



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

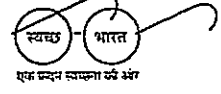
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर  
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

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निवन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-97/OA/2020

आदेश की तारीख/Date of Order:- 07.03.2022

जारी करने की तारीख/Date of Issue :- 07.03.2022

**DIN NO: 20220364WT00004242AB**

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

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 69/ADC/GB/2021-22

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

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील ,इसकी प्राप्ति से) 60 साठ (दिन के अन्दर आयुक्त) अपील ,(केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन ,अंबावाड़ी ,अहमदाबाद-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 जाएंगे।

(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/15-97/OA/2020** dated **29.09.2020** issued to **M/S. Vaibhavi Logistics** situated at Binali Complex, Opp Torrent Power Office, Naranpura, Ahmedabad.

**BRIEF FACTS OF THE CASE :**

M/s Shri Vaibhavi Logistics situated at 405, Binali Complex, Opp. Torrent Power Office, Naranpura, Ahmedabad(hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. ACLFS2595MSD001.

2. Ongoing through the third party CBDT data for the Financial Year 2014-2015 to 2015-16, it has been observed that the Assessee has declared less/ not declared any taxable value in their Service Tax Return (ST-3) for the F.Y.2014-2015 to 2015-16 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/ Form 26AS, the details of difference as per CBDT data for the Financial Year 2014-2015 to 2015-16 are as under:

(Amount in Rs.)

F.Y.	Value As per B/S, P&L, Form 26AS of ITR	Value declared in ST-3 Returns	Differential amount	Service tax payable (including cess)
2014-15	36969803/-	5864125/-	31105678/-	3844662/-
2015-16	36962639/-	7163753/-	29798886/-	4320838/-
<b>Total</b>				<b>8165500/-</b>

3. The clarification along with documents were called for from the assessee for assessment purpose by the Jurisdiction office vide letter F.No. STC/Prev/Gr-I/TPD-/2017-18 dated 09.02.2018 followed by Reminders. The assessee neither submitted the documents nor extended the co-operation in the matter although sufficient time was provided. This act of non-co-operation of assessee has contravened the provision of Section 72 of the Finance Act, 1994 has rendered themselves liable for penal action under Section 77 of Finance Act,1994.

4. In view of above, it was observed that the Assessee has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of **Rs.8165500/-**-, by declaring less value in their ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

5. 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 2014-2015 to 2015-16. 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.8165500/-. It appears 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 appears to be recoverable from them under the provisions of Section 73 of the Finance Act, 1994 along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appears that the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

6. Therefore, M/s Shri Vaibhavi Logistics situated at 405, Binali Complex, Opp. Torrent Power Office, Naranpura, Ahmedabad called upon to show cause to the **Additional Commissioner , Central GST & Central Excise, Ahmedabad North** Commissionerate having office 1<sup>st</sup> Floor, Custom House, Navarangpura, Ahmedabad as to why :

- (i) The demand for Service tax to the extent of Rs.8165500/- (Rupees Eighty one Lakh Sixty Five Thousand five Hundred Only) 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;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty of Rs.10,000/- (Rupees Ten thousand only) should not be imposed under Section 77 of the Finance Act, 1994.

DEFENCE REPLY :

7. The assessee vide letter dated 09.11.2020 submitted their defence reply denied all the eligations, averments and the charges levelled against them in the impugned show cause notice; that they have discharged their liabilities towards service tax in full on the taxable value; that they are engaged in providing freight forwarder/logistic services related to import and export of goods from India and vice-a-versa. The said service was covered under the "Business Support service" for which they have obtained Service Tax Registration.

7.1 Further, they stated that they purchase space in vessel and hiring containers from shipping lines, which they provide to their customer; that they also provide services like port clearance services to their customers; that while raising bills to their customers, they are charging Ocean freight along with other charges for the transport of goods by sea in a vessel for export and import; that the shipping lines charges ocean freight from them for transportation of goods in a vessel by sea; they in turn charges the ocean freight from their customers with addition of their margin; that the Ocean freights are just Ocean freight & its components.

7.2 They also submitted that they have discharged service tax at the appropriate rate on the taxable value and the Department has not rebutted the said facts in the show cause notice; that they furnish details of taxable value declared and service tax paid during the year 2014-15 and 2015-16; that in the value as declared for the purpose of payment of service tax, they have not considered income of ocean freight as such and its components such as Bunker adjustment factor, currency adjustment factor, General rate increase, Peak season surcharges etc., being non-taxable; that from the table, it is very clear that they have correctly determined their liability and correctly assessed value of taxable service provided by them which work out as above for each month; that the value of taxable service Rs. 5864125/- during 2014-15 and Rs.7163753/-as declared by them, and considered by the department in the subject show cause notice is correct; that the difference of value as declared with those alleged is due to non consideration of exempted value of Ocean freight & its components availed by them as detailed herein above and therefore there is no undervaluation on their part as alleged in the subject show cause notice.

7.3 They further submitted that Section 66 levies service tax at a particular rate on the value of taxable services. Section 67(1) makes the provisions of the section subject to the provisions of Chapter V, which includes Section 66. This is a clear mandate that the value of taxable services for charging service tax has to be in consonance with Section 66 which levies a tax only on the taxable service and nothing else. **The services for transportation of goods by a vessel was not taxable services as the same was covered under the Negative list of Services under Section-66D(p). This is the only reasons that they have not shown the value of Ocean freight i.e. freight for transportation of goods in a vessel, in their ST-3 returns.** There is thus inbuilt mechanism to ensure that only the taxable service shall be evaluated under the provisions of 67. Clause (i) of sub-section (1) of Section 67 provides that the value of the taxable service shall be the gross amount charged by the service provider "for such service". Reading Section 66 and Section 67(1)(i) together and harmoniously, it seems clear to us that in the valuation of the taxable service, nothing more and nothing less than the consideration paid as *quid pro quo* for the service can be brought to charge. Sub-section (4) of Section 67 which enables the determination of the value of the taxable service "in such manner as may be prescribed" is expressly made subject to the provisions of sub-section (1). In view of the said provisions of law we have correctly valued the services provided by them .

6. The allegation in the show cause notice regarding suppression of correct taxable value is not acceptable in view of above explanations and provisions of law. The difference arriving between the value declared in the income return and the value shown in the ST-3 returns is due to the income towards ocean freight. The ocean freight recovered by them from their client is nothing but charges for Ocean freight & its components paid by them for purchase of space in the vessel and hiring of container on behalf of the client.

7. Further they also stated that the ocean freight was exempted from payment of Service tax as the same was covered under the Negative list of services under Section-66D(p) therefore they have claimed the ocean freight as direct expenses in their profit and loss account; that services of transportation of goods by an Aircraft or a vessel was covered under Section-66D(p)(ii) for Negative list of services (ocean freight on import of goods); that the exemption from payment of service tax was granted withdrawn vide Entry No.149 of Finance Bill, 2016. Section -66D(p) and entry No.149 of Finance Bill,2016 reads as under:

**SECTION [66D. Negative List of Servies.** – The negative list shall comprise to the following services namely:-

- (p) Services by way of transportation of goods---
  - (i) by road except the services of ----
    - (A) a goods transportation agency; or
    - (B) a Courier agency;
  - (ii) by an aircraft or a vessel from a place outside India upto the customs station of clearance in India ; or
  - (iii) by inland waterways;

CHAPTER V  
SERVICE TAX

**149. Amendment of section 66D.** — In the 1994 Act in section 66D,—

- (a) clause (l) shall be omitted;
- (b) with effect from the 1st day of June, 2016—
  - (i) in clause (o), sub-clause (i) shall be omitted;
  - (ii) in clause (p), sub-clause (ii) shall be omitted.

10. We further say and submit that the taxable services are listed in Section 65(105); that the service provided by them falls under clause (zzzq); that it is only the value of such service that is to say, the value of the service rendered by them to their client which is that of a Business Support Service, that can be brought to charge and nothing more; that the quantification of the value of the service can therefore never exceed the gross amount charged by them for the service provided by them. In this regards they rely on the judgment of Hon'ble High Court of Delhi in the case of INTERCONTINENTAL CONSULTANTS & TECHNOCRATS PVT. LTD. vrs. union of India as reported at 2013(29) STR (9) wherein judgment the Hon'ble High Court has held that the Ocean freight & its components are not to be considered for the purpose of

levy of service tax and can not be form part of assessable value. Therefore the show cause notice is drafted without going in to details and also in accordance with the law and therefore is to be vacated as such; that they also rely judgement in the case of Suraj Forwarder Vrs. Commissioner Service Tax, Ahmedabad

11. From above submission it transpired that they have correctly assessed their service tax during the financial year 2014-15, 2015-16 and there is no under valuation. And therefore, the demand of differential service tax a is not justified proper and within the eye of law, and deserve to be dropped in favour of them. Since there is no demand of service tax the interest demanded on such alleged short payment is not just, proper and legal in the eye of law; therefore the demand of interest from them is not proper ; that the there was no fraud or collusion or willful mis-statement or suppression of facts, or contravention of any of the provisions of Finance Act, 1994 or of the rules made there under with intent to evade payment of service tax; that they requested to drop the proceedings proposed under the impugned SCN on merit as also on the ground of limitation as prayed and thus render justice; that they have not received the letter from jurisdiction office therefore they could not furnish the reply and defend their case; that in view of above invocation under the proviso to section 73(1) the extended period of limitation under section 73(1) could be invoked as there is no positive documentary evidence to show that fraud, collusion or suppression of fact etc. with an intent to evade the payment of service tax has been committed by the assessee and demand of interested under section 75 of the finance Act, penal action under section 76, 77 for failure to pay service on prescribed time limit deserve to be dropped.

19. As regards to the penal actions proposed under section 78 of the Finance Act for failure to comply with section 68 and Rule 6 of service tax Rules, 1994 and section 70 read with Rule 7 of the service tax Rule, 1994 and violation of section 77 of the Act for deliberate efforts by not paying the correct amount of service tax and defiance of law. We submit that on the grounds stated above when the proposed demand itself is not sustainable and the consistent views taken by the Hon'ble Tribunal that the service tax could not be demanded on Ocean freight, which is also in the knowledge of the department. It is failed to understand that the above serious charges have been made against us, which itself show non-application of proper mind and defiance of the law settled by the higher appellate authorities.

20. The penal action under section 78 of the Finance Act, could be made applicable only in a case were failure to pay service tax is due to reasons of fraud or collusion or wilful mis-statement or suppression of facts with intent to evade payment of service tax. In the present case there is no such allegation and the department has not brought any positive documentary evidence which proves the charges of fraud or collusion or deliberate act of suppression. The actions are initiated merely based on the third party verification and the issue is about interpretation of law and finally settled in the favour of the assessee by the higher appellate authorities and we were following the correct law. It is a sewed principle of law that penalty proceedings under section 78 are

quasi criminal in nature and penalty cannot be imposed in the absence of mens-rea. Penalty can be imposed only when the entirety of circumstances reasonably point to the fact that assessee has acted in conscious defiance of law or his behaviour was contumacious and he has consciously concealed the particular/facts and has fraudulently furnished inaccurate facts/particulars. In the present case we acted bonafidely in not paying the service tax on ocean freight. And the evidence placed before your Honour suggests that there is no such deliberate attempt in not paying the service tax with a motive to evade the service tax. Therefore the proposed penal actions under section 78 are not sustainable in law.

21. In view of all the above submissions made, it is to submit that the proposed demand of service tax of Rs.81,65,500/-is de-void on any merit and so the demand is not sustainable on merits. On limitation also the demand is not sustainable as the Show cause notice is issued on 29.09.2020 received by us on 05.10.2020, for the period 2014-45. 2015-16 which is clearly beyond the normal period of limitation and so it is requested to drop the proceedings initiated under the aforesaid Show Cause notice in the interest of fair justice.

#### **PERSONNEL HEARING :**

22. Personnel hearing was granted to the assessee on 28.02.2022. Shri Harinath Balla appeared for personnel hearing. He reiterated the written submission made on 09.11.2020 and 10.02.2022 and requested to drop the proceeding initiated against the show cause Notice.

#### **DISCUSSION AND FINDINGS**

23. 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 2014-15 and 2015-16. In the present case, Show Cause Notice was issued to the noticee demanding Service Tax of Rs. 81,95,500/- for the financial year 2014-15 and 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 engaged in providing freight forwarder/ logistic Services related to export and import of goods from India and vice-versa 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. 81,65,500/- with interest and penalty.

24. The issue here to be decided is whether the income in the form of ocean freight claimed is taxable under the Finance Act, 1994 and Rule made thereunder or not for the relevant period 2014-15 & 2015-16.



25. On perusal of submissions and other details furnished by the said assessee, I find that they are engaged in providing freight forwarder/ logistic Services related to export and import of goods from India and vice-a-versa, logistic solutions to the exporters, shipping lines. For providing cargo handling service mainly export freight forwarder service and received an amount for the said activity. They further submitted that the ocean freight charges of Rs. 3,11,05,678/- (for the year 2014-15 and Rs. 2,97,98,886/- (for the year 2015-16) 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.*

26. 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.3,69,69,803/- for the year 2014-15 and Rs. 3,69,62,639/- for the year 2015-16 earned by way of ocean freight charges are not taxable and therefore I accept the contention of the assessee that the amount Rs.3,69,69,803/- for the year 2014-15 and Rs. 3,69,62,639/- for the year 2015-16 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. 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.3,69,69,803/- for the year 2014-15 and Rs. 3,69,62,639/- for the year 2015-16 as detailed below, received towards air/sea fright chargers are not taxable.

27. 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	2014-15	2015-16
Total income as per ITR and SCN	36969803	39962639
Total income declared as per ST3	5864125	7163753
Differential value on which service tax as per SCN	31105678	29798886
Less: Air /Ocean freight charges as discussed	31105678	29798886
Difference	0	0

28. 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.81,65,500/- for the period 2014-15 & 2015-16 is not sustainable and accordingly Show Cause Notice dated 29.09.2020 is liable to be dropped. Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty upon noticee on this count.

Accordingly, I pass the following order;

**ORDER**

29. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 81,65,500/- along with interest and penalties initiated against M/s Shri Vaibhavi Logistics, 405, Binali Complex, Opp. Torrent Power Office, Naranpura, Ahmedabad vide SCN No. STC/15-97/OA/2020 dated 29.09.2020.

*R. Gulzar M.*  
 (R.GULZAR BEGUM)  
 Additional Commissioner  
 Central GST & Central Excise  
 Ahmedabad North.  
 Dated-07.03.2022

F.No. STC/15-97/OA/2020

By Regd. Post AD./Hand Delivery

To

M/s Shri Vaibhavi Logistics,  
 405, Binali Complex, Opp. Torrent Power Office,  
 Naranpura, Ahmedabad.

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-I, Division-VII, Central Excise & CGST, Ahmedabad North
- 4 The Superintendent(system) CGST, Ahmedabad North for uploading on website.
- 5 Guard File