



आयुक्त का कार्यालय

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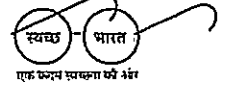
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद – 380009

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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-160/OA/2020

आदेश की तारीख/Date of Order:- 28.02.2022

जारी करने की तारीख/Date of Issue :- 28.02.2022

DIN NO: 20220264WT000092499C

द्वारा पारित/Passed by:-

आर गुलजार बेगम *IR. GULZAR BEGUM*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 64/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-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/15-160/OA/2020** dated **22.10.2020** and issued to **M/S. Chase Logistics Pvt Ltd** situated at 101, Shoppers Plaza, Opp. Municipal Market, C.G. Road, Navrangpura, Ahmedabad-380009.

BRIEF FACTS OF THE CASE

M/s. Chase Logistics P.Ltd, 101/Shopper's plaza, Opp.Municipal Market, C.G Road, Navrangpurs, Ahmedabad -380009 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.-AADCC3409MSD001 & are engaged in the business of Providing Taxable Services.

2. On perusal of the data received from CBDT, it was noticed that the assessee had declared different values in Service Tax Return (ST-3) and Income Tax Return (ITR/Form 22AS) for the Financial year 2015-16. On scrutiny of the above data, it was noticed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2015-16 as compared to the Service related taxable value declared by them in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

(Amount in Rs.)								
Sr No	F. Y.	Total Sale of Service as per ITR	TOTAL GROSS VALUE PROVIDED (STR)	TOTAL VALUE for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	VALUE DIFFERENCE in ITR and STR	VALUE DIFFERENCE in TDS and STR	HIGHER VALUE (VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	DUTY @ 14.5%
1	2015-16	97264193	6785126	67386574	90479067	60601448	90479067	13119464

3. To explain the reasons for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form: 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns for the Financial Year 2015-16, letter dated 06.10.2020 was issued to the said assessee. However, the said assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner. For this reason, no further verification could be done in this regard by the department. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16, the service tax liability of the service tax assessee has been ascertained on the basis of income mentioned in the Income Tax returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the Service tax liability under Section 67 of the Finance Act, 1994.

4. As no data was forwarded by CBDT, for the period 2016-2017 and 2017-18 (upto June-2017) and the assessee has also failed to provide any information regarding rendering of taxable service for this period. Therefore, at the time of issue of SCN, it was not possible to quantify short payment of Service Tax for the period 2017-18 (upto June-2017). With respect to issuance of un quantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies that:

"2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient."

5. From the data received from CBDT, it appeared that the "Total Amount Paid/Credited Under Section 194C, 194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2016-17 to 2017-18(upto June-2017) has not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. Further, the assessee has also failed to provide the required information even after the issuance of letters from the Department. Therefore, the assessable value for the year 2016-17 and 2017-18 (upto June-2017) is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action will be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular.No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period 2016-17 to 2017-18 (upto June 2017) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

6. The government has from the very beginning placed full trust on the service provider so far as service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust by the service provider, no matter how innocently. From the evidence on record, it appears that the said assessee had not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider appears to have made deliberate efforts to suppress the value of taxable service to the department and appears to have not paid the liable service tax in utter disregard to the requirements of law and the trust deposited in them. Such outright act in defiance of law, appears to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

7. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the noticee, M/s. CHASE LOGISTICS PVT. LTD., have committed the following contraventions of the provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004:

- (i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994;
- (ii) Failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994 as discussed above;
- (iii) Failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have not paid service tax as worked out in the Table for Financial Year 2015-16 to 2017-18 (upto June-2017).
- (iv) All the above acts of contravention on the part of the said assessee appear to have been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid is required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years.
- (v) All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appears to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.
- (vi) The said assessee is also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.
- (vii) Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

8. The above said service tax liabilities of the assessee, M/s. CHASE LOGISTICS PVT. LTD., has been worked out on the basis of limited data/ information received from the Income tax department for the financial years 2015-16. Thus, the present notice relates exclusively to the information received from the Income Tax Department. It has been noticed that at no point of time, the assessee has disclosed 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. From the evidences, it was noticed 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.1,31,19,464/- (including Cess). It was also noticed that the above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same was to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST by invoking extended period of time, along with

Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

9. Accordingly Show Cause Notice dated 22.10.2020 was issued to M/d.Chase Logistics P.Ltd to called upon as to why :

- (i) The Service Tax to the extent of Rs.1,31,19,464/-short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;
- (ii) Service Tax liability not paid during the financial year 2016-17 and 2017-18 (upto June-2017),ascertained in future, as per paras no. 7 and 8 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iv) Penalty under the provisions of Section 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.
- (v) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

DEFENCE REPLY

10. The assessee vide their letter dated 28.12.2020 submitted their reply to SCN wherein they contended that they are providing Cargo Handling service mainly export freight forwarder service. They charged for their service and paid service tax on them, but air freight/sea freight for export and AIR ICD charges are exempted from service tax (i.e.non taxable). They made common bills for taxable & Non taxable service (copies of bills attached) Most of their clients deducted TDS on full bill value or sometimes on taxable value, so this is the main reason of difference of amount of ST3 Return, 26 AS and ITR.

11. They further submitted that as per SCN, there is big error to calculate their service tax liabilities, because in SCN the basic value of services provided is based on TDS from and IT Audit Report, but the Deptt. have not considered their ST return value. They have attached a reconciliation statement in this connection. In view of the above submissions and cited case law, they prayed that allegations and charges leveled in the SCN may be dropped. Vide their latter dated 25.01.2022, the assessee further submitted that as a freight forwarder; they receive ordered from their customers for providing cargo handling service for exporting of their goods from their place to abroad by Air or Sea transportation. This is the nature of their service. They charged for their service and paid service tax on them, but Air Freight / sea freight for export and AIR-ICD charges are exempted from service tax so they did not charge and collect service tax on such services. The freight forwarders act in capacity as principal and earn profit or loss on transportation of goods. The same is clarified on Para No.5.9.6 of CBEC;s education guide. In such case, the freight forwarder buys and sells cargo space as a principal and hence, no service tax is payable on the margin amount earned by him in case of export freight, as the destination of goods is outside India (Rule 10 of POP s Rules, 2012). Further CBEC has issued a Circular No.197/07/2016 dated 12.08.2016, wherein it is clarified that the place of provisions of the service of transportation of goods by air/sea from a place in India to a place

outside India, will be a place outside the taxable territory and hence not liable for service tax. They have also submitted their P&L account, Sales Register which shows their sources of income and air freight/sea freight and ICD charges customs duty. They have made single bill for taxable and non taxable service (copies of bills attached) Their clients deducted TDS on full bill value or sometimes taxable value.

12. Further vide their letter dated 02.02.2022, the assessee further submitted that they have furnished all information required as and when sought by the department, hence the entire demand is hit by time bar. In this regard they relied upon the decision of Hon'ble supreme Court in the case of Pahwa Chemicals Vs CCE-2005(189) ELT 257(SC) They further relied upon the decision of Hon'ble apex Court in the case of CCE Mumbai VS S Narender Kumar & Co 2011-TIOL-52-SC-CX, hence the extended period cannot be invoked in the facts involved in the present case. In view of the above, the said assessee requested to drop the proceedings.

PERSONEL HEARING

13. Personnel Hearing in this case was granted to the said assessee. Shri Samir Vora, Advocate and duly authorised representative attended the personnel hearing and submitted that they are freight forwarders and has received payment as pure agent. He further added that they have submitted the reconciliation statement and will submit further details within 3 days and accordingly they have submitted further details vide their letter dated 02.02.2022.

DISCUSSION AND FINDINGS

14. 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. In the present case, Show Cause Notice was issued to the noticee demanding Service Tax of Rs.1,31,19,464/- for the financial year 2015-16 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 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. 1,31,19,464/- with interest and penalty.

15. The issue here to be decided is whether the income in the form of air freight/ocean freight/AIR/ICD claimed is taxable under the Finance Act, 1994 and Rule made thereunder or not for the relevant period 2015-16.

16. On perusal of submissions and other details furnished by the said assessee, I find that they are providing services of Clearing and Forwarding Agency services, logistic solutions to the exporters, shipping lines and airlines. For providing cargo handling service mainly export freight forwarder service and received an amount for the said activity. They further submitted that the air freight/ocean freight/Air-ICD charges of Rs. 9,03,31,919/- had been collected on exporters on the goods transported to outside India and the same was paid to shipping lines/airlines by the assessee. In this regard a reading of Section 66 B of Finance Act, 1994 along with Rule 10 of Place of Provision of Services is necessary which reads as under:

Section 66 B of Finance Act, 1994: Charge of Service Tax on and after Finance Act, 2012- There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent on the value of services, other than those specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

10. Place of provision of goods transportation services.- The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods: Provided that the place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.

17. A plain reading of Section 66B of Finance Act along with Rule 10 of Place of Provisions of Service Rules, 2012, it is understood that if the destination of imported goods is outside India then the Place of Provisions of such service is outside India i.e. non taxable territory and as such no service tax is leviable on such service. In view of the above provisions and facts of the case, I find the income of Rs.9,03,31,919/- earned by way of ocean freight/air freight charges/AIR-ICD charges are not taxable and therefore I accept the contention of the assessee that the amount Rs.9,03,31,919/- is outside the purview of service tax. I also find that vide circular issued by the CBEC bearing No.197/7/2016-ST dated 12.08.2016 wherein it has been clarified that where the freight forwarder acts as a principal while providing service of transportation of goods outside India and negotiate terms with the shipper/airline/ocean liner and with actual exporter, the amount collected by them is not liable to service tax as the same is on principal to principal basis and Rule 10 of Place of Provision of Services Rules, 2012 (POPs) shall be applicable on them and therefore they shall not be liable to service tax on amount collected for ocean freight/sea freight / Air freight. While considering all these aspects, I find that the services provides to the exporter for transportation of goods by sea/air are not come under the preview of taxable service and thereby they are exempted from payment of service tax hence the claim of the assessee that the an amount Rs. 9,03,31,919/-, as detailed below, received towards air/sea fright chargers are not taxable. They have also received insurance charges of Rs.1,83,953/- in relation to the services for exportation of goods which is also not liable to be taxed.

18. Further, on perusal of paras 6,7 & 8 of SCN, I find that the levy of Service Tax for the financial year 2016-17 & 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of subject SCN, if he same was to be disclosed by the Income Tax department or any other source/agencies, against the said

assessee, action was to be initiated against assessee under proviso to Section 73(1) read with master Circular No. 1053/02/2017-CX dated 10.03.2017, the service tax liability was to be recovered from the assessee accordingly, I however, do not find any charges leveled for the demand for the year 2016-17 & 2017-18 (Up to June 2017), in charging para of the SCN. 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
Total income as per ITR and SCN	97264193
Total income declared as per ST3	6785126
Differential value on which service tax as per SCN	90479067
Less: Air /Ocean freight charges as discussed	90331919
Difference	147148
Less: Insurance charges	183953
Difference	-36805

19. 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.1,31,19,464/- for the period 2015-16 is not sustainable and accordingly Show Cause Notice dated 22.10.2020 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

23. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 1,31,19,464/- along with interest and penalties vide SCN No. STC/15-160/OA/2020 dated 22.10.2020.

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

To
 M/s CHASE LOGISTICS PVT. LTD.,
 101/SHOPPERS PLAZA/OPP
 MUNICIPAL MARKET,
 C.G.ROAD,NAVRANGPUR,AHMEDABAD
 -380009.

Copy for information to:

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