आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By SPEED POST

DIN:- **20240364SW000000BDF1**

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4558/2023 /4526- 30
(ख)	अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date	AHM-EXCUS-001-APP-334/2023-24 and 22.03.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	30.03.2024
(ङ)	Arising out of Order-In-Original No. CGST-VI/Dem-258/AVM Logistics/AC/DAP /2022-23 dated 30.01.2023 passed by The Assistant Commissioner, CGST, Division-VI, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s AVM Logistics Pvt. Ltd., 305, Panlee Complex, Opposite Sardar Patel Sewa Samaj, Mithakali, Ahmedabad-380009

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 पूवोक्त 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 :-

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 : -

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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 मे 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.

(ख) 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 मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

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.

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

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

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट 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।

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.

(2) 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 दिनाँक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर अपीलीय न्यायाधिकरण के प्रति अपीलः-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गतः-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद 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।

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

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. Registar 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 ओदश 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 हैं।

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 Appellant 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 संषोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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 in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

(1) खंड (Section) 11D के तहत निर्धारित राशि;
(2) लिया गलत सेनवैट क्रेडिट की राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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.

(6) (i) 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

The present appeal has been filed by M/s AVM Logistics Private Limited, 305 Panlee Compex, Opp. Sarpar patel Sewa Samaj, Mithakhali, Ahmedaba-380009(hereinafter referred as Appellant) against Order in Original No. CGST-VI/Dem-258/AVM LOGISTICS/AC/DAP/2022-23 dated 30.01.2023[hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Div-VI, Ahmedabad South[hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that as per the information received from the Income Tax Department, the appellant having Service Tax registration no. AAICA7429ASD001, during the financial year 2015-16 had earned substantial service income. As per the data provided by the IT Authority, the Service Tax payable calculated on the basis of value of Sales of Services under Sales/Gross receipts from Services for the financial year 2015-16, is as below:

F.Y	Taxable Value i.e. Value difference in sale of service as per ITR/TDS & STR	Rate of Service Tax inclusive of EC & SHEC	Service Tax payable(in Rs.)
2015-16	1,22,40,619/-	15%	18,36,093/-/-

3. In view of the above, Show Cause Notice vide F.No. V/WS06/O&A/SCN-312/2020-21 dated 26.12.2020(in short 'SCN') was issued to the appellant, proposing as to why:

- Service Tax of Rs. 18,36,093/- which was not paid for the F.Y. 2015-16 should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994; read with relaxation provisions of Section 6 of Chapter V of the Taxation and Other Laws (Relaxation and amendment of Certain Provisions) Act, 2020 (No. 38 of 2020) promulgated on 30.09.2020 (time limit extended upto 31st December, 2020) by invoking extended period of time limit;
- Interest at the appropriate rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- Penalty under the provisions of Section 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.
- Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

4. The said SCN was adjudicated vide the impugned order confirming the followings:

- Service tax of Rs. 18,36.093/-(Rs. Eighteen Lacs Thirty Six Thousands and Ninety Three Only) including Education Cess (EC) and Secondary and Higher Education Cess (SHEC), SB Cess, & KK cess) under proviso to Section 73(1) of the Finance Act, 1994 invoking extended period.
- Interest on the confirmed demand at the applicable rates under proviso to Section 75 of the Finance Act, 1994.
- Penalty of Rs. 18.36,093/- under proviso to Section 78 of the Finance Act, 1994.
- Penalty of Rs.10,000/- (Rs.Ten Thousands) under Section 77 (1)(c) of Finance Act, 1994.

5. Being aggrieved with the impugned order, the appellant have filed the present appeal, with further request for condonation of delay for 12 Days, on following grounds:

- At the outset, the appellants submit that the impugned order in original is incorrect in law as well as on facts. The impugned order has been passed by the Ld. Assistant Commissioner, CGST in gross and abundant violation of principal of natural justice. The appellants counter and do not agree with any finding of impugned OIO. Hence, the impugned order is liable to be set aside forthwith.
- That the SCN is Vague as the impugned SCN fails to point out the reason on the basis of which department has considered that the differential value of services provided by the appellants are taxable services. The impugned SCN nowhere discusses the nature of activities being carried out by the appellants and assumed that whatever income they have earned is taxable service income liable to tax under the provisions of Finance Act 1994 and Rules made therein.
- That the impugned order is A Non Speaking Order. Appellants submit that impugned OIO was confirmed without considering the facts of the case and applying to the provisions and rules discussed in OIO itself. Appellants submit that the impugned OIO has not considered the submissions made by them and did not discussed the provisions related to Freight Forwarder Services and peculiarity of such business in terms of offering transportation

services for Export of Goods while determining the alleged service tax liability as per the provisions of the Finance Act, 1994.

- That the Ld. Assistant Commissioner has not given any cogent findings. The Appellants submit that the impugned order in original is passed in gross violation of principles of natural justice.
- That the SCN is based on the presumption of the provision of taxable services as the SCN also presumes that the differential amount is towards the provision of taxable services but does not identify the relevant taxable services in question.
- That as per reconciliation statement , it is amply clear that there is no shortfall in payment of Service Tax and the difference alleged in Value of Income as per Form 26AS/Income Tax returns are purely on account of Export of Services.
- That the appellant are not liable to pay alleged service tax as the services of transportation of goods are provided in non-taxable territory.
- That the appellant are not working as an intermediary and the allegations leveled in impugned OIO are incorrect. They submit that they are providing services for transportation of goods on principal to principal basis ant they are not in any way working as an intermediary. Appellants submit that it is important to understand that there should be supply of goods or services by main supplier and the person viz. agent, broker or any other person should arrange or facilitate the same. Appellants are not appointed to act as a broker or an agent to arrange or facilitate supply. In fact, Appellants provides logistics services on their own as an independent logistics supplier. It is important to note that there is no privity of contract between shippers and customers i.e. exporters for whom transportation is executed and the services are not provided by shippers to exporters, which is one of the important requirements to qualify as intermediary.
- That the meaning of Intermediary defined under Service Tax Regime and GST Regime are same and in order to provide more clarity to the meaning of Intermediary Services additionally, they would like to refer to the Circular issued by CBIC vide reference #159/15/2021-GST dated September 20, 2021, wherein the scope / primary requirement for intermediary services is defined. It has been specifically stated as under:

i. There should be minimum three parties;

ii. There should be two distinct supplies;

iii. Intermediary services provide to have the character of an agent, broker or any other similar person;

iv. does not include a person who supplies such goods or services or both or securities on his own account.

In view of the above, they would not merit classification of intermediary in present case.

- That even if the appellant are liable to pay any S.Tax on the amount received from their service receivers, the tax calculation itself is incorrect as the amount received should be taken as cum duty price and the value should be derived there from, by excluding the duty alleged to be payable. Thus the OIO is liable to be dropped as the tax liability is required to be re-calculated considering the value of service provided cum-tax.
- That the extended period of limitation is inapplicable in the present case. Therefore S.Tax cannot be demanded invoking the proviso to sub-sectioN(1) to section 73 of the Finance Act, 1994.
- That the SCN also presumes that the differential amount is towards the provision of taxable services but does not identify the relevant taxable services in question. The SCN seeks to justify the said position on the premise that the requisite information which was called for has not been made available by the taxpayer and hence the said presumption is valid. Appellants submit that the said approach may not be in accordance with law. Hon'ble Tribunal in the case of Shubham Electricals (supra) was faced with a similar issue wherein the department justified the issuance of SCN based on the presumption that in absence of availability of data from the taxpayer, the differential figure needs to be subjected to tax. The Hon' ble CESTAT allowing the appeal of the taxpayer held that the officers have powers under the Act to visit the premises and examine the facts for issuing the SCN. It was further held that "the failure to gather relevant facts for issuing a proper show cause notice cannot provide justification for a vague and incoherent show cause notice which has resulted in a serious transgression of the due process of law"
- That there is no suppression since all facts were disclosed to the department. The allegation made in the show cause notice of suppression of facts with

intent to evade payment of duty is not tenable and it has no legs to stand. It is well settled law that the Department cannot press into service the machinery for invoking the extended period of limitation unless there is established an act of suppression or mis-declaration with intent to evade payment of duty. The SCN has not brought on record any evidence to show that the appellants have suppressed any fact from the Department.

- That the appellants are not liable to pay service Tax. Hence no question of imposing penalty on the appellants.
- That no interest is payable in case where the demand itself is not payable;

6. In view of the above the appellant have prayed for the following:

- Set aside the Order-in-Original No. CGST-VI/Dem-258/AVM LOGISTICS/ AC/DAP/2022-23 dated 30.01.2023 passed by the Ld. Assistant Commissioner of Central GST, Division-VI, Ahmedabad South Commissionerate and allow the appeal in full with consequential reliefs to the Appellants;
- Set aside the Service Tax demand of Rs. 18,36,093/-, interest under Section 75 of the Act and Penalty under Section 77(1)(c) & 78 of the Act, 1994 confirmed against the Appellants;
- Grant a personal hearing; and
- Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case.

7. Personal Hearing in the case was held on 11.03.2024. Shri Pratik Trivedi, appeared for PH on behalf of the appellant. He reiterated the contents of the written submission and requested to allow their appeal.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during hearing and the facts available on records. The issue to be decided in the present appeal is whether the demand for Service Tax amounting to Rs. 18,36,093/- confirmed vide the impugned order alongwith interest and penalties is legal and proper or otherwise. The demand pertains to the period F.Y. 215-16.

9. Before taking up the issue on merits, the request of the appellant for condonation of delay must be discussed. I find that in terms of Section 85, the limitation period of two months for filing the appeal in the present cases starts

from 02.05.2023 i.e from the date of the receipt of the order and the appellant were required to file the appeal on or before 01.07.2023. However, the appeal was filed on 13.07.2023 i.e. after 12 days of last day of filing the appeal. For the delay in filling the appeal, the appellant have submitted that they were struggling to create challan for pre-deposit due to some technical reasons and their account migration to new website was not getting successful and after successful migration of their account they had generated challan immediately and filed the appeal. Considering the cause of delay as genuine, I condone the delay of 12 days and take up the appeal for decision on merits.

10. I find that the appellant having Service Tax Registration No. AAICA7429ASD001, during the financial year 2015-16 had earned substantial service income. In the instant case, As per the data shared by the CBDT, the Service Tax payable to the tune of Rs. 18,36,093/- on the differential Service Value of Rs. 1,22,40,619/- has been calculated on the basis of value of Sales of Services under Sales/Gross receipts from Services for the financial year 2015-16. Accordingly, they were served upon the Show Cause Notice dated 26.12.2020 which was further adjudicated by the Impugned Order confirming the Demands/interest/penalties as proposed in the SCN on the ground that the Appellant have failed pay the service tax on the income shown by them in their ITR and also that they have failed to provide/produce any reasonable cause backed by supporting evidences for failure to pay Service Tax due.

11. I find that the appellant have submitted that the difference of Rs. 1,22,40,619/- in value of Services reflecting in ST-3 Return and income tax return is mainly due to Ocean Freight on export of Goods. The reconciliation statement as submitted is detailed as under:

Particular		Amount in Rs.
Sale of Services as per ITR		2,20,21,741/-
Value of Services as per STR		97,81,122/-
Excess Value as per ITR		1,22,40,619/-
Less:	Freight on Export of Goods	1,22,37,030/-
	Brokerage and Misc Income	3,589/-
Balance amount		NIL

11.1. As per the details provided above and the records available in this regard, I find that the Brokerage amount of Rs. 3589/- has not been contended by the appellant. The appellant contended for the amount of Rs. 1,22,37,030/- received as freight on Export of goods by putting forth that the said amount is for the services provided by them in relation to transportation of goods outside the taxable territory and therefore no service Tax is leviable on the same in term of Rule 10 of the place of provision of Services Rules,2012.

11.2. In this regard, I put my reliance on the relevant CBIC Circular No. 197/7/2016 dated 12.08.2016 clarifying the rules under place of provision of Service Rules, 2012 regarding applicability of Service Tax on Freight forwarders on transportation of Goods from india, re-produced as under:

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2.0 It may be noted that in terms of rule 10 of the Place of Provision of Services Rules 2012, (herein after referred to as 'POPS Rules 2012', for brevity) the place of provision of the service of transportation of goods by air/sea, other than by mail or courier, is the destination of the goods. It follows that the place of provision of the service of transportation of goods by air/sea from a place in India to a place outside India, will be a place outside the taxable territory and hence not liable to service tax. The provisions of rule 9 of the POPS Rules 2012, should also be kept in mind wherein the place of provision of intermediary services is the location of the service provider. An intermediary has been defined, inter alia, in rule 2(f) of the POPS Rules 2012, as one who arranges or facilitates the provision of a service or a supply of goods between two or more persons, but does not include a person who provides the main service or supplies the goods on his own account. The contents of the succeeding paragraphs flow from the application of these two rules.

2.1 The freight forwarders may deal with the exporters as an agent of an airline/carrier/ocean liner, as one who merely acts as a sort of booking agent with no responsibility for the actual transportation. It must be noted that in such cases the freight forwarder bears no liability with respect to transportation and any legal proceedings will have to be instituted by the exporters, against the airline/carrier/ocean liner. The freight forwarder merely charges the rate prescribed by the airline/carrier/ocean liner and cannot vary it unless authorized by them. In such cases the freight forwarder may be considered to be an intermediary under rule 2(f) read with rule 9 of POPS since he is merely facilitating the provision of the service of transportation but not providing it on his own account. When the freight forwarder acts as an agent of an air line/carrier/ocean liner, the service of transportation is provided by the air line/carrier/ocean-liner and the freight forwarder is merely an agent and 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.

2.2 The freight forwarders may also act as a principal who is providing the service of transportation of goods, where the destination is outside India. In such cases the freight forwarders are negotiating the terms of freight with the airline/carrier/ocean liner as well as the actual rate with the exporter. The invoice is raised by the freight forwarder on the exporter. In such cases where the freight forwarder is undertaking all the legal responsibility for the transportation of the goods and undertakes all the attendant risks, he is providing the service of transportation of goods, from a place in India to a place outside India. He is bearing all the risks and liability for transportation. In such cases they are not covered under the category of intermediary, which by definition excludes a person who provides a service on his account.

3.0 It follows therefore 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.

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12. Upon comprehensive reading of the said Circular, the main question to decide in this case is as to whether the appellant have acted as intermediary between shipping lines and exporter or was providing main service of transportation of goods from a place in India to a place outside India on his account. I find that the appellant have been given ample opportunity, following principle of natural justice, before issuance of impugned order. I find that the appellant have submitted plethora of verbal/documentary statements in support of their points as mentioned in Ground of Appeal but the moot question as regarding the nature of service provided by them and also whether the same have been provided in the capacity of intermediary or acting as principal, remains unexplored conclusively by the appellant. The appellant have submitted verbal/documentary re-iteration of the fact that they have not acted as Intermediary, however, no any corroborating conclusive documents have been submitted by them in support of their claims. For the figures as submitted in the reconciliation statement, I find that appellants have countered the allegation of the adjudicating authority without any supporting documentary evidence. Sufficient documentary evidences such contract copy, invoices or any other documents establishing the fact that they have entered into the negotiation of the terms and rate of freight with Airline/carrier/ocean liner have not been placed on record by the appellant so as to satisfactorily establish the role of the appellant as Principal and not intermediary as detailed in the CBIC Circular 197/7/2016-Service tax dated 12.08.2016 quoted above, has been made available on record. Mere verbal statement has no *locus standi* in the eyes of law.

13. In view of the facts mentioned at Para-12 hereinabove, without going into the merit of the case, I am of the considered view that the instant matter requires conclusive verifications of the documentary proofs before reaching out any conclusion. Hence, it is in the fitness of the thing that the matter is remanded back so that the adjudicating authority may consider the matter afresh and pass the speaking order. The appellant is also directed to put all the evidences before the Adjudicating Authority in support of their contention as well as any other details/documents etc. that may be asked for by the Adjudicating Authority during the adjudication proceedings. Needless to say that the principal of natural justice be adhered to. In view thereof, the impugned order is set aside and the appeal filed by the appellant is allowed by way of remand.

14. अपीलकर्ताद्वारादर्जकीगईअपीलकानिपटाराउपरोक्ततरीकेसेकियाजाताहै।

The appeal filed by the appellant stands disposed off in above terms.

(ज्ञानचंद जैन)
आयुक्त (अपील्स)
Dated: 22nd March, 2024

सत्यापित /Attested:

(मोहित कुमार)
अधीक्षक(अपील्स)
केंद्रीय जीएसटी, अहमदाबाद

By REGD/SPEED POST A/D

To,
AVM Logistics Private Limited,
305 Panlee Compex, Opp. Sarpar patel Sewa Samaj,
Mithakhali, Ahmedaba-380009.

Copy to :

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST and Central Excise, Ahmedabad South

3. The Deputy/Asstt. Commissioner, Central GST, Division-VI, Ahmedabad South.

4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website

5. Guard file

6. PA File