



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

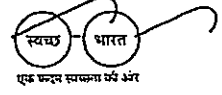
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद – 380009

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निबन्धित पावती डाक द्वारा/By R.P.A.D

फ़ा.सं./F.No. **STC/15-76/OA/2020**

आदेश की तारीख/Date of Order:-31.03.2022

जारी करने की तारीख/Date of Issue :- 31.03.2022

DIN NO: 20220364WT0000111970

द्वारा पारित/Passed by:-

आर गुलजार बेगम **IR. GULZAR BEGUM**

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 122/ADC/GB/2021-22

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

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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-380015को प्रारूप संख्या इ.ए (1-A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो 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. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील ,अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-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 रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 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.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice No. STC/15-76/OA/2020 dated 29.09.2020 issued to M/s. FREIGHT CORPORATION, Maurya Complex FF 105 Science City Road Nr Sola Over Bridge Ahmedabad Sola Ahmedabad GUJARAT-380054.

Brief Facts of the Case

M/s. FREIGHT CORPORATION, Maurya Complex FF 105 Science City Road Nr Sola Over Bridge Ahmedabad Sola Ahmedabad GUJARAT-380054 (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. AMZPM8886BSD001.

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. 39995674/-. From this, it observed that the service provider has less discharged their service tax liability of Rs. 5088153/- on the aforesaid difference amount of Rs. 39995674/- 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	Higher Edu Cess at the rate of 1% on duty	Total(S Tax+ Edu cess+ Higher Edu Cess)
FY 2014-15	34336488	4120379	82408	41204	4243990

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	Educational 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	0	0	0	0	0	0	0

FY	Difference Between Value of Services from ITR/TDS and Gross Value in Service Tax Provided	Service Tax from 01.04.16 to 31.03.17	Swacch 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	5659186	792286	28295	23579	844162

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	Kris hi Kalyan Cess from 01.06.16 to 31.03.17	GRAND TOTAL
FY 2014-15 to FY 2016-17	39995674	4912665	82408	41204	28295	23579	5088153

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 was 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. 5088153/- during the material period. Further, it was observed 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. 5088153/- 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 was observed that the service provider has short paid/non-payment Service Tax of Rs. 5088153/- on the actual value received towards taxable services provided which is 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 observed 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 was observed 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 is 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 are liable to penalty in terms of Section 77 of the said Act. Further, the penalty under Section 78 of the said Act also 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. FREIGHT CORPORATION, Maurya Complex FF 105 Science City Road Nr Sola Over Bridge Ahmedabad Sola Ahmedabad GUJARAT-380054, was called upon to show cause to the Additional Commissioner of CGST & Central Excise, Ahmedabad-North, as to why :

- a) The demand of Service tax to the extent of Rs. 5088153/-(Fifty Lakh Eighty Eight Thousand One Hundred Fifty Three Only) (Service Tax of Rs. 4912665/- + Education Cess of Rs. 82408/- + SHEC of Rs. 41204/- + Swachh Bharat Cess of Rs. 28295/- + Krishi Kalyan Cess of Rs. 23579) 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.

PERSONNEL HEARING :

10. The personnel hearing was granted to the assessee on 21.03.2022. Shri Ronak D. Modi, authorized person of firm was appeared for personnel hearing. He submitted written reply and submitted reconciliation statement and requested to drop all the proceedings.

DEFENCE REPLY :

11. The assessee vide letter dated 21.03.2022 submitted in their defence reply that they are engaged in the business of freight forwarding which is covered under pure agent services. Further, they also submitted that their gross receipts during the year includes taxable services, exempt services and expenses reimbursement. Further, they also submitted that as they are in the business of freight forwarding, their turnover includes transport charges, on which service tax is payable by the recipients. They also submitted that they have also made supply to SEZ unit i.e. M/s Frimenic Aeromatics Production (India) Pvt Ltd.

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. 50,88,153/- for the financial year 2014-15 and 2016-17 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 Forwarding Agent 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. 50,88,153/- with interest and penalty.

12.1. *In the instant SCN, the point is regarding taxability of reimbursement expenses received by the assessee, transportation charges and Supply to SEZ. 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 Forwarding Agent service. They have given the clarification regarding differential value of Rs.3,99,95,674/- for the year 2014-15 and 2016-17 are pertaining to reimbursement of expenses arrived on behalf of Principal, GTA services and Supply to SEZ unit. 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, Detention Charges, Loading Charges, Ocean Freight, Repairing Charges Shipping line charges, Transportation charges & 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, 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 during the year 2016-17, total income as per their accounting records i.e profit and loss account is Rs. 3,41,72,582/-, total value of services as per 26 AS is Rs. 3,58,56,249, total value of services as per STR is Rs. 3,01,97,063/- and the SCN is proposed for demanding service tax on differential income of Rs. 56,59,187/- between 26AS and STR for the year 2016-17. Relying on the same financial records alongwith the ledger, I find that assessee has income of Rs. 3,41,72,582/- from the services provided as stated above. The form 26AS reflects such income where the TDS has been deducted by the recipient of services which may not give the correct financial transaction as regard to the sale of services because it may includes value of goods as well as service tax portion in the payment received by the assessee. It is therefore, relied on the financial records i.e Balance sheet and Profit and Loss account which are also prepared in terms of the companies act as well as income tax act., I consider Rs. 39,75,519 for adjudication i.e. the difference in value as per Profit and loss account and Service Tax returns for FY 2016-17.

The year wise reconciliation is tabulated herewith as under:

FY 2014-15

Description	2014-15
Total value of Services as per P & L	4,07,83,977
Total value of Services as per STR	64,47,491
Difference in ITR & STR as per reconciliation statement	3,43,36,488
Differential value on which service tax demanded as per SCN statement .	3,43,36,488
Reimbursement charges not applicable to Service Tax deducted. The assessee has furnished detailed statement .	3,43,36,488
Difference	0

FY 2016-17

Description	2016-17
Total value of Services as per P & L	3,41,72,582
Total value of Services as per STR	3,01,97,063
Difference in ITR & STR as per reconciliation statement	39,75,519
Total exempted services as per ITR .	2,57,23,419
Total exempted services as per STR	2,17,47,900
Difference in value of exempted services	39,75,519
Value of exempted services not reporting under STR	39,75,519
Differential Value of services consider for FY 2016-17 as stated above	39,75,519
Difference	0

12.5 From the statement above, I find that the difference of Rs. 3.43.36.487/ for the year 2014-15 is on account of re-imburement charges incurred by the assessee on behalf of Principal. With regard to difference of Rs. 39,75,519 for the year 2016-17 is because of exempted services not reported in their respective STR for the financial year. The invoices have been generated accordingly. 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 Forwarding 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 Forwarding 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 alongwith 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, etention 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. 3,99,95,674/- for the year 2014-15 and 2016-17 are only reimbursement of expenses in the capacity of pure agent, thereby not liable to service tax.

30. 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. 50,88,153/- for the period 2014-15 and 2016-17 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

14. I hereby order to drop proceedings initiated against M/s. FREIGHT CORPORATION, Maurya Complex FF 105 Science City Road Nr Sola Over Bridge Ahmedabad Sola Ahmedabad GUJARAT-380054; for recovery of service tax of Rs. 50,88,153/- along with interest and penalties vide SCN No. STC/15-76/OA/2020 dated 29.09.2020.

R. Gulzar Begum

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

By Regd. Post AD./Hand Delivery
F. No.: STC/15-76/OA/2020

Date:31.03.2022

To,
M/s. FREIGHT CORPORATION,
Maurya Complex FF 105 Science City Road
Nr Sola Over Bridge Sola
Ahmedabad GUJARAT-380054;

Copy for information to:

1. The Commissioner, CGST & CX, Ahmedabad North.
- 2.. The Dy. /Assistant Commissioner, DIV-VI, CGST & CX, Ahmedabad North.
3. The Superintendent, Range-IV, Division-VI, CGST & CX, Ahmedabad North
4. The Superintendent, Systems, CGST & CX, Ahmedabad North
5. Guard File.

