



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- aaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20220364WT000021792D

फा.सं./F.No. STC/15-73/OA/2020

आदेश की तारीख/Date of Order :- 29-03-2022

जारी करने की तारीख/Date of Issue :- 29-03-2022

द्वारा पारित/Passed by:-

आर गुलजार बेगम *IR Gulzar Begum*

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 109/ADC/ GB /2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

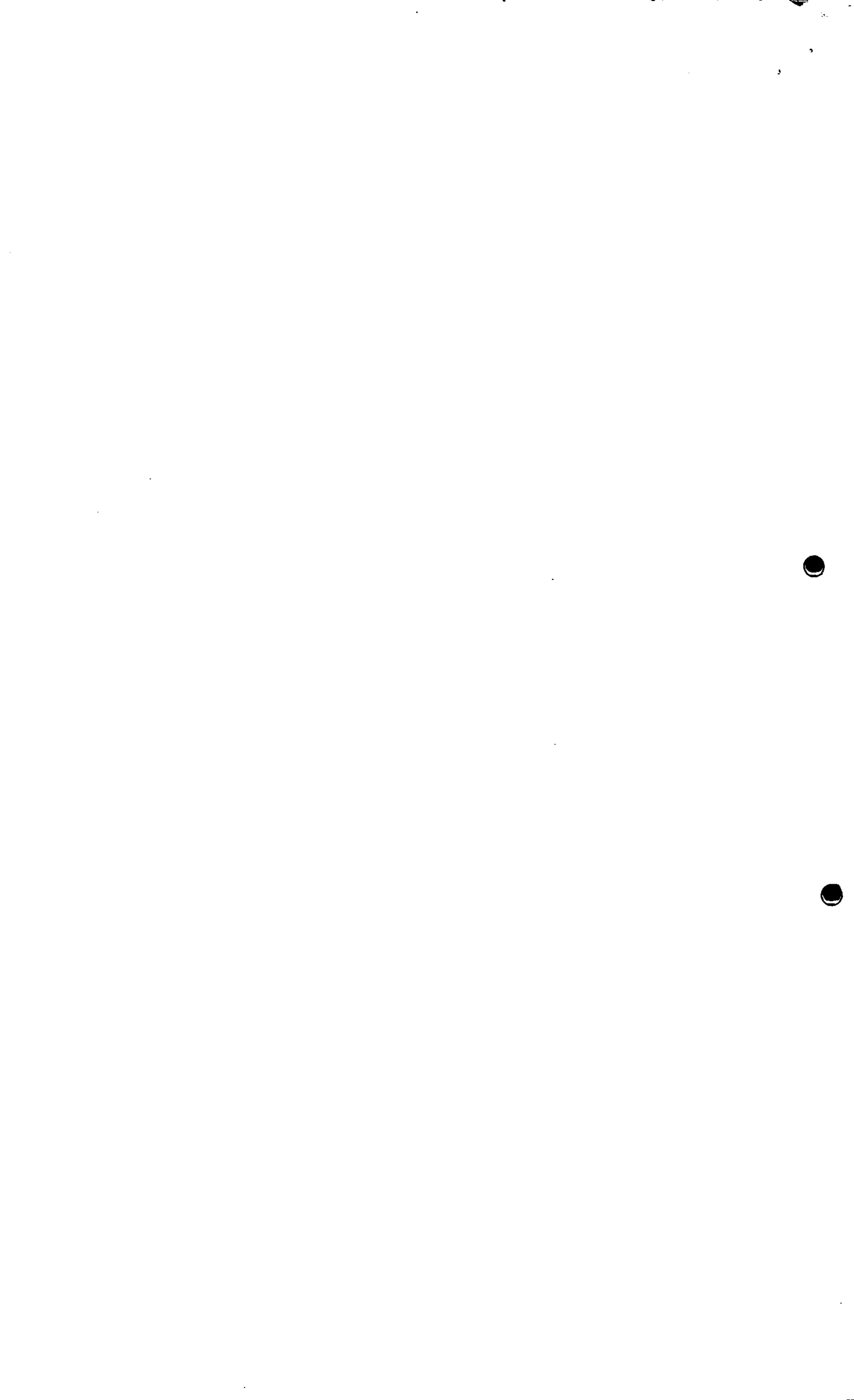
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No.STC/15-73/OA/2020 dated 29.09.2020 issued to Kashyap Shipping Agency, 14, Kalindi Complex, Opp. Loha Bhavan, Old High Court Lane, Income Tax Ahmedabad, Navarangpura HO, Ahmedabad-380009.



BRIEF FACTS OF THE CASE :

M/s. KASHYAP SHIPPING AGENCY, 14 KALINDI COMPLEX OPP. LOHA BHAVAN OLD HIGH COURT LANE INCOMETAX AHMEDABAD NAVARANGAPURA HO AHMEDABAD GUJARAT -380009 (hereinafter referred to as "the service provider") are engaged in the business of providing taxable services and registered with Service Tax Department holding Service Tax Registration No. AANHS6430FST001.

2. On preliminary verification of Third Party Data received from CBDT of the said service provider, the Sales/Gross Receipts from Services (Value from ITR/TDS, whichever is higher) are not tallied with Gross Value of Services Provided, as declared in ST-3 Returns of the FY 2014-15, FY 2015-16 and FY 2016-17. Further, it is observed that there is difference in Value of Services from ITR/TDS and Gross Value of Services provided in ST-3 returns which is to the tune of Rs. 81142673/-. From this, it appears that the service provider has less discharged their service tax liability of Rs. 10044561/- on the aforesaid difference amount of Rs. 81142673/- for the FY 2014-15, FY 2015-16 and FY2016-17, breakup of which is as under:

FY	Difference Between Value of Services from ITR and Gross Value in Service Tax Provided	Service Tax at the rate of 12%	Education Cess at the rate of 2% on duty	Sec Higher Edu Cess at the rate of 1% on duty	Total FY14-15(S Tax+ Edu cess+ Sec Higher Edu Cess)
FY 2014-15	80180870	9621705	192435	96218	9910356

FY	Difference Between Value of Services from ITR/TDS and Gross Value in Service Tax Provided	Service Tax from 01.04.15 to 31.05.15	Service Tax from 01.06.15 to 31.03.16	Education cess 2% of S Tax from 01.04.15 to 31.05.15	Sec Higher Education Cess 1% of S Tax from 01.04.15 to 31.05.15	Swachh Bharat Cess from 15.11.15 to 31.03.16	Total FY1516
FY 2015-16	961803	19288	112517	385	192	1818	134203

FY	Difference in value FY1617	Service Tax from 01.04.16 to 31.03.17	Swachh Bharat Cess from 01.04.16 to 31.03.17	Krishi Kalyan Cess from 01.06.16 to 31.03.17	Total FY1617
FY 2016-17	0	0	0	0	0

FY	Difference Between Value of Services from ITR/TDS and Gross Value in Service Tax Provided	Service Tax	Education cess 2% of S Tax from 01.04.15 to 31.05.15	Sec Higher Education Cess 1% of S Tax from 01.04.15 to 31.05.15	Swachh Bharat Cess from 15.11.15 to 31.03.16	Krishi Kalyan Cess from 01.06.16 to 31.03.17	GRAND TOTAL
FY 2014-15 to FY 2015-16	81142673	9753511	192820	96410	1818	0	10044561

3. The service provider is requested to clarify the above said differential value by submitting the self-certified documentary evidences such as Audited Balance Sheet, copy of Profit & Loss Account, copy of Ledgers, Gross Trial Balance Sheet, ITR, Form 26AS, ST-3 returns, sample sales invoices along with details of all the sales invoices issued during financial year 2014-15, FY2015-16 and FY2016-17 vide letters/email, but the service provider has neither produced any documentary evidences of the differential value nor submitted any reply.

4. It is observed that the service provider has not discharged their service tax liability on the actual value received towards taxable services provided by them, hence, there was a short payment of Service Tax of Rs. 10044561/- during the material period. Further, it appears that the service provider has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994, inasmuch as they failed to pay Service Tax to the extent of Rs. Rs. 10044561/- /- as per their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services provided/received by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

5. In view of the above, it appears that the service provider has short paid/non-payment Service Tax of Rs. Rs. 10044561/- on the actual value received towards taxable services provided which appears to be recoverable under proviso to Section 73(1) of the said Act along with interest under Section 75 *ibid* not paid by them under Section 68 of the said Act read with Rule 6 of Service Tax Rules, 1994, inasmuch as the said service provider has suppressed the facts to the department and contravened the provisions with intent to evade payment of service tax.

6. Further, in terms of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, every person providing taxable service to any person is required to pay Service Tax at the rate specified in Section 66 in such manner and within such period as may be prescribed. In the present case, on the basis of Third party Data/information of CBDT for the FY 2014-15, FY 2015-16 and FY 2016-17 it however appears that the service provider has less discharge their service tax liability on the actual value received towards taxable services provided at the rate prescribed under Section 66 of the said Act. Further, it appears that all these acts of contravention on the part of the service provider is committed by way of suppression of the facts by not declaring/not considering the correct value of taxable services provided by them for payment of service tax to the Central Government for the period in question, with intent to evade payment of Service Tax and therefore the service tax which was not paid at the material time is required to be demanded under the proviso to Section 73(1) along with interest as per provision of Section 75 of the said Act.

7. All the above acts of contravention as discussed in above paras on the part of the service provider appears to be punishable, therefore, they are liable for penalty under Section 76 of the said Act. Further, as per Section 70 of the said Act, the person liable to pay service tax shall himself assess the tax due on the services provided by him and shall furnish a prescribed return as per Rule 7 of the Service Tax Rules, 1994. As they have failed to do so, they appear to be liable to penalty in terms of Section 77 of the said Act. Further, the penalty under Section 78 of the said Act also appears to be invocable in the instant case as they have suppressed the taxable value.

8. The provisions of the repealed Central Excise Act, 1944, the Central Excise Tariff Act, 1985 and amendment of the Finance Act, 1994 have been saved vide Section 174(2) of the CGST Act, 2017, and therefore the provisions of the said repealed/amended Acts and Rules made thereunder are enforced for the purpose of demand of duty, interest, etc. and imposition of penalty under this notice.

9. Therefore, M/s. KASHYAP SHIPPING AGENCY, 14 KALINDI COMPLEX OPP. LOHA BHAVAN OLD HIGH COURT LANE INCOMETAX AHMEDABAD NAVARANGAPURA HO AHMEDABAD GUJARAT -380009 called upon to show cause to the Additional Commissioner of CGST & Central Excise, Ahmedabad-North, having their office situated at **FIRST FLOOR, CUSTOM HOUSE, NR. All India Radio, Navrangpura, Ahmedabad, Gujarat 380009**, as to why :

- a) The demand of Service tax to the extent of Rs. 10044561/- (One Crore Forty Four Thousand Five Hundred Sixty One Only) (Service Tax of Rs. 9753511/- + Education Cess of Rs. 192820/- + SHEC of Rs. 96410/- + Swachh Bharat Cess of Rs. 1818/- + Krishi Kalyan Cess of Rs. 0) not paid/short paid by them should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- b) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- c) Penalty should not be imposed upon them under the provisions of 78 of the Finance Act, 1994.

DEFENCE REPLY :

10. The assessee vide letter dated 24.02.2022 submitted in their defence reply that he is service provider for the clearing house agent (CHA); that on behalf of the customer, it is their practice of the business that they pay the expenses on behalf of the customer for various charges and expenses like Concor charges, Fumigation charges, Shipping line charges, Transportation charges, Warehouse charges, Palletization charges, CMC & Other Expenses for different works; that after completion of the assignment, they raise their bill for agency charges, and demand note for the reimbursement of the expenses paid on behalf of the customer; that they provide all the documents and receipts of the reimbursement expense which are in the name of the customers; that their service income, being income of Agency Charges are taxable income for which they issue an invoice with service tax and reflect the same in the ST-3 return; that the receipts of reimbursement charges are not their income, the same is not taxable for service tax; that they enclose copy of the Audited Balance sheet which shows both the receipt in separate head, against which expense paid as reimbursement expense are also separately mentioned; that they enclose reconciliation of the monthly income of service income and reimbursement receipts as shown in ST-3 return and in the books of account; that they also attached sample copy of the invoice issued for the Agency charges income and reimbursement receipt Memo along with the copy of sample expense receipts which are standing in the name of customer; that there is no less discharging of the service tax for all the three years and requested to drop the proceedings.

PERSONNEL HEARING :

11. The personnel hearing was granted to the assessee on 16.03.2022. Shri Pritesh D. Shah, proprietor of the firm appeared for personnel hearing. He submitted

written reply and submitted reconciliation statement and requested to drop all the proceedings.

DISCUSSION AND FINDINGS

12. I have carefully gone through the records of the case, submission made by the noticee in reply to the show cause notice, ITR, Balance sheet for the year 2014-15 to 2016-17. In the present case, Show Cause Notice was issued to the noticee demanding Service Tax of Rs. 1,00,44,561/- for the financial year 2014-15 and 2015-16 on the basis of data received from Income Tax authorities and find that the noticee had obtained Service Tax registration and also filed the ST-3 Returns as stipulated in the Finance Act, 1994 and rules made thereunder. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. The assessee submitted that they are providing Clearing (Custom) House Agent (CHA) Services to their client for which they had taken service tax registration. Based on the details received from Income tax department and comparing the receipt shown in Form 26AS with ST-3 returns filed by the them, the show cause notice was issued to recover short paid service tax of Rs. 1,00,44,561/- with interest and penalty.

12.1. *In the instant SCN, the point is regarding taxability of reimbursement expenses received by the assessee. In this regard on perusal of reply to SCN and other documents submitted by the assessee, I find that the main business of their company is to provide Custom House Agent service. They have given the clarification regarding differential value of Rs.8,11,42,673/- for the year 2014-15 and 2015-16 are pertaining to reimbursement of expenses arrived on behalf of Principal. I find with regard to reimbursement charges, assessee company had incurred expenses on behalf of clients. Further invoice is also generated on the name of client only. Normally these invoices are Concor charges, Fumigation charges, Shipping line charges, Transportation charges, Warehouse charges Palletization charges, CMC & Other Expenses. Further these expenses are not amounts to supply of service. Further these expenses does not include any charges from company side it purely reimbursement of expenses only. Where there is no supply of service then no service tax on such amount. They have also furnished documents such as audited financial statements, copy of ledgers, Gross Trial Balance, ITR, Form 26AS, ST 3 return sample invoices etc and requested to resolve the issue. They have also provided details of reimbursement of various charges paid on behalf of client and recovered from them. The reimbursement is related to the items such as customs duty, Detention charges, concord charges, shipping line charges, transportation charge, etc.*

12.2 In this connection, I find that Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 provided that where any expenditure or costs are incurred by service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service and shall be included in the value for the purpose of charging service tax. Rule 6(2) *ibid* provided that subject to provisions of sub-rule (1), the expenditure or costs incurred by service provider as a pure agent of the recipient of service, shall be excluded from the value of taxable service if the conditions prescribed are satisfied. Rule 5 (1) and (2) both does not differentiate provisions service wise, value of expenses shall be includible in all services if incurred in the course of service and similarly relief is also extended to all services if expenses or cost incurred in satisfaction of the conditions prescribed. The provisions contained in Rule 5(2) *ibid* reads as below;

Rule 5 (2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely :-

(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;

- (ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
- (iii) the recipient of service is liable to make payment to the third party;
- (iv) the recipient of service authorises the service provider to make payment on his behalf;
- (v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;
- (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- (viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation 1. - For the purposes of sub-rule (2), "pure agent" means a person who -

- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- (b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;
- (c) does not use such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services.

Explanation 2. - For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.

12.3 Rule 5(2) *ibid* is applicable subject to conditions provided. In the case on hand the services provided by the assessee and that of arranged from third party are distinct and the noticee themselves was not providing such services. They had arranged such service only on direction of principal and raised separate bills to principal for charging remuneration of services rendered by them and for reimbursement of expenses. Principal was aware that service provider has arranged such activity from third party service provider for which payment is to be made by principal. The noticee along with debit notes had also enclosed service bills issued by third party service provider and charged amount on actual basis. They did not keep margin between the value charged by third party service provider and recovered from principal. Explanation 1(a) to Rule 5(2) *ibid* provided that "pure agent" means a person who enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service. The above clause provided that there must be a contractual agreement between principal and the party whom amount reimbursed but the clause does not insist for agreement to be a written one. The term agreement includes both oral and written and it is undisputed that an oral agreement is as equally valid, as a written one. The legality, of oral agreement, cannot be questioned, if it falls under the ambit of the requirements. Section 10 of the Indian Contract Act, 1872 provided that all agreements are contracts if they are made by free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

12.4. I find that the activities independent of the service rendered if provided as facility to principal by managing it from third party and amount recovered only equal to expenses incurred, such other expenses does not form part of assessable value for payment of service tax. The assessee has also furnished copies of invoices, wherein I find that invoices issued to various agencies and corresponding documents for claiming the reimbursable expenses only. I find from the random invoices furnished by the assessee that they have separated the reimbursement charges and paid service tax on clearing and forwarding agency charge. I have also verified their profit and loss account for the year 2014-15 and 2015-16 wherein the detail scheduled for income has been mentioned wherein reimbursement charges have been mentioned separately. I also verified reconciliation statement furnished by the assessee wherein the month wise reimbursement charges collected on behalf of the principal has been submitted for the year 2014-15 and 2015-16. The grand total for both the year for the reimbursed amount detailed as under :

Description	2014-15	2015-16
Differential value on which service tax demanded as per SCN	80180870	961803/-
Reimbursement charges not applicable to Service Tax deducted. The assessee has furnished detailed statement .	80180870	961803/-
Difference	0	0

12.5 On perusal of invoices and other documents, I find that there is no element of supply of service involved in this activity of reimbursement of expenses. The noticee though holding service tax registration as Custom House Agent are providing services for documentation with Customs and port authorities for clearance of cargo. The other activity arranged by noticee could have been arranged from third party by the principal themselves but often the exporter/importer are sitting far away from the port of loading/ port of destination as the case may be and arranging such other activities by themselves remains a tiring work. Therefore, a trade practice has been arrived at that the CHA/C&F Agent sitting at the port of export/import will in addition to their own work also arrange such other services and the agency charges paid to them include remuneration for all. The charges incurred by noticee for arranging activity from third party service provider are reimbursed to them on actual basis.

12.6 The Balance sheet and profit and loss account of an assessee is vital statutory records. Such records are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for evincing true financial position. Assessee was legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in unorganized method. The statute provides mechanism for supervision and monitoring of financial records. It is mandate upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive fair conclusion in respect of the balance sheet and profit and loss accounts. It is also onus upon auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs. The Chartered Accountant, who audited the accounts of the assessee, being qualified professional has given declaration that the balance sheet and profit and loss accounts of the noticee reflect true and correct picture of the transaction and therefore, I have no option other than to accept the classification of incomes under profit and loss account along with ledger as true nature of the business and to proceed to conclude instant proceedings accordingly.

13. While considering all these aspects, I find that the services provided and collected income as *the reimbursement is related to the items such as customs duty, attention charges, concord charges, shipping line charges, transportation charge, etc.* (as detailed above) are not come under the preview of taxable service and thereby they are exempted from payment of service tax. As supra, I find that as the differential income of Rs. 8,11,42,673/- for the year 2014-15 and 2015-16 are only reimbursement of expenses in the capacity of pure agent, thereby not liable to service tax.

14. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, ITR, reconciliation statement, I find that the service tax demand of Rs. 10044561/- for the period 2014-15 and 2015-16 is not sustainable and accordingly Show Cause Notice dated 29.09.2020 is liable to be dropped. Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty upon noticee on this count.

Accordingly, I pass the following order;

ORDER

15. I hereby order to drop proceedings initiated against M/s. KASHYAP SHIPPING AGENCY, 14 KALINDI COMPLEX OPP. LOHA BHAVAN OLD HIGH COURT LANE INCOME TAX AHMEDABAD NAVARANGAPURA HO AHMEDABAD GUJARAT - 380009; for recovery of service tax of Rs. 10044561/- along with interest and penalties vide SCN No. STC/15-73/OA/2020 dated 29.09.2020.

R. Gulzar Begum
29/9/20

(R.GULZAR BEGUM)
Additional Commissioner
Central GST & Central Excise
Ahmedabad (North)

By Regd. Post AD./Hand Delivery
F. No.: STC/15-73/OA/2020

Date: 19/03/2022

To,
M/s. KASHYAP SHIPPING AGENCY,
14 KALINDI COMPLEX OPP. LOHA BHAVAN
OLD HIGH COURT LANE INCOME TAX AHMEDABAD
NAVARANGAPURA HO AHMEDABAD GUJARAT -380009;

Copy for information to:

- 1 The Commissioner of CGST & C.Ex., Ahmedabad North.
- 2 The Deputy Commissioner Division-VI, Central Excise & CGST, Ahmedabad North.
- 3 The Superintendent, Range-IV, Division-VI, Central Excise & CGST, Ahmedabad North
- 4 The Superintendent(system) CGST, Ahmedabad North for uploading on website.
- ✓ 5 Guard File

