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 द्वरा/By R.P.A.D

फा.सं./F.No. STC/15-181/OA/2020 आदेश की तारीख़/Date of Order:-14.03.2022

जारी करने की तारीख़/Date of Issue :- 14.03.2022

DIN NO: 20220364WT000000E3C8

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

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 79/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-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 विरूद्ध 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.

विषयः- कारण बताओ सूचना/ Show Cause Notice No. GEXCOM/ADJN/ST/ADC/303/2020-ADJN-O/o COMMR-CGST-AHMEDABAD(N) dated 21.12.2020. issued to M/s. KARMAA SHIPPING,7/2, S.F., GITANJALI SHOPPING CENTRE, DARPAN 5 RASTA, NARANPURA, AHMEDABAD.

BRIEF FACTS OF THE CASE :

M/s. KARMAA SHIPPING,7/2, S.F., GITANJALI SHOPPING CENTRE, DARPAN 5 RASTA, NARANPURA, AHMEDABAD (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.-AEIPP9521KSD001.

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 and 2016-17.

3. On scrutiny of the above data, it is noticed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2015-16 and 2016-17 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 (STR)	Total Sale of Service as per ITR	TOTAL VALUE for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	HIGHER VALUE (VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Rate of duty including Cess	Resultant Service Tax short paid (including Cess)
1	2015-16	16249906	27956548	26981210	11706642	14.5%	1697463
2	2016-17	NULL	51845003	50597807	51845003	15%	7776750

4. Letter dated 07.10.2020 was issued to the said assessee by the jurisdiction office 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& 2016-17. 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.

5. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16& 2016-17, the service tax liability of the service tax assessee has been ascertained on the basis of income mentioned in the ITR 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.

6. Further, no data was forwarded by CBDT, for the period 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 this stage, at the time of issue of SCN, it is not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

7. 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.'

8. From the data received from CBDT, it was observed that the "Total Amount Paid/Credited Under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts From Services (From ITR)"for the assessment year 2017-18 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 letter and summons from the Department. Therefore, the assessable value for the year 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 2017-18 (upto June-2017) not covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

9. The government has from the very beginning placed full trust on the service provider so far 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 placed on the service provider, no matter how innocently. From the evidence, 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 breach of trust deposed on them. Such outright act in defiance of law, appear 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.

10. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the asseessee 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& 2016-17.

(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.

11. The above said service tax liabilities of the assessee, M/s. KARMAA SHIPPING, has been worked out on the basis of limited data/ information received from the Income tax department for the financial year 2015-16 & 2016-17. Thus, the present notice relates exclusively to the information received from the Income Tax Department.

12. 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 2015-2016 & 2016-17. 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.9474213/-(including Cess). It is observed 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(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.

13. Accordingly Show Cause Notice was issued to show cause as to why:

(i) The Service Tax to the extent of Rs. 9474213/- 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 30.09.2020 issued vide F.No.450/61/2020-Cus.IV (part I).

(ii) Service Tax liability not paid during the financial year 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 :

14. The assessee vide letter dated 28.01.2021 and 21.02.2022 stated that they do not accept the content of Show cause cum demand notice; that they have replied from time to time whenever such query raised for difference in income reported in Form26AS of Income Tax v/s Income chargeable to Service Tax; that they are CHA agency and provide all Custom Clearance Services, Air/Sea Freight, Warehouse Service, Logistic Services and Port handling / clearing services to their clients; that they are operating as CHA agency and Commercially their Bills are combined of PURE SERVICE (their Income) / REIMBURSEMENT SERVICES duly Supported with Actual Receipt and SERVIES WITH MARGIN like Transport.; that their services bill also includes Transport Service as part of their Total services for Import and Export; that the demand raised are illegal, illogical and improper to demand service tax liability, without referring to the actual transaction and service provided; that from 26AS details in income tax contains all service whether exempted, not liable for service tax or reimbursement as in the instant case; that as per the Finance Act, 1997, the taxable service rendered by a Custom House Agent means any service provided to a client by CHA in relation to the entry or departure of conveyances or the import of export of goods; that the value of the taxable service in relation to the service provided by a Custom House Agent to a client has agent from the client for services rendered in any manner in relation to import or export of goods; that the services rendered by the Custom House Agent are not merely limited to the clearing of the import and export consignment, the CHA also renders the service of loading/ unloading of import or export goods from /at the premises of the exporter / importer, the packing, weighment, measurement of the export goods, the transportation of the export goods to the customs station or the import goods from the customs station to the importer's premises, carrying out of various statutory and other formalities such as payment of expenses on account of octroi, destuffing/palletisation, terminal handling, fumigation, drawback / DEEC processing, survey / amendment fees, dock fees, repairing and examination charges, landing and container charges, statutory labour charges, testing fees, drug control formalities, sorting / marking / stamping / sealing on behalf of the exporter / importer.

15. They further state that the Custom House Agent also incurs various other expenses such as crane / fork lift charges, taxi charges, photostat and fax charges, bank collection charges, courier service charges, and miscellaneous other expenses on account of the exporter / importer; that for all the above charges, the CHA is ordinarily reimbursed by the importer / exporter for whom the above services are rendered; that apart from the above charges, the CHA also charges the client for his service under the head / nomenclature of 'agency and attendance charges' or similar kind of heads which is purported to be his service charge in respect of the services rendered in relation to the import / export goods; that is has been clarified that in relation to Custom House Agent, the service tax is to be computed only on the gross service charges, by whatever head / nomenclature, billed by the Custom House Agent to the client; that the practice obtaining is to show the charges for services as " agency commission", "charges", "agency and attendance charges", "agency charges" and some similar descriptions; that the service tax will be computed only with reference to such

charges; that in other words, payments made by CHA on behalf of the client, such as statutory levies (cess, Customs duties, port dues, etc.) and various other reimbursable expenses incurred are not to be included for computing the service tax; that accordingly, they have paid all the due Service tax on the services provided by them and data in Form 26AS has no relevance for demanding the Service tax on the total sales mentioned in the income tax return; that they submitted that, similar Query were raised by Income Tax Department and their case was taken for Scrutiny in AY 2014-15, they had submitted require details with reconciliation and the Income tax authorities were satisfied and accepted their submissions; that during the opportunity of Pre SCN consultation, they had explained all the details and same were not considered; that they attached Audited Accounts set for FY 15-16 and FY 16-17, Copies of Form 26AS for FY 15-16 and FY 16-17; ledger of Transport Income for FY 15-16 and FY 16-17; Ledgers of Haulage Charges / terminal handling charges / CONCOR charges; sample Ledger of clients showing Gross Business done and TDS Deducted along with Sample copies of Bill.

PERSONNEL HEARING :

16. The personnel hearing was granted to the assessee on 01.03.2022, Shri Jigar Patel, Authorised person of the Karma Shipping appeared for personnel hearing. He submitted written submission during personnel hearing and requested to drop all the proceedings.

DISCUSSION AND FINDINGS

17. I have carefully gone through the records of the case, submission made by the noticee in reply to the show cause notice, ITR, Balance sheet for the year 2015-16 and 2016-17. In the present case, Show Cause Notice was issued to the noticee demanding Service Tax of Rs. 94,74,213/- for the financial year 2015-16 and 2016-17 on the basis of data received from Income Tax authorities and find that the noticee had obtained Service Tax registration and also filed the ST-3 Returns as stipulated in the Finance Act, 1994 and rules made thereunder. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. The assessee submitted that they are providing Clearing and Forwarding Agent Services, Air/Sea freight, Warehouse Service, Logistic Services and port handling/clearing services to their client for which they had taken service tax registration. Based on the details received from Income tax department and comparing the receipt shown in Form 26AS with ST-3 returns filed by the them, the show cause notice was issued to recover short paid service tax of Rs. 94,74,213/-with interest and penalty.

18. In the instant SCN, the point is regarding taxability of reimbursement expenses and ocean freight income received by the assessee. In this regard on perusal of reply to SCN and other documents submitted by the assessee, I find that the assessee submitted that the main business of their company is clearing and forwarding agent service, Customs House Agent Service and other Business Auxiliary Services. They have given the clarification regarding differential value of Rs.6,35,51,645/- for the year 2015-16 and 2016-17 are pertaining to reimbursement of expenses and income from ocean freight income. I find with regard to reimbursement charges, assessee company had incurred expenses on behalf of clients. Further invoice is also generated on the name of client only. Normally these invoices are customs duty payment, Air freight payment, ocean/shipping freight charges and other related expenses. Further these expenses are not amounts to supply of service. Further these expenses does not include any charges from company side it purely reimbursement of expenses only. Where there is no supply of service

then no service tax on such amount. They have also furnished documents such as audited financial statements, copy of ledgers, Gross Trial Balance, ITR, Form 26AS, ST 3 return sample invoices etc and requested to resolve the issue. They have also provided details of reimbursement of various charges paid on behalf of client and recovered from them. The reimbursement is related to the items such as customs duty, Ocean fright, CFS charges, Detention charges, concord charges, shipping line charges, transportation charge, GSEC, stamp duty, warfage, insurance detention charges, airline transfer charges, lift on charges destination charges, BL charges, certificate of origin charges, Fumigation charges, Test Report charges, etc.

19. In this connection, I find that Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 provided that where any expenditure or costs are incurred by service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service and shall be included in the value for the purpose of charging service tax. Rule 6(2) ibid provided that subject to provisions of sub-rule (1), the expenditure or costs incurred by service provider as a pure agent of the recipient of service, shall be excluded from the value of taxable service if the conditions prescribed are satisfied. Rule 5 (1) and (2) both does not differentiate provisions service wise, value of expenses shall be includible in all services if incurred in the course of service and similarly relief is also extended to all services if expenses or cost incurred in satisfaction of the conditions prescribed. The provisions contained in Rule 5(2) ibid reads as below;

Rule 5 (2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely :-

(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;

(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;

(iii) the recipient of service is liable to make payment to the third party;

(iv) the recipient of service authorises the service provider to make payment on his behalf;

(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;

(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

(viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation 1. - For the purposes of sub-rule (2), "pure agent" means a person who -

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services.

Explanation 2. - For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.

20. 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.

21. I find that the activities independent of the service rendered if provided as facility to principal by managing it from third party and amount recovered only equal to expenses incurred, such other expenses does not form part of assessable value for payment of service tax. The assessee has also furnished copies of invoices wherein I find that invoices issued to various agencies and corresponding documents for claiming the reimbursable expenses only. I find from the random invoices furnished by the assessee that they have separated the Ocean Freight Charges and reimbursement charges and paid service tax on clearing and forwarding agency charge.

22. Further, the issue here to be decided is to 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 2015-16 & 2016-17.

23. 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. 47,88,677/- (for the year 2015-16 and Rs. 3,50,43,019/- (for the year 2016-17) 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:

24. 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.

25. 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. 47,88,677/- (for the year 2015-16 and Rs, 3,50,43,019/- (for the year 2016-17) earned by way of ocean freight charges are not taxable and therefore I accept the contention of the assessee that the amount Rs. 47,88,677/- (for the year 2015-16 and Rs, 3,50,43,019/- (for the year 2016-17) 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. 47,88,677/- (for the year 2015-16 and Rs, 3,50,43,019/- (for the year 2016-17) as detailed below, received towards air/sea fright chargers are not taxable.

26. The said assessee has also provided the categories wherein they have reimbursed the amount which as detailed as under:

Description	2015-16	2016-17
Differential value on which service tax demanded as per SCN	1,17,06,642/-	5,18,45,003/-
Less: Ocean Freight charges out of the perview of Service Tax Taxability as discussed	47,88,677/-	3,50,43,019/-
Difference	69,17,965/-	1,68,01,984/-
Less : abetment on Transport Income (Service Tax paid after abetment on the value of service provided	34,09,472/-	25,17,354/-
Difference	35,08,493/-	1,42,84,630/-
Reimbursement charges not applicable to Service Tax deducted (Out of the total Re-imbursement Charges of Rs. 87,91,106/-, the assessee has paid the Service tax on Rs. 52,82,614/- on behalf of the Principal)	35,08,493/-	-
Service Tax paid by the assessee on gross service income, Transport income after abetment and on other income.	-	1,42,84,630
Difference	0	0

27. On perusal of invoices and other documents, I find that there is no element of supply of service involved in this activity of reimbursement of expenses. The noticee though holding service tax registration as C&F agent, they were also a licensed CHA and providing services of C&F agent and for documentation with Customs and port authorities for clearance of cargo. The other activity arranged by noticee could have been arranged from third party by the principal themselves but often the exporter/importer are sitting far away from the port of loading/ port of destination as the case may be and arranging such other activities by themselves remains a tiring work. Therefore, a trade practice has been arrived at that the CHA/C&F Agent sitting at the port of export/import will in addition to their own work also arrange such other services and the agency charges paid to them include remuneration for all. The charges incurred by noticee for arranging activity from third party service provider are reimbursed to them on actual basis.

28. Further, I also find that the Service Tax of Rs. 1,42,84,630/- paid by the assessee for the year 2016-17 on gross service income, Transport income after abatment and also paid on other income.

29. The Balance sheet and profit and loss account of an assessee is vital statutory records. Such records are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for evincing true financial position. Assessee was legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in unorganized method. The statute provides mechanism for supervision and monitoring of financial records. It is mandate upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive fair conclusion in respect of the balance sheet and profit and loss accounts. It is also onus upon auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs. The Chartered Accountant, who audited the accounts of the assessee, being qualified professional has given declaration that the balance sheet and profit and loss accounts of the noticee reflect true and correct picture of the transaction and therefore, I have no option other than to accept the classification of incomes under profit and loss account as true nature of the business and to proceed to conclude instant proceedings accordingly.

30. While considering all these aspects, I find that the services provided and collected income as *customs duty, Ocean fright, CFS charges, Detention charges, concord charges, shipping line charges, transportation charge, GSEC, stamp duty, warfage, insurance detention charges, airline transfer charges, lift on charges destination charges, BL charges, certificate of origin charges, Fumigation charges, Test Report charges, etc. and Ocean Freight Charghes* (as detailed above) are not come under the preview of taxable service and thereby they are exempted from payment of service tax. As supra, I find that as the differential income of Rs. Rs. 1,17,06,642/- for the year 2015-16 are only reimbursement of expenses in the capacity of pure agent, Ocean Freight Charges and thereby not liable to service tax. Further, with regard to Difference of Rs. 5,18,45,003/- for the year 2016-17, Assessee has paid the Service Tax of Rs. 1,42,84,630/- on gross service income, Transport income after abatment and also paid on other income which have been reflected in their Service Tax returns. The difference of Rs. 3,75,60,373/- after payment of Service Tax as stated above comes due to only reimbursement of expenses in the capacity of pure agent, Shipping line and Ocean Freight Charges and abetment availed on income from transportation.

31. Further, on perusal of para 6 of SCN, I find that the levy of Service Tax for the financial year 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 2017-18 (Up to June 2017), in charging para of the SCN.

32. 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. 94,74,213/- for the period 2015-16 and 2016-17 is not sustainable and accordingly Show Cause Notice dated 18.10.2020 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

33. I hereby order to drop proceedings initiated against M/s. KARMAA SHIPPING, for recovery of service tax of Rs. 94,74,213/- along with interest and penalties vide SCN No. GEXCOM/ADJN/ST/ADC/303/2020-ADJN-O/o COMMR-CGST-AHMEDABAD(N) dated 21.12.2020.

14/12

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

By Regd. Post AD./Hand Delivery
To
M/s. KARMAA SHIPPING
7/2, S.F., GITANJALI SHOPPING CENTRE,
DARPAN 5 RASTA, 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