



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

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निवन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-171/OA/2020

आदेश की तारीख/Date of Order:- 03.02.2022

जारी करने की तारीख/Date of Issue :- 03.02.2022

DIN NO: 20220264WT0000666D8D

द्वारा पारित/Passed by:- आर गुलजार बेगम *IR. GULZAR BEGUM*

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 57/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, अंबावाडी, अहमदाबाद-380015) को 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/15-171/OA/2020 dated 23.10.2020 and issued to M/s. Maxima Freight India Pvt. Ltd., situated at 33, Anaveshan, Vill:Bopal, TA. Daskroi, Ahmedabad-380058.



BRIEF FACTS OF THE CASE

M/s Maxima Freight India Private Limited, 33, Anaveshan Village:Bopal, Tal. Daskroi,Ahmedabad - 380058 (hereinafter referred to as "the said assessee" for the sake of brevity) is engaged in providing taxable services and for the same was registered with Service Tax Department having Registration (ST-2) No. AAJCM2434QSD001.

2. An analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 to 2016-17, and details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. On going through the Third party Data received from CBDT of the said assessee for the F.Y. 2015-16 to 2016-17, the Sales/Gross Receipt from Services (Value from ITR) are not tallied with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16 to 2016-17. It appeared that the said assessee have declared less/not declared any taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 to 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16 to 2016-17. The details of difference as per CBDT data for the F.Y. 2015-16 to 2016-17 are as under :

Sr. No.	Financial Year	VALUE DIFFERENCE in ITR & STR / TDS & STR) (Whichever is higher) (in Rs.)	Service Tax (in Rs.)
02	2015-16	34965635	4878386
03	2016-17	51712020	7713709
	TOTAL	86677655	12592095

4. The clarification regarding the above said differential value along with documents were called for from the said assessee for assessment purpose vide Supdt's letter F.No. CGST-06/04-64/TPD/AR-I/2020-21 dated 19.10.2020. The said assessee has been asked to furnish the reason for the difference between taxable value shown in ST-3 Return vis-à-vis Income Tax Return filed by the said assessee for the Financial year 2015-16 to 2016-17 alongwith submission of self-certified documents such as audited balance sheet, Profit & Loss account, ledgers, gross trial balance, ITR, Form 26AS, ST-3 Return and details of all the sales invoices issued during F.Y. 2015-16 to 2016-17 but the said assessee has neither produced any documentary evidences of the differential value nor submitted any reply.

5. The said assessee has neither submitted the documents nor extended the cooperation in the matter although sufficient time was provided. This act of non-cooperation of the said assessee has contravened the provisions of Section 72 of the Finance Act, 1994 and thus rendered themselves liable for penal action under Section 77 of Finance Act, 1994. As per the provisions of Section 72 of the Finance Act, if any person, liable to pay service tax having made a return, fails to assess the tax, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is

available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

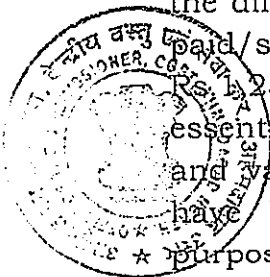
6. As per the provisions of Section 73(1) of the Finance Act where any service tax has not been levied or paid or has been short levied or short paid by the reasons of willful mis-statement or suppression of facts with intent to evade payment of service tax, the Central Excise Officer may within five years from the relevant date, serve notice on the person chargeable with service tax which has not been levied or paid of which has been short levied or short paid requiring him to show cause why he should not pay amount specified in the notice.

7. As per Rule 6 of the Service tax Rules, 1994, the service tax shall be paid to the credit of the Central Government by 5<sup>th</sup> day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that assessee shall submit their service tax returns in the form of ST-3 within the prescribed time.

8. The said assessee have failed to pay/short paid/deposit service tax to the extent of Rs.1,25,92,095 /- on the difference of taxable value during the period 2015-16 to 2016-17 by declaring less value in their ST-3 Returns vis-a-s their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services received/provided by them with an intent to evade payment of service tax. Thus, it was observed that the said assessee have failed to discharge the service tax liability of Rs. 1,25,92,095/- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) worked out on value of Rs. 8,66,77,655/- and therefore, service tax is required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994. In view of above, it appeared that the said assessee have contravened the provisions of Section 66, 68 and 70 of the Finance Act, 1994,

9. It has been noticed that at no point of time, the said assessee has disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Service of the differential value that has come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 to 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc., based on mutual trust and confidence are in place. From the evidences, it appears that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs.1,25,92,095/-. Thus, it was found that there is a deliberate withholding of essential and material information from the department about service provided and value realized by them. It appeared that all these material information have been concealed from the department deliberately, consciously and purposefully to evade payment of service tax.

10. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax found to have been committed by way



of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of service tax as discussed in the foregoing paras and therefore, the said amount of service tax amounting to Rs.1,25,92,095/- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) not paid is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

11. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appear to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it was found that the said assessee have contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee appeared to have rendered themselves liable to penalty under Section 76 & Section 77 of the Finance Act.

12. Moreover, in addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appears that the said assessee has willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of service tax rendering themselves liable for penalty under Section 78 of the Finance Act, 1994.

13. Accordingly Show Cause Notice dated 23.10.2020 was issued to M/s.MAXIMA FREIGHT INDIA PRIVATE LIMITED, called upon to show cause as to why;

(i) Differential amount of Service Tax amounting to Rs.1,25,92,095/- (Rupees One crore Twenty Five lakhs Ninty Two thousand Ninty Five only) (inclusive of Edu. Cess and S&H Edu. Cess) short paid/not paid by them, should not be confirmed/demanded under proviso to Section 73(1) of the Finance Act, 1994.

(ii) interest at the appropriate rates should not be recovered from them as prescribed under Section 75 of the Finance Act, 1994 from the due date on which the Service Tax was liable to be paid till the date on which the said Service Tax is paid.

(iii) penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for the failure to make payment of service tax payable by them within prescribed time-limit.

(iv) penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for the failure to assess the correct tax liability.

(vi) penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 as amended for suppressing and not disclosing the value of the said taxable service provided by them before the department with an intent to evade payment of service tax.

**DEFENCE REPLY**

14. The said assessee vide letter dated 26.10.2020 submitted their explanation regarding short payment/non payment of service tax for the FY 2015-16 & 2016-17 wherein they submitted that the main business of their



company is clearing and forwarding agent service, Customs House Agent Service and Cargo Handling Service. They have given the clarification regarding differential value of Rs.3,49,65,635/- and Rs.5,17,12,020/- are pertaining to reimbursement of expenses. Company incurred expenses on behalf of clients. Further invoice is also generated on the name of client only. Normally these invoices are customs duty payment, Air freight payment, ocean/shipping freight charges and other related 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 detailed list 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, Ocean freight, air freight, concor charges, shipping line charges, transportation charge, GSEC, stamp duty, warfage, insurance detention charges, airline transfer charges, lift on charges destination charges, BL charges etc etc.

#### PERSONEL HEARING

15. A personnel Hearing was granted to the assessee on 11.01.2022. Shri Ruthik Patel, accountant, duly authorised attended the P.H on behalf of the said assessee. He stated that they have submitted reconciliation statement and requested to drop all further proceedings.

#### DISCUSSION AND FINDINGS

16. I have carefully gone through the records of the case, submission made by the noticee in reply to the show cause notice, Form 26AS, ITR, ST-3 Returns, Balance sheet for the year 2015-16 & 2016-17. In the present case, Show Cause Notice was issued to the noticee demanding Service Tax of Rs.1,25,92,095/- for the financial year 2015-16 & 2016-17 on the basis of data received from Income Tax authorities and finding 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 and Forwarding Agent Services, Transport of goods by road/GTA services, Works Contract Services and Legal Consultancy service 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.1,25,92,095/- with interest and penalty.

17. In the instant SCN, the point is regarding taxability of reimbursement expenses made by the assessee. In this regard on perusal of reply to SCN and other documents submitted by the assessee, I find that the assessee submitted that the main business of their company is clearing and forwarding agent service, Customs House Agent Service and Cargo Handling Service. They have given the clarification regarding differential value of Rs.3,49,65,635/- and Rs.5,17,12,020/- are pertaining to reimbursement of expenses. The assessee

company had incurred expenses on behalf of clients. Further invoice is also generated on the name of client only. Normally these invoices are customs duty payment, Air freight payment, ocean/shipping freight charges and other related 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 detailed list 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, Ocean freight, air freight, concord charges, shipping line charges, transportation charge, GSEC, stamp duty, warfage, insurance detention charges, airline transfer charges, lift on charges destination charges, BL charges etc etc.

18. 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.

19. 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.

20. 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 it was invoices issued to various agencies and corresponding documents for claiming the reimbursable expenses. The said assessee has also provided the categories wherein they have reimbursed the amount which as detailed as under:

FINANCIAL YEAR 2014-15

<u>CATEGORY</u>	<u>AMOUNT</u>
Custom Duty paid on behalf of Client	7,226,081
Ocean Freight paid on behalf of Client	14,576,981
Air Freight paid on behalf of Client	5,081,677
Concor Charge paid on behalf of Client	901,151
Shipping Line Charges paid on behalf of Client	1,205,396
Transportation Charges paid on behalf of Client	4,033,400
GSEC paid on behalf of Client	86,838
Fumigation paid on behalf of Client	22,050
Stamp Duty paid on behalf of Client	242,125
Wharfage Charges paid on behalf of Client	227,883
Insurance paid on behalf of Client	73,776





Ware House Charges paid on behalf of Client	680,244
Detention Charges paid on behalf of Client	246,488
Agency Charges paid on behalf of Client	65,605
Lift on Charges paid on behalf of Client	35,509
Destination Charges paid on behalf of Client	16,160
Airline DO Charges paid on behalf of Client	55,410
BAF Charges paid on behalf of Client	32,086
Examination Charges paid on behalf of Client	28,000
RTO Challan paid on behalf of Client	12,000
EDI Charges paid on behalf of Client	13,099
Documentation Charges paid on behalf of Client	11,574
Customs & Docs Charges paid on behalf of Client	4,900
Cartage Charges paid on behalf of Client	9,359
Bond Charges paid on behalf of Client	2,100
Wooden Pallets paid on behalf of Client	6,300
Handing Charges paid on behalf of Client	5,185
Survey Charges paid on behalf of Client	5,080
Cargo Charges paid on behalf of Client	2,680
Endorsement Charges paid on behalf of Client	3,435
Ground Rent paid on behalf of Client	2,405
Quarantine Entry Fees paid on behalf of Client	2,695
Overload Charges paid on behalf of Client	22,000
Certificate origin paid on behalf of Client	400
ITF paid on behalf of Client	4,900
ADF paid on behalf of Client	3,185
THC paid on behalf of Client	6,174
FSC Charges paid on behalf of Client	1,310
Courier Fees paid on behalf of Client	1,500
Labour Charges paid on behalf of Client	1,500
Brokerage paid on behalf of Client	3,407
ACD Charges paid on behalf of Client	500
Notary Charges paid on behalf of Client	100
Other Charges	2,947
Round off.	41
<b>TOTAL</b>	<b>34,965,635</b>

## FINANCIAL YEAR 2016-17

CATEGORY	AMOUNT
Custom Duty paid on behalf of Client	18,513,998
Ocean Freight paid on behalf of Client	11,086,385
Air Freight paid on behalf of Client	4,225,749
Concor Charge paid on behalf of Client	923,115
Shipping Line Charges paid on behalf of Client	4,429,109
Transportation Charges paid on behalf of Client	5,861,831
GSEC paid on behalf of Client	182,075
Ex Work expense paid on behalf of Client	2,124,965
Stamp Duty paid on behalf of Client	751,270
Wharfage Charges paid on behalf of Client	62,773
Insurance paid on behalf of Client	80,911
Ware House Charges paid on behalf of Client	2,506,612
Detention Charges paid on behalf of Client	46,553
Airline transfer charges paid on behalf of Client	3,105



Lift on Charges paid on behalf of Client	137,577
Destination Charges paid on behalf of Client	28,724
Airline DO Charges paid on behalf of Client	130,005
BL Charges paid on behalf of Client	22,200
Bank Fee paid on behalf of Client	274
Examination Charges paid on behalf of Client	3,500
Clearance Fees paid on behalf of Client	55,113
Misc Charges Paid on behalf of Client	12,000
EDI Charges paid on behalf of Client	50,448
Documentation Charges paid on behalf of Client	53,163
Customs & Docs Charges paid on behalf of Client	4,529
Info Charges paid on behalf of Client	12,545
Bond Charges paid on behalf of Client	4,900
Certificate of Origin charges paid on behalf of client	7,755
Handing Charges paid on behalf of Client	16,564
Commsion Paid on behalf of Client	7,163
Damage charges paid on behalf of Client	5,237
Delivery charges paid on behalf of Client	9,315
CGC Charges paid on behalf of client	200
Docking Fees paid on behalf of Client	6,887
Pick Up charges on behalf of Client	146,629
Lifting Cahrges paid on bhalf of Client	8,264
Registration Fees paid on behalf of Client	20,000
AWB paid on behalf of Client	5,865
THC paid on behalf of Client	30,826
Port Charges paid on behalf of Client	9,969
Courier Fees paid on behalf of Client	1,500
Advance Licence Issue fee on behalf of Client	112,543
Terminal Fee paid on behalf of Client	6,075
ACD Charges paid on behalf of Client	500
ADC NOC Cahrges paid on behalf of Client	3,000
N form Charges paid on behalf of Client	300
<b>TOTAL</b>	<b>5,17,08,220</b>

21. 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 C&F agent, they were also a licensed CHA and providing services of C&F agent and 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.

22. 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 as true nature of the business and to proceed to conclude instant proceedings accordingly.

23. While considering all these aspects, I find that the services provided and collected income as customs duty, Ocean freight, air freight, concor charges, shipping line charges, transportation charge, GSEC, stamp duty, warfage, insurance detention charges, airline transfer charges, lift on charges destination charges, BL charges 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.3,49,65,635/- and Rs.5,17,12,020/- in the SCN for financial year 2015-16 & 2016-17 is only reimbursement of expenses in the capacity of pure agent and thereby not liable to service tax.

24. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income from clearing and forwarding services. I, therefore, refrain from discussing the taxability on other income other than clearing and forwarding services. For the sake of clarity, the consolidated worksheet are tabulated and reconciled as under:

Description	2015-16	2016-17
Differential value on which service tax as per SCN	34965635	51712020
Less: Charges reimbursed as discussed	34965635	51712020
Difference	0	0

25. 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. 1,25,92,095/- for the period 2015-16 & 2016-17 is not sustainable and accordingly Show Cause Notice dated 23.10.2020 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**

24. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 1,25,92,095/- along with interest and penalties vide SCN No. STC/15-171/OA/2020 dated 23.10.2020.

*R. Gulzar Begum*

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

F.No.STC/15-171/OA/2020

Date: 31/10/20

To,  
M/s MAXIMA FREIGHT INDIA PRIVATE LIMITED  
33 ANAVESHAN VILL:BOPAL  
TA DASKROI,AHMEDABAD 380058

Copy to:

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

