



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 ☎ 07926305065- टेलिफैक्स 07926305136



DIN: 20221164SW000000F5F0

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2726&2727/2021-APPEAL / 4425-30
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-52&53/2022-23
 दिनांक Date : 31-10-2022 जारी करने की तारीख Date of Issue 03.11.2022
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/42/2021-22
 दिनांक: 31.08.2021, issued by Deputy Commissioner, CGST, Division-VII, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

The East West Freight Carriers Ltd.
 9/A, Vikram Nagar Society, Opposite Ambika Society,
 Usmanpura, Ahmedabad

2. Respondent

The Deputy Commissioner, CGST, Division-VII, 4th Floor, Shajanand
 Arcade, Nr. Helmet Circle, Memnagar, Ahmedabad-380052

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

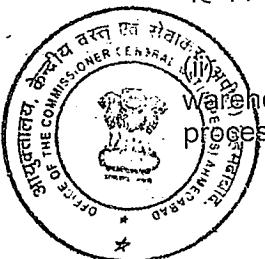
भारत सरकार का पुनरीक्षण आवेदन :
 Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a Warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

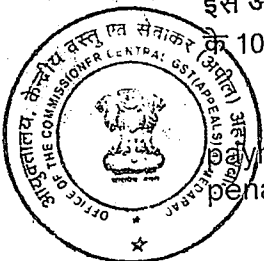
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

Two appeals, as per the details given below, have been filed by M/s. East West Freight Carriers Ltd., 9/A, Vikram Nagar Society, Opposite Ambika Society, Usmanpura, Ahmedabad (hereinafter referred to as '*the appellant*') against the OIO No. CGST/A'bad North/Div-VII/ST/DC/42/2021-22 dated 31.08.2021 (in short '*impugned order*') passed by the Deputy Commissioner, Central GST, & Central Excise, Division-VII, Ahmedabad North (in short '*the adjudicating authority*'). The appellants are holding Service Tax Registration No.AAACE0996JST001 for providing Business Auxiliary Service, Business Support Services, Transport of Goods by Road and Custom House Agent Service.

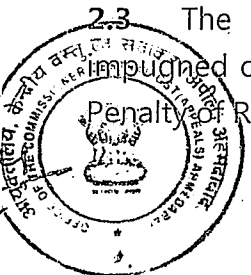
Sr.No.	Appeal No.	SCN No.	SCN date	Amount
01	GAPPL/COM/STP/2726/2021	SD-01/04-12/SCN/EW/17-18	12.06.2017	Rs.62,080/-
02	GAPPL/COM/STP/2727/2021	Div-VII/North/Dem-05/East West/18-19	17.09.2018	Rs.3,60,510/-

2. The facts of the case, in brief, are that during the course of audit, on verification records of the appellant, it was noticed that the appellant use to pre-book/buy cargo space from airlines/shipping lines and sell them to the exporter/exporters, thereby, supporting the business of their clients/customer. The appellant earned an income for rendering such services, which they artificially split into taxable and non-taxable consideration. The ocean freight recovered from the clients was shown as non-taxable income by showing it as a sale of service under head 'Freight & Forwarding charges' in the Balance Sheet. It was found that the appellant had vivisected the composite activity into various activities resulting into artificial fragmentation of value with intent to evade the payment of service tax on the amount recovered as Air/Ocean Freight. Thus, a Show Cause Notice (SCN) No. CEA-II/ST/05-02/C-IV/APXV/RP-05/DAR/16-17 dated 21.04.2016, covering period (01.04.2010 to 31.03.2015), involving service tax amount of Rs.2,87,57,626/- was issued by the Commissioner, Audit-II, Central Excise and Service Tax, Ahmedabad. This SCN was adjudicated vide OIO No.AHM-EXCUS-002-COMMR-1/18-19 dated 26.12.2018 by the Commissioner, CGST, Ahmedabad (North), wherein the said demand was confirmed alongwith interest.

2.2 However, as the appellant continued with the same practice, following protective demands for subsequent periods were issued under the provisions of Section 73(1) proposing recovery of below mentioned service tax demand alongwith interest and penalty under Section 76 & 77 of the Finance Act, 1994.

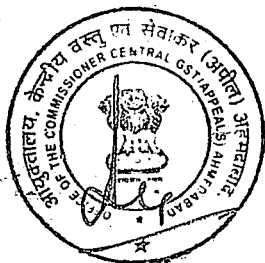
Sr.No.	SCN No.	Date	Period	Amount of Service Tax.
01	SD-01/04-12/SCN/EW/17-18	12.06.2017	01.04.2015 to 31.03.2016	Rs. 62,080/-
02	Div-VII/North/Dem-05/East West/18-19	17.09.2018	01.04.2016 to 31.03.2017	Rs.3,60,511/-
03	CGST/A'bad North/Div-VII/20/East West/18-19	27.06.2019	01.04.2017 to 30.06.2017	Rs.13,931/-
			Total	Rs.4,36,522/-

2.3 The above mentioned demand notices were adjudicated commonly vide the impugned order wherein the demand of Rs.4,36,522/- was confirmed alongwith interest. Penalty of Rs.10,000/- each was also imposed under Section 76 & 77.



3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant has preferred the present appeals wherein they contested the demand of Rs.62,080/- and Rs.3,60,511/- on following grounds:-

- The major activity of the appellant is that of booking cargo space in advance with a particular airline/shipping line for which rates are negotiated with the airline/shipping lines. The appellant has to pay for cargo space booked irrespective of the fact whether the cargo space is subsequently sold or not, sold at a price incurring losses/profit. The airlines/shipping lines issues a Master Airway Bills and in turn the appellant issues House Airway Bill to the exporter. The appellant is thus acting on own account as Principal and are responsible for safe shipment of cargo for which they have taken insurance policy. The SCN issued are contradictory as on one hand the exporters are treated as appellant's client while on the other hand airlines/shipping lines are treated as appellant's clients. The notices issued are contrary to the notices issued by Mumbai Service Tax Commissionerate where the demand on freight forwarders service was made under BAS, treating the incentives as promoting the services of airlines/shipping lines whereas in some jurisdiction these services are treated as freight difference earned as service rendered to exporters and in some cases they are treated as Business Support Service (BSS). This has resulted into divergent notices issued to various assesses including the appellant.
- The adjudicating authority brushed aside appellant's submission regarding applicability of the CBEC Circular date 12.08.2016 and the judgment passed in the case of Global Transportation –AIT-2016-62-AAR.
- The appellant claim that they have acted in the capacity of a principal and has not rendered any support services as the primary activity is freight forwarding covered in para 2.2 of the said circular and the transportation services provided to the place outside India is covered under Rule 10 of POPS Rules, 2012. The impugned order is passed merely by re-producing the Order passed by the Commissioner, CGST, Ahmedabad without countering the submissions made by the appellant. They placed reliance on following case laws:-
 - Greenwich Meridian Logistics (I) Pvt Ltd-2019 TIOL 150 SC
 - La freight Final Order No. 40464 to 40467/2018
 - Bax Global India Ltd. – Final Order No.42113/2017
 - Karam Freight Movers-2017 (4) GSTL 215 (Tri-Del)
 - Sea Master Shipping- 2019(20) GSTL 458
- The appellant have filed an appeal before CESTAT, Ahmedabad against the OIO No.AHM-EXCUS-002-COMMR-1/18-19 dated 26.12.2018 by Commissioner, CGST, Ahmedabad (North) on 29.03.2019 (Appeal No.ST/10750/2019), which is pending, hence the issue cannot be considered as settled as held by the adjudicating authority.
- Interest and penalty is liable to be set-aside as booking of cargo space and selling the space to exporter is not subjected to service tax. Penalties imposed are therefore also liable to be set-aside.



4. Personal hearing in the matter was held on 20.10.2022. Shri Siddharth Mallinathan, Deputy Manager (Legal) of D. Arvind & Associates LLP, Chennai, appeared on behalf of the appellant in both the appeals. He reiterated the submissions made in both the appeal memorandum. He further stated that he would submit copies of relevant judgment as part of additional written submission.

5. I have carefully gone through the facts and circumstances of the case, the impugned order passed by the adjudicating authority, earlier OIO, the submissions made by the appellant in their appeal memorandum and the evidences available on records. The limited issue to be decided under the present appeal is whether ocean freight /air freight collected by the appellant is chargeable to service tax or otherwise? The period of dispute involved is from 01.04.2015 to 30.06.2017.

6. The SCN alleges that the appellant has recovered freight charges on imported goods, where the place of provision/destination is in taxable territory. Further, in terms of the principle of bundling of the services provided in Section 66F (3) (a) of the Finance Act, 1994, if various elements of services are naturally bundled in the ordinary course of business, it shall be treated as provision of single service, which gives such bundle its essential character, thus the services provided is classifiable under the category of 'Business Support Services' as this services gives essential characters of the taxable service. The adjudicating authority, by following the principles of judicial discipline, confirmed the demand by relying on the findings of higher adjudicating authority. The Commissioner, while deciding the SCN dated 21.04.2016, held that Notification No.29/2005-ST dated 15.07.2005 exempts the service of transportation of goods, only if it is provided by an aircraft operator, thus the Ocean freight /Air Freight recovered by the appellant from their clients as non-taxable portion by showing it as 'Sale of Service' (Freight & Forwarding) in the Balance Sheets is a taxable service.

6.1 A freight forwarder arranges for export and import shipments and while doing so he may act on his own account or act as an intermediary. In reply to the SCN dated 12.06.2017, the appellant before the adjudicating authority have stated that they pre-booked cargo space after negotiating with airlines/shipping lines and sold this space subsequently to one or more exporters offering the price either higher / lower than the rate at which freight was booked. In some cases, the airlines issued Master Airway Bill/Master Bill of Lading, showing them (appellant) as consignor, while in some cases, the appellant have issued their own multi modal transport document/House Airway Bills acting as a Principal and have shown the exporter as the consignor. Where they have acted on account as a principal, they were responsible for safe shipment of cargo and hence insurance was also taken by them to cover the risk of losses, if suffered during shipment of consignment. They have acted in the capacity of a principal and have not rendered any support services. They claim that their primary activity is freight forwarding covered in para 2.2 of the Board's Circular dated 12.08.2016 and the transportation services provided to the place outside India is covered under Rule 10 of POPS Rules, 2012. In support of their argument they submitted Tax Invoice, Export Invoice Cum Cash Receipt, Air Way Bills, Air freight Manifest, HAWB, Insurance Policy etc.

6.2 The CBIC vide Circular No. 197/7/2016-S.T., dated 12-8-2016, had clarified that where the freight forwarders deals with the exporters as an agent of an airline/carrier/ocean liner, who merely acts as a sort of booking agent with no



responsibility for the actual transportation, then in such cases the service of the freight forwarder will be subjected to tax, while the service of actual transportation will not be liable for service tax under Rule 10 of POPS. However, where the freight forwarders act as a principal who is providing the service of transportation of goods and where the destination is outside India, then the freight forwarder will not be liable to pay service tax.

6.3 It, thus, follows that a freight forwarder, when acting as a principal, will not be liable to pay service tax when the destination of the goods is from a place in India to a place outside India. Where the freight forwarder is acting as an agent of airlines/ carrier/ocean liner, the service of the freight forwarder will be subjected to tax but the service of actual transportation will not be liable for service tax under Rule 10 of POPS. This clarification has been provided in respect of outbound freight.

6.4 It cannot be stated that appellant is acting as a pure agent as they not only receive the actual amount incurred to procure such goods and services but they also collect certain amounts over and above the expenses incurred by them by way of documentation charges, handling charges and miscellaneous charges. The appellant purchased space from airlines and shipping liners. This space is allotted to various exporters/importers for which they collected freight. Procurement of space in the ships/airlines for the client-exporters/importers is a service. The appellant out of the above charges were paying service tax on the agency charges, Storage and Warehousing Services, Air way Bill Fees, Document processing charges, transportation and on lable charges except on freight charges.

6.5 In terms of Rule 9(c) of POP Rules, the place of provision of "intermediary services" shall be the location of the service provider. "Intermediary" is defined in terms of Rule 2(f) ibid and means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (called main service) or supply of goods, between two or more person, but does not include a person who provides the main service or supplies the goods on his account. Thus, the definition of "intermediary" does not include a person who provides main service on his own account. The relationship between the appellant and the airline/shipping line is separate and distinct from the relationship between the appellant and its customer. The appellant contracts with its customer to provide for transportation of cargo. They also negotiate with an airline/shipping line seeking space and time for transportation of cargo. However, it does not imply that the appellant contracts with the airline on behalf of its customer as an intermediary. In the present case, the appellant has also taken insurance and are responsible for safe shipment of cargo. In case of damage or destruction of cargo, the appellant shall have an independent right of recover the damages against the airline. Similarly, the customer shall also have a right to recover damages from the appellant in such a scenario. Therefore, agreement between appellant and airline/shipping line would be on principal to principal basis. The appellant would be covered by the exclusion clause, i.e., provides the main service - inbound and outbound shipment on his own account in terms of Rule 2(f) of POP Rules and thus not covered under Rule 9(c) ibid as "intermediary" service. Therefore, place of provision of said service will not be location of service provider.



7. Further, on the allegation that the service provided by the appellant is bundled service in terms of Section 66F of the Finance Act, 1994, it is observed that Explanation to Section 66F, *inter alia*, states that the expression "bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. It is observed that the activities of the appellant are mutually exclusive and can be provided on standalone basis. They have been paying service tax on all activities (Agency charges, Storage and Warehousing Services, Air way Bill Fees, Document processing charges, transportation charges and lable charges) except "freight charges". Revenue has not given any reason as to how these services are single indivisible bundled service, especially when the applicant is discharging liability towards service tax on each and every above referred service except on international air/ocean freight.

8. The appellant has relied on catena of decisions, which I find are squarely applicable to the present case. It is observed that Hon'ble CESTAT, WZU, Mumbai, in the case of Greenwich Meridian Logistics (I) PVT. LTD -2016 (43) S.T.R. 215 (Tri. - Mumbai) held that;

12. XXXXX

"Correspondingly, allotment of procured space to shippers at negotiated rates within the total consideration in a multi-modal transportation contract with a consignor is another distinct principal-to-principal transaction. We, therefore, find that freight is paid to the shipping line and freight is collected from client-shippers in two independent transactions.

13. The notional surplus earned thereby arises from purchase and sale of space and not by acting for a client who has space or slot on a vessel. Section 65(19) of Finance Act, 1994 will not address these independent principal-to-principal transactions of the appellant and, with the space so purchased being allocable only by the appellant, the shipping line fails in description as client whose services are promoted or marketed."

Similar view has been expressed by Tribunal in the case of DHL Lemuir Logistics Pvt. Ltd.- 2017 (47) STR 309 (Tri-Mum), Sea Master Shipping and Logistics - 2019 (25) G.S.T.L. 458 (Tri. - Hyd.), Global Transportation Services Pvt. Ltd- 2016 (45) S.T.R. 574 (A.A.R.).

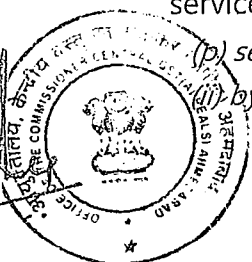
9. The contention of the appellant that their primary activity is freight forwarding for export cargo which is covered in para 2.2 of the Board's Circular dated 12.08.2016 and the transportation services provided was to the place outside India covered under Rule 10 of POPS Rules, 2012, was not examined by the adjudicating authority. Applying the ratio of above decisions and CBIC Circular dated 12.08.2016, I find, that the place of provision of service of transportation of goods, as per Rule 10 of POP Rules shall be the place of destination of the goods. In the case of outbound shipment - both by aircraft and vessel, destination of goods shall be outside India hence, there will be no Service Tax on freight margin recovered by the appellant from the customer for outbound shipment.

10. As far as inbound shipment is concerned, it is noticed that Section 66D (p)(ii) of Finance Act, 1994, as it existed prior to 1-6-2016, read as under :

66D- Negative list of services. - The negative list shall comprise of the following services, namely :-

(p) services by way of transportation of goods=

by an aircraft or a vessel from a place outside India to the customs station of



clearance in India;

In terms of Section 66D(p)(ii), transportation of goods by aircraft or vessel from a place outside India to India prior to 1-6-2016 was covered by the negative list of services and was not liable to Service Tax, as per Section 66B. However, vide Finance Act, 2016, this entry (p)(ii) was removed, so by virtue of Rule 10 of the Place of Provision of Services Rules, 2012, which reads –

"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";

Thus, the inward freight, after 1st June, 2016, came under service tax levy.

10.1 However, vide (S. No. 53) of Notification No. 09/2016-ST dated 01.03.2016, w.e.f. 01.06.2016, entry was inserted in mega exemption Notification No. 25/2012 as

"53. Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.;"

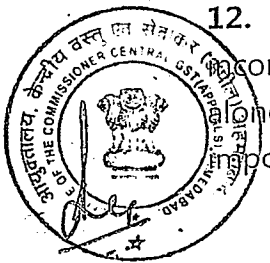
Consequently, the transportation by vessels was intentionally left to make inward ocean freight subject to levy of service tax. Subsequently, vide Notification No.01/2017 dated 12.01.2017, by insertion of proviso in Entry 34 of said mega exemption notification, the exemption of service provider and receiver being out of taxable territory was also removed **specifically** for inward ocean freight. It was done by insertion of proviso in entry 34 of mega exemption notification as –

"Provided that the exemption shall not apply to - (i)or (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India;"

But, in the present case, the appellant has rendered service from taxable territory. Therefore, the liability to pay service tax on ocean freight shall remain on them for the period from 1st June, 2016.

11. In light of above discussion and findings, the freight income received by the appellant from its customer for inbound shipment is exempt from levy of Service Tax provided to transportation of goods by aircraft and ocean vessel under Section 66D of the Finance Act, 1994 up to 31-5-2016. Further, in respect of transportation of goods by aircraft, exemption will continue to operate in view of Notification No. 9/2016-S.T. However, the ocean freight income recovered by the appellant from its customer for inbound shipment transported in an ocean vessel shall be taxable w.e.f 01.06.2016. As the demand notice does not bifurcate the amount / income received on ocean freight, I find that the same is required to be quantified and therefore, the matter needs to be remanded back to the adjudicating authority.

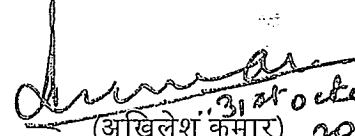
12. In view of above discussion and findings, I find that the demand on air freight income from import cargo is not sustainable and, accordingly, deserves to be set aside alongwith interest and penalties. However, the demand on ocean freight income on import cargo needs to be quantified, hence, the impugned order to that extent is



remanded to the adjudicating authority in terms of directions contained in Para-11 above, for quantification of service tax liability pertaining to ocean freight of inbound cargo and pass a speaking order after following the principles of natural justice.

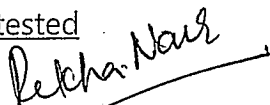
13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

Both the appeals filed by the appellant stand disposed off in above terms.


31st October,
(अखिलेश कुमार) 2022..
आयुक्त (अपील्स)

Date: 10.2022

Attested


(Rekha A. Nair)

Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,
M/s. East West Freight Carriers Ltd.,
9/A, Vikram Nagar Society,
Opp. Ambika Society,
Usmanpura,
Ahmedabad

Appellant

The Deputy Commissioner,
CGST, Division-VII,
Ahmedabad North

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
4. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on the website.
5. Guard File.