आयुक्त का कार्यालय,
केंद्रीय जी. एस. टी. एवं
केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर,
कस्टम हॉउस, प्रथम तल,
नवरंगपुरा ,अहमदाबाद- 380009

OFFICE OF COMMISSIONER
CENTRAL GST & CENTRAL EXCISE,
AHMEDABAD- NORTH
CUSTOM HOUSE, 1ST FLOOR,
NAVRANGPURA, AHMEDABAD-380009

फ़ोन नंबर./ PHONE No.: 079-27544557 फैक्स/ FAX : 079-27544463 E-mail:- oaahmedabad2@gmail.com

निबन्धित पावती डाक द्वरा/By R.P.A.D

DIN-20220364WT0000020432

फा.सं./F.No. STC/15-151/OA/2020

आदेश की तारीख़/Date of Order :- 01-03-2022

जारी करने की तारीख़/Date of Issue :- 01-03-2022

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

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 66/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 विरूद्ध 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 रू. 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 विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5) 00. पांच रूपये (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/15-151/OA/2020 dated 22.10.2020 issued to M/s Safe Sea Logistics Pvt Ltd., 403, Anushree Complex, Nr. BOB, Usmanpura, Ahmedabad, Gujarat-380013.

BRIEF FACTS OF THE CASE

M/s. Safe Sea Logistics Pvt. Ltd, 403, Anushree Complex, NR.BOB, Usmanpura, Ahmedabad, Gujarat- 380013, (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.- AANCS1203KST001 & 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 26AS) 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.)

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%
2015-16	52808127	12602981	30490736	40205146	17887755	40205146	5829746

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. No data was forwarded by CBDT, for the period 2016-2017and 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 is not possible to quantify short payment of Service Tax, if any, for the period 2016-2017and 2017-18 (upto June-2017). With respect to issuance of unquantified 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, 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 deposed 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 assessee, M/s. SAFE SEA LOGISTICS PRIVATE LIMITED, 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 publishable 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 service tax liabilities of the assessee, M/s. SAFE SEA LOGISTICS PRIVATE LIMITED, 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 also 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 to 2016-17. From the evidences, it appeared 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. 58,29,746/- (including Cess). It also found 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 is 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. Accordingly, Show Cause Notice dated 22.10.2020 was issued to M/s. Safe Sea Logistics P. Ltd called upon to show cause as to why :

(i) The Service Tax to the extent of Rs. 58,29,746/- 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

9. The said assessee vide letter dated 29.12.2020 submitted their reply wherein they contended that the impugned show cause notice is issued without verification of ground reality of the facts with regard to the taxability. The present show cause notice is issued simply on the difference of value between what is shown in our ITR and what is shown in our ST-3 returns filed in the year 2015-16. Thus the department has no occasion to verify the actual facts of the business carried out by us. The said show cause notice is issued without verification or enquiry with regard to which component of Income is taxable and which component is not taxable. Therefore such show cause notice issued without verification of ground reality of the facts on record with regard to the taxability is not correct and not tenable under the law as explained in the ensuing paras. The difference of Rs.4,02,05,146/- pointed in the show cause notice of between Gross Turnover as per ST-3 returns and Gross turnover as per profit & loss account.

10. They further submitted that they are engaged in forwarding of the export cargo of their customers. The freight so charged for exports cargo is not taxable in view of Rule 10 of Place of Provision of Services Rules, 2012 (POPs) read with Section 66B as the place of provision of service is out side India. They are mainly engaged in the business of handling of export cargo and undertaken transportation of export cargo from India to outside India. They have collected ocean freight/ air freight from the exporters on principal-to-principal basis. They have also drawn attention to the 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. They have placed reliance upon the case of **Greenwich Meridien Logistics (I) Pvt. Ltd. v. Commissioner of Service Tax Mumbai reported in 2016 (43) S.T.R. 215 (Tri.-Mum.)** found in favour of it in a parallel matter relating to ocean freight / air freight. The activities of buying the freight slot from the shipping lines/airlines and then selling it to the customers are independent activities and are not in the capacity of principal-agency relationship and are purely in the nature of Principal-to-Principal basis. Since the ocean freight/Air freight is not taxable in terms of Rule 10 of Place of Provision of Service Rules 2012, the amount received from the customers of ocean/ Air freight is not taxable under Service Tax. That the assessee is engaged in providing the services of transportation of goods by Sea /Air through various shipping lines/Airlines or freight forwarder to the customers (hereinafter called as customers or exporters or consignors). For providing such services to its customers, the assessee buys the slots [Freight space in the form of container] on the vessels or aircrafts of the shipping lines / Air lines through various freight forwarders i.e. it buys the slots [Freight space in the form of container] on the vessels/ aircraft's of the shipping line.

11. They further submitted that the assessee has acted as a principal, and the assessee has entered into a contract of services with the customer. The assessee is the only person with whom the customer is in contractual relations, even though the actual services which the forwarder has undertaken are carried out by others. The profit which the forwarder makes, when contracting with the actual operators, is his own affair and he is not accountable for it to the customer. That it is evident from their business, **after procuring the slot** [Freight space in the form of container] **from the shipping / airline companies on account or through freight forwarders, we sell the space** [Freight space in the form of container] **to our customers for facilitating them in the exports at a premium or profits.** That selling of the space

to the customers is entirely based on the demands of the customers and has nothing to do with the quantum of space [Freight space in the form of container] purchased by us from the shipping lines. That the activity of buying the space/slot from the shipping lines and then selling the same to its customers is nothing but trading of space in the shipping lines in return of which the asseessee charges premium form the customers. That the activities of buying the space/slot from the shipping lines and then selling it to the customers are independent activities and are not related to each other in any sense. That otherwise also what has been recovered by assessee from exporter is freight. There is possibility of trading in space or slots on vessels. It cannot be said that such trading was figment and only freight was transacted. Freight, though used colloquially to describe all manner of carriage, is nomenclature assigned to consideration for space provided on vessel for particular voyage - Freight is charged by entity that is in possession of space on vessel from entity that requires space for carriage of cargo. That it is not been disputed that the amount of ocean freight paid to the shipping companies is not taxable as the said amount has been paid for transportation of goods outside the taxable territory. That hence the freight surplus earned by assessee is in capacity of principal and has all the features of transactions entered by a freight forwarder in capacity of principal as mentioned in Schmitthoff's Export Trade : The law and practice of International Trade discussed in respect of forwarder as 'agent' and 'principal'.

12. They palced reliance on the following cawse laws in support of their claim: DHL Lemuir Logistics Pvt Ltd vs C. CEx Thane-I reported in 2017 (47) STR 309 (Tri-Mum),DHL Logistics Pvt Ltd vs CST Mumbai-II reported in 2017 (6) GSTL 85 (Tri-Mumbai) ,Gudwin Logistics v. Commissioner of Central Excise, Vadodara reported in (2010) 18 S.T.R. 348,. In their our own case Hon'ble commissioner appeal had rejected the departmental appeal wide OIA No. AMM-EXCUS-002-APP-5-18-19 dated 26.4.2018. Copy of the said OIA alongwith OIO are attached herewith as **Annexure B.** Therefore, it is amply clear from the above discussion that the amount of Ocean/ Air freight received by the assessee is not liable to service tax as it is covered under rule 10 of POPs. In support of the aforesaid contention of the assessee, the reliance is placed upon the case of **Greenwich Meridien Logistics (I) Pvt. Ltd. v. Commissioner of Service Tax Mumbai reported in 2016 (43) S.T.R. 215 (Tri.-Mum.)** found in favour of the assessee in a parallel matter relating to ocean freight. The Hon'ble Tribunal held that ***Freight is a consideration for sale of cargo space, by an entity in possession of such space - By purchasing cargo space, assessee bears risk of unsold/non-used space and such assumption of risk is not within scope of agency function; it is a principal-to-principal transaction - What assessee pays to shipping lines for buying cargo space is 'freight' and what assessee collects from customers from selling cargo space is also 'freight' - Surplus is earned on buying and selling space on principal-to-principal basis and not by acting as agent for shipping line and shipping line cannot be described as 'client' whose services are promoted or marketed - Hence, ocean freight surplus cannot be taxed under Business Auxiliary Service [Paras 10 to 14] [In favour of assessee].*** That in case of **Phoenix International Freight Services Pvt Ltd vs. CST Mumbai-II reported in 2017 (47) STR 129 (Tri-Mumbai).** That further on facts, Booking of container space and selling the same to the exporter is an independent business activity on Principal to Principal basis. We are not providing any taxable service of procurement of services for the consignors as held in the impugned order. Whatever price realized by us in excess of the price paid for the container would belong to them in their own right. In case we are unable to sell the space, we have to pay for the container space booked by us and the loss incurred is borne by us. The amount of profit realizable is dependent on our efforts and the market conditions and the amount collected represents the proceeds of space. That in light of above judgments on same facts the issue to no more res-Integra and hence is in favour of assessee. That service is defined as any activity carried out for a consideration; therefore, freight is also a consideration for service, as cargo space cannot be regarded as 'goods'. Therefore, buying and selling of cargo space by Freight

Forwarders is a service and there is no dispute involved in this fact. That it is already argued above that transaction is on principal-to-principal basis and what is collected by assessee from the clients is freight, hence, Place of Provision of service of buying and selling cargo space would be determined as per rule 10 of the Place of Provision of Services Rules, 2012. In case of export freight, the Place of Provision would be outside India and accordingly, surplus on export freight would not be liable to service tax. Since export freight is in outside the ambit of service tax being Place of Provision of Service outside India (i.e. Place of Destination of Goods in accordance with Rule 10 of POPS 2012), other charges collected during the same will also not liable to be taxed.

13. They further submitted that in case of reimbursements, they have made payments of expenses incurred on behalf of their clients. The same is not towards any service rendered by them. Moreover, they are not providing such services but they do charge separately for their service charges on which due service tax has been duly discharged and same is accepted by the department. In such reimbursement's invoices/ money receipts are for or on behalf of the customers. They only make payment for the services rendered by the others and collect payment made by them from their customers. As the said reimbursable amounts are for the customers and if service tax is applicable on the same then it is charged by the such service providers in their invoices. The nature of some of such reimbursement of actual charges are as under:

(i) CONCOR Charges

CONCOR (Container Corporation of India) is a custodian who provide the service for export and import cargo in their warehouse for that they charge to exporter or importer to handle the export or import cargo. Sample copies of the same are attached as **Annexure D.**

(ii) GSEC & CFS Charges

GSEC Ltd (Gujarat State Export Corporation Ltd) and CFS (Container Freight Station) are refers to a warehouse where cargo that belongs to various exporters or importers is consolidated or deconsolidated before being exported or imported. These are custodian who provide the service for export and import cargo in their premises for that they charge to exporter or importer to handle the export or import cargo. Sample copies of the same are attached as **Annexure E.**

(iii) Shipping line/Airline DO Charges

Delivery Orders are issued from shipping line and airlines to exporter or importer to handle the export or import cargo and charges against the same are charged to exporters/importers respectively. Sample copies of the same are attached as **Annexure F.**

(iv) Customs and Stamp Duty

Custom & Stamp Duty charges are duty and taxes which are raised by customs department to exporter or importer. Sample copies of the same are attached as **Annexure G.**

(v) Insurance Charges

Exporters are taking insurance for their export cargo to their valuable cargo for export. For that exporter pay the insurance charges to cover their export cargo materials which are charged by the insurance companies directly to exporters. Sample copies of the same are attached as **Annexure H.**

(vi) Transportation

Local Transportation is transportation within city and transport loose cargo from one place to another place within few kilo-meter and for that generally use local tempo vendor or transportation vendor for shifting the loose cargo, where no goods transport agency is involved. Therefore, the same is not taxable in view of being specified in negative list under clause (p) of Section 66D of the

Finance Act, 1994. Sample copies of such vouchers are attached as **Annexure I.**

14. From the above discussion it is very much clear that the assessee has not provided any services for the collection of said amounts from their customers and the same are being reimbursed to them by their customers. In following judicial pronouncements, it is held that reimbursable expenditure is not included in the taxable value of clearing and forwarding agent service:

Sr.No.	CITATION	PARTICULARS
1	Intercontinental Consultants and Technocrats Private Limited, Hon'ble Supreme Court [2018 (10) GSTL 401]	To determine value of taxable Services for charging service tax, any other amount, which is calculated not for providing such taxable service, cannot part of that value.
2	Malabar Management Service Pvt Ltd., Hon'ble Supreme Court [2019 (22) GSTL J56(SC)]	Impugned amounts being reimbursement of salaries and infrastructural expenses not to be termed as amounts charged by service provider.
3	Sanghmitra Services Agency, Hon'ble Madras High Court [2014 (33) STR 137]	Reimbursable expense received by assessee need not be added to the taxable value related to clearing and forwarding agent service.
4	M/S Inductotherm, Hon'ble CESTAT Ahmedabad [A/10987/2018]	Reimbursable expenses do not form part of taxable supply.
5	Pinnacle Shares Registry Pvt Ltd., Hon'ble CESTAT Ahmedabad [2015(40) STR 194]	Impugned expenses received by assessee not liable to be included in taxable value of services.
6	Mosaic India Pvt Ltd, Hon'ble CESTAT Ahmedabad [2014 (12) TMI 169]	As the services are separate and service recipient in future could avail services of a service provider from a service provider other than the appellant therefore it can not be held that all the independent and separate contracts represent common composite contract.
7	Bhayana Builders (P) Limited, Hon'ble Supreme Court [2018 (10) GSTL 118]	Gross amount charged by the service provider for such service provided or to be provided by him for the commission only and reimbursable expenditure should not be included in taxable

		value.
8	S&K Enterprises, Hon'ble CESTAT Bangalore [2008(10) STR 171]	Commission received for C&F activity alone taxable, reimbursements on account of loading/unloading, coolie/cartage and freight charges not liable to service tax.
9	Althur Agencies, Hon'ble CESTAT Bangalore [2007 (7) STR 402]	Reimbursable expenses paid by the C&F agent not chargeable to Service tax and cannot be added to commission as normally not paid by them but are paid by their principal.
10	SRI Sastha Agencies Pvt. Ltd. , Hon'ble CESTAT Bangalore [2007 (6) STR 185]	Elements chargeable to service tax restricted to amounts received by assesse on C&F services only, reimbursements on account of loading/unloading and not liable to service tax.
11	Nilalohita enterprises, Hon'ble CESTAT Kolkata [2007(01)LCX0199]	The contention of the revenue that reimbursement of expenses should part of taxable service was not considered as not justified.
12	Bhagyanagar Service, Hon'ble CESTAT Bangalore [2006(06) LCX0124]	There is an existence of separate contract entered into service as C&F agents and to collect transportation charges and such charges cannot be added in the service tax paid by C&F Agents.
13	U.M Thairath & Co., Hon'ble CESTAT Bangalore [2007(06) LCX0116]	The amounts received towards loading/unloading, coolie cartage handling/ portage lorry freight etc. charges cant form part of and not liable to be added to the assessable value of C&F category.
14	K.D. Sales Corporation, Hon'ble CESTAT Bangalore [2006(12) LCX0255]	Rent of Godown and clerk salary not be included in the taxable value of the services.
15	Amit Sales, Hon'ble CESTAT Delhi [2017(47) STR 156] [2010 (19) STR 815-Tri-LB]	Revenue is not alleging such reimbursements not on actual basis.

15. They further submitted that in entire SCN issued by the Ld. Additional commissioner does not contain any assertion proposing to levy and collect service tax on the basis of any specified taxable services allegedly rendered by the assessee. The said SCN is issued without doing investigation, business of the assessee and also not bothering about the provisions of the law. The same is affirmed by **Hon'ble Delhi High Court** in case of **Principal Commissioner Vs. Shubham Electricals [2016(42) STR J312 (Del.)]** it is held that: *In entirety of show cause notice, there is not even single assertion proposing to levy and collect Service Tax on the basis of any specified taxable services allegedly rendered except several alternative taxable services speculated to have been provided. Adjudicating order reiterating almost verbatim, content of show cause notice. Failure of department to properly investigate the matter cannot be a ground for justifying vague and incoherent show cause notice and equally incoherent and vague adjudication order.* The **Hon'ble Supreme Court** in case of **Commissioner of C.Ex., Banglore Vs. Brindavan Beverages (P) Ltd [2007(213) ELT 487 (SC)]** it is held that: *The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any. As no sufficient material much less any material has been placed on record to substantiate the stand of the appellant, the conclusions of the Commissioner as affirmed by the CEGAT cannot be faulted. Therefore, on the facts noticed by the Commissioner and the CEGAT, there is no scope for interference in these appeals which are accordingly dismissed. There will be no order as to costs.* The **Hon'ble Supreme Court** in case of **Commissioner Vs. Interchrome Pvt Ltd [2004 (164) ELT A128 (SC)]** it is held that: *When show cause notice itself was vague and does not contained information as to from which raw material which finished goods are produced and how such finished goods are known in the market in such case demand is not sustainable.* In case of **Shilpi Enterprise Vs. Commissioner of C.Ex., Allahabad [2017(349) ELT 308(Tri.-All.)]** it is held that: *Person called upon to show cause should clearly understand contentions of revenue for raising demand. Reason for issue of show cause notice is not revealed in it. Facts and provisions of the law on the basis of which conclusion that differential duty was payable not forthcoming from show cause notice. Show cause notice is vague and does not make any sense on reading it. Show cause notice and proceedings arisen out of such show cause notice is vitiated.* Herein this case Additional Commissioner has not specified under which service, the said income is taxed. Therefore, the SCN is vague and incoherent and time barred. The said issue is decided by Hon'ble CESTAT, Ahmedabad in the following cases, Wherein the Hon'ble CESTAT held that:

- Span Commercial Co. Vs. CCE Ahmedabad-I. Final Order No. A/10185/2020 dated 14.01.2020:
- In case of Suzica Color Laboratory Vs. Comissioner of Central Excise and Service Tax, Patna [2020-TIOL-1176-CESTAT-KOL]:
- In case of Guala Closure (India) Pvt. Ltd Vs. CCE , Ahmedabad-II. Final Order No. A/12117/2018 dated 23.08.2018:
- M/s. Concept Motors Pvt. Ltd. V. CST, Ahmedabad. Final Order No. A / 11717 / 2018 dated 07.08.2018:
- M/s. Truvision Colour Lab. Vs. Commissioner of Central Excise, Indore [2017 (51) STR 267 (Tri.-Del.)

They also submitted that of Section 174 of the CGST Act, 2017 is not applicable in this case in view of case laws of *Rayala Corporation (P) Ltd. Vs. Director of Enforcement (1969) 2 SCC 412 &Kolhapur Cane Sugar Works Vs. Union of India (2000) 2 SCC.* Penalty is not impossible under Section 78 of the Finance Act, 1994 in view of the case laws of Continental Foundation Jt. Venture Vs. CCE, Chandigarh-I 2007 (216) E.L.T.

177 (S.C.) CCE, TIRUCHIRAPALLI Vs SHRI SUTHAN PROMOTERS 2010-TIOL-623-HC-MAD-ST RAC Steels Vs. CCE, Salem 2010-TIOL-484-CESTAT-MAD
Rajarani Exports Vs. CCE, Salem (2010) 18 STR 777

16. The assessee submitted the details of various charges paid by them which are claimed to be exempted from the service tax.

01	Air Freight Charges	12467954
02	Occean Freight Charges	11761049
	Total	24229003
1	GSEC CHARGES	374300
2	Stamp/Customs duty charges	873570
3	Concor Charges	37859340
4	Insurance Charges	365672
5	Pallates Charges	1380000
6	Transportation Charges	4970837
7	Concor Handling Charges	94982
	TOTAL	15918701

17. Further they have submitted that agent commission they have incurred on behalf of their client is for Rs.57,440/- and they have paid as brokerage on freight on behalf of their client on which they are not liable to pay service tax as this is also a reimbursement. In view of the foregoing submissions the said assessee requested to drop the proceedings

PERSONEL HEARING

18. A Personnel Hearing was granted to the assessee on 10.12.2021 and Shri Bishan Shah, CA, duly authorized representative attended the same and reiterated the written submissions submitted on 30.11.2020 and requested time to submit the COM(A) order, ST3 Return, reconciliation etc and accordingly the same was also furnished by them on 28.02.2022.

DISCUSSION AND FINDINGS

19. 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.58,29,746/- 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, 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.58,29,746/- with interest and penalty.

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

21. 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 the

same, they carried out the activities of buying cargo space from airlines /shipping lines, filing IGM, arranging transport for picking up cargo from factory/shipment, site, getting containers cleaned, filing Bills of Entry, loading unloading, fumigating the container, preparing /obtaining various documents viz. Bill of Lading, handling the cargo, Customs clearance of export cargo etc, and received an amount for the said activity. They further submitted that the air freight and ocean fright 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 alongwith 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.

22. 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 earned by way of ocean freight/air freight charges are not taxable and therefore I accept the contention of the assessee that the amount Rs.2,42,29,003/- 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.2,42,29,003/-, as detailed below, received towards air/sea fright chargers are not taxable .

Air Freight Charges	12467954
Ocean Freight Charges	11761049
Total	24229003

23. The next point regarding taxability of reimbursement expenses made by the assessee. In this regard on perusal of reply to SCN and other documents submitted by the asssesssee I find that the assessee submitted that in case of reimbursements, they have made payments of expenses incurred on behalf of our clients. The same is not towards any service rendered by them. Moreover, they are not providing such services but they charge separately for their service charges on which due service tax has been duly discharged and same is accepted by the department. In such reimbursement's invoices/ money receipts are for or on behalf of the customers. They only make payment for the services rendered by the others and collect payment made by us from our customers. As the said reimbursable amounts are for the customers and if service tax is applicable on the same then it is charged by the such

service providers in their invoices. The nature of some of such reimbursement of actual charges are GSEC Charges, Custom Duty charges, Concor Charges, Insurance Charges, Palletes charges, Transportation Charges, Concor Handling Charges. The assessee have not provided any services for the collection of said amounts from their customers and the same are being reimbursed to them by their customers. They have also relied upon a large number of case laws wherein it was held that these types of reimbursement expenses are not part of taxable service of the service provider. The details of the reimbursement expenses made by the said party is as under:

GSEC CHARGES	374300
Stamp/Customs duty charges	873570
Concor Charges	7859340
Insurance Charges	365672
Pallates Charges	1380000
Transportation Charges	4970837
Concor Handling Charges	94982
Brokerage on freight	57440
TOTAL	15976141

24. 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 and Rule 5(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 authorizes 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;
> I 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.

25. 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.

26. I find that the said assessee has made references to a large number of case laws in support of their claim and the said judgments in the case law relied by the said assessee make it clear that service tax is payable only on the value of the service rendered. Other 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.

27. While considering all these aspects, I find that the services provided and collected income as GSEC Charges, Custom Duty charges, Corocor Charges, Insurance Charges, Palletes charges, Transportation Charges, Concor Handling Charges are not come under the preview of taxable service and thereby they are exempted from payment of service tax. As supra, the differential income of Rs. 1,59,76,141/- in the SCN for financial year 2015-16 is only reimbursement of expenses in the capacity of pure agent and thereby not liable to service tax.

28. 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	52808127
Total income declared as per ST3	12602981
Differential value on which service tax as per SCN	40205146
Less: Air /Ocean freight charges as discussed	24229003
Difference	15976143
Less: Charges reimbursed as discussed	15976141
Difference	2

29. 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. 58,29,746/- 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

30. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 58,29,746/- along with interest and penalties vide SCN No. STC/15-151/OA/2020 dated 22.10.2020.

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

F.No.STC/15-151/OA/2020
Date: 11/3/2

To
M/s Safe Sea Logistics P.Ltd,
403,Anushree Complex, Nr.Bank of Baroda, Usmanpura, Ahmedabad, Gujarat- 380013

Copy 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