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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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. **STC/15-89/OA/2020** आदेश की तारीख़/Date of Order:-16.03.2022

जारी करने की तारीख़/Date of Issue :- 16.03.2022

DIN NO: 20220364WT000000A398

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

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 84/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 वताओ सूचना/ Show Cause Notice No. STC STC/15-89/OA/2020 dated 29.09.2020 issued to **M/s.Vimal Cargo Services,** Tejendranagar Part I B167 D Cabin, Sabarmati, Ahmedabad, Gujarat .

BRIEF FACTS OF THE CASE

M/s. Vimal Cargo Services, Tejendranagar, Part I, B167, D-Cabin, Sabarmati Ahmedabad Gujarat (hereinafter referred to as the Assessee) holding Service Tax registration No.-ALHPG3413DSD001.

2. Ongoing through the Third Party CBDT data for the Financial Year 2014-15, 2015-16 and 2016-17 it has been observed that the said Assessee has shown less amount of the 'Gross Value of Services Provided' in the Service Tax (ST-3) Returns filed with Service Tax Department than the 'Sales/Gross Receipts from Services (Value from ITR)', the 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' filed with the Income Tax Department. Therefore, it was observed that the said assessee had mis-declared / suppressed the 'Gross Value of Services Provided' in the Service Tax (ST-3) Returns filed by them for the F.Y. 2014-15, 2015-16 and 2016-17 and consequently short paid / not paid the applicable Service Tax on whole amount of services provided by them. As per the details shared with the CBIC, is as under-

Table-I **(Amt. in Rs.)**

F. Y.	Value of Services declared in ITR	Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J'	Value of Services provided as per Service Tax Returns	Highest Difference	Service Tax (Including Cess)
2014-15	Rs.29791412/-	Rs.8208926/-	Rs.5896524/-	Rs.23894888/-	Rs.2953408/-
2015-16	Rs.2,74,90,683/-	Rs.1,46,09,700/-	Rs.46,40,135/-	Rs.2,28,50,548/-	Rs.3313329/-
2016-17	Rs.18312482/-	Rs.9238663/-	Rs.3484725/-	Rs.14827757/-	Rs.2224164/-
Total	Rs.75594577/-	Rs.32057289/-	Rs.14021384/-	Rs.61573193/-	**Rs.8490901/-**

3 It was requested 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, by the Jurisdiction office vide letters dated 09.02.2018, 25.06.2019 and 17.07.2020 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 can be done in this regard.

4. In view of facts stated hereinabove, that the total Value of Services declared in ITR filed by the noticee for Financial Year 2014-15, 2015-16 and 2016-17 was Rs.75594577/- and that the Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' for Financial Year 2014-15,2016-17 and 2016-17 was Rs.32057289/- and whereas the total Value of Services provided as per Service Tax Returns was Rs.14021384/-. And since the said noticee has not provided any details/data for such difference, the reasons for such difference cannot be ascertained and therefore, the exact Service Tax liability cannot be adjudged. Therefore, for calculation and demand of the Service Tax under this notice the maximum amount of difference between (i) Value of Services declared in ITR filed by the notice & Value of Services provided as

per Service Tax Returns and (ii) Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' & Value of Services provided as per Service Tax Returns i.e. the highest difference of Rs.61573193/-between these two is considered and the highest applicable rate is applied for Non-Payment/Short-Payment of Service Tax of **Rs.8490901/-** (Including Cess) for Financial Year 2014-15, 2015-16 and 2016-17 is worked out.

5. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B *ibid* in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said notice had not paid service tax as worked out as above in Table-I.

6. Whereas, as per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns).The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appears that the said service provider has not assessed the tax dues properly, on the services received by him, as discussed above, and failed to file correct ST-3 Returns thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

7. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the noticee along with interest under Section 75 of the Finance Act, 1994.

8. From the foregoing paras and discussion made herein above, it appears that the noticee has contravened the provisions of -

(i)Section 67 of the Finance Act, 1994 in as much as they have failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the period 2014-15;

(ii)Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as-much-as they failed to make payment of service tax during the period 2014-15, to the credit of the Government account within the stipulated time limit;

(iii)Section 70 of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value and to file correct ST-3 returns during the period 2014-15.

(iv) Section 77 of the Finance Act, 1994 as much as they did not provide required data / documents, as called for from them.

9. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part the noticee has 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 the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years along with applicable interest. All these acts of contravention of the provisions of Section 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 on part of noticee appears to have rendered them for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time.

10. 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, 2015-16 and 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc., based on mutual trust and confidence are in place. From the evidences, it appears that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of **Rs.8490901/-** including Cess). It 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 by invoking extended period of time, 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, and penalty under provisions of Rule 7C of the Service Tax Rules, 1994;

11. Therefore, M/s. Vimal Cargo Services upon to show cause to the Addl. Commissioner, CGST & CX, Ahmedabad North having office at 1st Floor, Custom House, Navrangpura Ahmedabad as to why:-

(i) The said differential amount should not be considered as taxable value and the Service tax involved in the said amount to the extent of **Rs.8490901/-** (Including Cess) (Rupees Eight Four Lakh Ninety Thousand Nine Hundred One only) short paid /not paid by them, should not be 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 should not be imposed upon them under the provisions of Section 77(1) of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Service Tax Rules, 1994.

(v) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

(vi) Penalty should not be imposed upon them for late filing ST-3 return for the period April'2014-September'2014 under the provisions of Rule 7C of the Service Tax Rules, 1994.

DEFENCE REPLY :

12. The assessee vide letter dated 26.10.2020 submitted their defence reply wherein they stated that he is engaged in Clearing and Forwarding Agent (CFA) and Transportation of Goods; that **"Clearing and Forwarding Agent"** means any person who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent; that 'clearing and forwarding' operations would be various activities having bearing on clearance of goods, which would involve documentary processes and arrangements for transfer of goods to their destination, which process may also involve clearance at subsequent stages during forwarding operations; that C&F Agent undertakes the activities (i) receiving the goods from the factories or premises of the principal or his agents (ii) warehousing these goods (iii) receivingdespatch orders from the principal (iv) arranging despatch of goods as per the directions of the principal by engaging transport on his own or through the authorized transporters of the principal (v) maintaining records of the receipt and despatch of goods and the stock available at the warehouse; and (vi) preparing invoices on behalf of the principal' that definition of 'forwarding agent', as known in legal parlance, from Black's Law Dictionary is a " A person or company whose business is to receive and ship goods for others and also termed freight-forwarder; that a person who specializes in moving goods from a factory or port of entry to their proper destination. Such an agent normally owns the transport necessary for this work and often arranges FREIGHT and customs formalities for his principal; that a forwarding agent is one who carries on the business of arranging for the carriage of goods for other people; that all that he does is to act as agent for the owner of the goods to make arrangements with the people who do carry, such as shipowners, road hauliers, railway authorities and air carriers, and to make arrangements, so far as they are necessary, for the intermediate steps between the ship and the rail, the customs or anything else; that as the nature of business is where being agent of the principal and looking to the market for clear the good for import and to dispatch the good for export being agent they have to incur many expenses on behalf of the assessee where invoice itself is issued in the name of principal only that they incur expenses where invoices

issued in the clients name and for smooth operation of business activities we are claiming the same form the principal as reimbursement or non-taxable expenses like Concor Charges, Insurance charges, Shipping Line Charges, Container Detention charges ,Central Warehousing Corporation Charges,Custom Duty, Govt Duty; that the taxable Services which they are charging as pure our service charges are agency charges, Documentation Charges, Labour Charges, Cont Facility charges; that they are collecting due paid to the respective agency on behalf of the principal in whose name invoices are issued and accordingly they are raising invoice for non-taxable services which are in nature of reimbursement and invoice for taxable service on which we have paid applicable service tax time to time; that they attach few invoices of taxable and non-taxable services along with copy of invoices; that it is a common practice in service industry, where the service agreement would provide for a fee for the service, by whatever name called and also for reimbursement of the actual expenditure incurred by the service provider, while rendering the service; that the measure of valuation is the gross amount charged, the question arose whether the payment received by the service provider, by way of reimbursement of expenses should also be subjected to the levy of service tax; a careful voyage of circulars no F.No.B43/1/97TRU Dated 06.06.97 states that payments made by Custom House Agents 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 it is inherent nature of C&F Agency service that number of expenditures is being incurred by the service provider and re-imbursement is being claimed in the bills. The nature and list of these expenses may vary from case to case basis and dependent on the natureof contract. Since there was no specific provision, honorable tribunal was consistent on holding that re-imbursement of expenses in case of clearing andforwarding agents are not forming part of gross value and not subject to service tax; that they relied upon Some case laws Sangamitra Services Agency v. CCE, Chennai - 2007 -TMI - 2029 - CESTAT, CHENNAI and other case laws; that the SCN itself fairly acknowledged the fact that the appellants had been paying Service tax regularly as required under Rule 6 on the remuneration/servicecharges they had been receiving from their principals periodically. If this averment of the SCN is read with the above provision of law, the matter ends there. Nevertheless, the SCN proceeded to frame a case of undervaluation against the party by alleging that charges towards freight, labour, electricity, telephone etc.collected by the appellants from their principals to meet the actual expenses incurred in connection with clearing and forwarding of excisable goods were also tobe added to the taxable value of the service. This case of the Revenue was clearly beyond the scope of Rule 6(8) ibidas held by the Tribunal in the case of SriSastha Agencies Pvt. Ltd.(supra) and a plethora of other cases considered therein. As rightly pointed out by ld. counsel, in the case of Mett Macdonald(supra),what was considered by the Tribunal was Consulting Engineer's service, for which **there was no specific rule defining taxable value/gross amount**. Apparently, inthat case, the Bench went by Section 67 and held that certain expenses incurred by the assessee and reimbursed to them by their principal were also to beadded to the taxable value. In the present case,

it is not in dispute that various charges which were alleged by the Revenue to be includible in the taxable valueof C&F service were reimbursed by the principals on the basis of actuals. The amount received by the appellants from the principals as remuneration/commission for the service of clearing and forwarding the goods has been rightly adopted as tax able value and tax paid accordingly. This satisfiesthe legal requirement; that various courts and tribunal it is clearly stated that in case of Clearing and Forwarding Agent (C & G) amount received such as agency charges, commission and fees for their C & F services are taxable to service tax and other amount received for the expenditure incurred on behalf of the principal where in such invoice of the supplier are also issued in the name of the principal are not chargeable to service tax; that looking to the above facts and figures the Hon'ble officer has added whole amount (Taxable and Non-Taxable called reimbursement) to gross value of accordingly service tax is being calculated in the gross value including reimbursement of expenses which is not chargeable to service tax.; that they stated that some time principals are paying advances to incur expenses on behalf of them which later on adjusted against the reimbursement (Non-Taxable) of expenses; that at the time of advance they have deducted TDS on whole amount including taxable and non taxable services which has resulted into deducted of TDS on higher side as compare to actual Clearing and Forwarding Agent Charges; that they attach copy of 26AS of Financial year 2014-2015 to Financial year 2016-2017; Service Tax Registration Certificate ST-2; Audited Financial Statement from Financial year 2014-2015 to 2016-2017.; Copy of Income Tax Return ; Copy of ST-3 Return from April 2014 to March 2017; Copy of Invoice of Taxable and Non-Taxable services along with invoice respective agency which was issued in the name of principal only which is claimed as non taxable amount received from principal as reimbursement of expenses; further they stated that they are regularly paying applicable service tax on C & F agent commission and fees received on time to time and all service tax return has also been filed within the time frame; and hence service tax demand of Rs.84,90,901/- to be delated which is shown as per Show Cause Cum Demand Notice dated 29.09.2020.

PERSONNEL HEARING :

13. Personnel Hearing was granted to the assessee on 09.03.2022 wherein Shri Krunal Modi, Proprietor and Shri Harsh Rashmikant Shah, Chartered Account appeared for personnel hearing. They have submitted reconciliation statement and have stated that they have acted as "Pure Agent" for which they don't have any Service Tax Liability and requested to drop all further proceeding.

DISCUSSION AND FINDING :

14. 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 2014-15, 2015-16 and 2016-17. In the present case, Show Cause Notice was issued to the noticee demanding Service Tax of Rs. 84,90,901/- for the financial year 2014-

15, 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. 84,90,901/- -with interest and penalty.

15. In the instant SCN, the point is regarding taxability of reimbursement expenses 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.6,15,73,193/- for the year 2014-15, 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.

16. 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.

17. 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.

18. 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.

19. 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 and 2017-18.

20. 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. 52,32,199/- (for the year 2014-15) Rs.

50,88,997/- (for the year 2015-16) and Rs. 37,04,300/- (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:

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.

21. 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. 52,32,199/- (for the year 2014-15) Rs. 50,88,997/- (for the year 2015-16 and Rs. 37,04,300/- (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 the same 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.

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

Description	2014-15	2015-16	2016-17
Differential value on which service tax demanded as per SCN	2,38,94,988/-	2,28,50,548/-	1,48,27,757/-
Less: Ocean Freight charges out of the perview	***52,32,199/-***	**50,88,997/-**	*37,04,300/-*

of Service Tax Taxability as discussed			
Difference	**18662789**	**17761251**	*11123457*
Reimbursement charges not applicable to Service Tax	**18662789**	**17761251**	*11123457*
Difference	0	0	0

23. 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.

24. 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.

25. 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. 2,38,94,888/- Rs. 2,28,50,548 and Rs. 1,48,27,757/-for the year 2014-15 to 2016-17 respectively are only reimbursement of expenses in the capacity of pure agent, Ocean Freight Charges and thereby not liable to service tax.

26. 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. 84,90,901/- for the period 2014-15, 2015-16 and 2016-17 are 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

27. I hereby order to drop proceedings initiated against **M/s.Vimal Cargo Services,** Tejendranagar Part I B167 D Cabin, Sabarmati, Ahmedabad, Gujarat for recovery of service tax of Rs. 84,90,901/- along with interest and penalties vide SCN No. STC/15-89/OA/2020 dated 29.09.2020.

16/3/21

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

By Regd. Post AD./Hand Delivery

To
M/s.-Vimal Cargo Services
Tejendranagar Part I B167 D Cabin
Sabarmati Ahmedabad, Gujarat

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