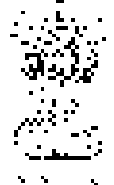




एनटीएम (एनटीएम) का कार्यालय, काठमान्डू, काठमाडौं, नेपाल
 OFFICE: NATIONAL COMMISSIONER OF APPRAISAL, GST AND PERCENTAGE



द्वितीय नयाँ बजार, २२^{वाँ} फ्लोर, ०११, काठमाडौं
 २^{वाँ} कोष, २२^{वाँ} फ्लोर, ०११, काठमाडौं

फोन नं. ०१-४२५५१११, ४२५५११२

फैलाफे नं. ०१-४२५५१११/१२/२०१९, काठमाडौं, नेपाल

दस्तावेज नं. ३१९

१. दस्तावेज नं. (Doc No.)	२. जारी गर्ने मिति (Date of Issue)	३. जारी गर्ने स्थान (Place)
१२७७१/१०९३२०१७	०१/०८/२०१९	काठमाडौं

४. आवेदन संख्या (Date-In-App) No

NCI-ENCUS-400-APP-031-2019

अर्थ नं. ३१९/१९९९
 Date of Issue: २७.०८.२०१९
 जारी गर्ने मिति (Date of Issue): २९.०८.२०१९

दस्तावेज जारी गर्ने अधिकारी (Authorizing Officer):
 Passed by Shri Ram Bahadur Paudyal, Director General, Appraisal Bureau

१. दस्तावेज जारी गर्ने मिति (Date of Issue): २९.०८.२०१९
 जारी गर्ने स्थान (Place): काठमाडौं
 आवेदन संख्या (Date-In-App) No: १२७७१/१०९३२०१७

२. दस्तावेज जारी गर्ने मिति (Date of Issue): २९.०८.२०१९
 जारी गर्ने स्थान (Place): काठमाडौं
 आवेदन संख्या (Date-In-App) No: १२७७१/१०९३२०१७

३. दस्तावेज जारी गर्ने मिति (Date of Issue): २९.०८.२०१९
 जारी गर्ने स्थान (Place): काठमाडौं
 आवेदन संख्या (Date-In-App) No: १२७७१/१०९३२०१७

४. दस्तावेज जारी गर्ने मिति (Date of Issue): २९.०८.२०१९
 जारी गर्ने स्थान (Place): काठमाडौं
 आवेदन संख्या (Date-In-App) No: १२७७१/१०९३२०१७

५. दस्तावेज जारी गर्ने मिति (Date of Issue): २९.०८.२०१९
 जारी गर्ने स्थान (Place): काठमाडौं
 आवेदन संख्या (Date-In-App) No: १२७७१/१०९३२०१७

६. दस्तावेज जारी गर्ने मिति (Date of Issue): २९.०८.२०१९
 जारी गर्ने स्थान (Place): काठमाडौं
 आवेदन संख्या (Date-In-App) No: १२७७१/१०९३२०१७

७. दस्तावेज जारी गर्ने मिति (Date of Issue): २९.०८.२०१९
 जारी गर्ने स्थान (Place): काठमाडौं
 आवेदन संख्या (Date-In-App) No: १२७७१/१०९३२०१७

८. दस्तावेज जारी गर्ने मिति (Date of Issue): २९.०८.२०१९
 जारी गर्ने स्थान (Place): काठमाडौं
 आवेदन संख्या (Date-In-App) No: १२७७१/१०९३२०१७

९. दस्तावेज जारी गर्ने मिति (Date of Issue): २९.०८.२०१९
 जारी गर्ने स्थान (Place): काठमाडौं
 आवेदन संख्या (Date-In-App) No: १२७७१/१०९३२०१७

१०. दस्तावेज जारी गर्ने मिति (Date of Issue): २९.०८.२०१९
 जारी गर्ने स्थान (Place): काठमाडौं
 आवेदन संख्या (Date-In-App) No: १२७७१/१०९३२०१७

११. दस्तावेज जारी गर्ने मिति (Date of Issue): २९.०८.२०१९
 जारी गर्ने स्थान (Place): काठमाडौं
 आवेदन संख्या (Date-In-App) No: १२७७१/१०९३२०१७

१२. दस्तावेज जारी गर्ने मिति (Date of Issue): २९.०८.२०१९
 जारी गर्ने स्थान (Place): काठमाडौं
 आवेदन संख्या (Date-In-App) No: १२७७१/१०९३२०१७

: ORDER IN APPEAL :

M/s. Munira Container Freight Station Private Limited Bharat CFS, Zone-1 MPSEZ, Munira (hereinafter referred to as 'appellant') filed present appeal against Order-in-Original No. D/ACIV/Undra/2017-18 dated 10.11.2017 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, CGST Division, Munira (hereinafter referred to as 'the assessing authority'). -

2. The brief facts of the case are that the appellant had paid service tax on lift and lift-off charges of the empty and loaded containers from the shipping lines and transportation of loaded containers from CFS to port and vice versa, however, no service tax was paid by the appellant on transportation of empty containers from port to CFS and vice versa by claiming benefit of exemption under Notification No. 25/2012-ST dated 20.5.2012. Statement of Shri Sujay Kumar Mahapatra, Manager (Accounts) and Authorized signatory of the appellant was recorded on 19.3.2015 wherein he deposed that in case of imported goods they charged service tax on the importer/CHA on composite service/tanned service right from transportation of loaded container till loading of imported goods to the trucks arranged by importer under the head of 'cargo handling service' that in case of export of the goods, the exporters bring their goods from export to appellants CFS; that in most of the cases, as the appellant has empty containers lying at CFS, the appellant after unloading the goods from exporters vehicles, stuff them in to the empty containers, then loaded containers and transport of loaded containers to the port for which they billed the exporter export domestic charges and also charged wharfage charge from the exporter under the head of 'Export Cargo Handling charges' and discharged service tax; that regarding activities of movement of empty containers from port to CFS and vice-versa and from one CFS to another, they provided service of transportation of empty containers and raised invoices and shown amount of lift and lift-off charges and amount of transportation of empty containers separately and discharged paid service tax on amount of lift and lift-off charges but did not pay service tax on transportation charges of empty containers, though composite invoices were issued and no consignment notes were issued and even when they were not a Goods Transport Agency. Show Cause Notice No. D/ACFIR/UNDRA/24/2015-17 dated 31.5.2017 was issued to the appellant imposing recovery of Service Tax of Rs. 24,00,785/- for the period from F.Y. 2012-13 to F.Y. 2016-17 (upto 30.9.2016) under Section 73(a) of the Finance Act, 1994 (hereinafter referred to as 'the Act') along with interest under Section 75 of the Act, imposition of penalty under Section 76 of the Act, and recovery of late fees under Section 70 of the Act read with Rule 70 of Service Tax Rules, 1994 for failure to file ST-3 returns for the period 1.7.2012 to 30.9.2015. The impugned order confirmed Service Tax of Rs. 24,00,785/- along with interest, imposed penalty of Rs. 24,00,785/- under Section 76 of the Act and ordered to recover applicable late fee for failure to file ST-3 returns in time.

3. Being aggrieved with the impugned order, appellant preferred the present appeal, inter alia, on the following grounds:

(i) The impugned order is a non-speaking order inasmuch as the impugned order has not dealt with specific prayer of the appellant that they are not engaged in trading of empty containers & stop on this fact warranted verification before adjudication; that the lower adjudicating authority has also failed to deal with specific plea of appellant that the SCM is contrary to CBEC Circular No. 104/7/2006-ST dated 9.8.2006, which was sent to all revenue officers as held by the Honble Supreme Court in the case of *Reliance Microbicides* reported as 1993 (97) F.T.R. (SC);

(ii) The lower adjudicating authority at Para 25 of the impugned order admitted that the appellant is providing service of transportation of empty containers from port to CFS and vice-versa. When it is an admitted position that the appellant had provided transportation of empty containers and when there is no dispute over the fact the transportation charges were below the specified limit under Sl. No. 21 of Notification No. 25/2012-ST, then there was no requirement to issue consignment note as provided in Explanation to Rule 4B of Service Tax Rules, 1994 and therefore, the lower adjudicating authority could not have held that the appellant cannot be treated as GTA because they had not issued consignment note;

(iii) Even assuming without admitting that loading of empty containers in vehicle is performed by the appellant as mentioned in Para 27 of the impugned order, have been clarified vide CBEC Circular No. 104/7/2006-ST dated 8.8.2006, as forming part of principal service, namely transportation of goods by road and the lower adjudicating authority at Para 25 of the impugned order admitted that the appellant is providing service of transportation. Therefore, the appellant submit that the impugned order is contrary to the aforesaid Circular and hence, the impugned order is not tenable in the eyes of law;

(iv) The reliance placed by the lower adjudicating authority on the decision of the Honble CESTAT in the case of *Ramathi Scrap Works* reported as 2008 (31) 548 (Ind. – Benq.) is misplaced inasmuch as in that case, the transporter was not exempted from the requirement to issue consignment note in terms of Explanation to Rule 4B of Service Tax Rules, 1994;

(v) The said, invoked is pertaining to interpretation of statute, trade practice followed by other CFS as bonafide belief of appellant flowing from CBEC Circular dated 8.8.2006 and hence, zero-rated tax could not have been demanded by invoking extended period of limitation;

(vi) Since demand of service tax is not tenable on merit as well as limitation, the

appellant is not liable to pay interest under Section 75 of the Act and no penalty is required to be imposed under Section 78 of the Act.

(vi) The appellant has not collected service tax from the service recipients and hence, their total receipt for rendering the service should be treated as inclusive of service tax as held by the Hon'ble CESTAT in the case of Advantage Media Consultant reported as 2008 (10) STR 449 (Tri - Kolkata) which has been upheld by the Hon'ble Supreme Court reported as 2009 (14) SCR 449 (SC).

4. Personal hearing in the matter was attended by Shri Vikas Mehta, Consultant who reiterated the grounds of appeal and submitted that the demand of service tax on transportation charges of empty containers is legally not sustainable, but the issue is already settled by CBEC Circular No. 1047/2008-GT dated 06-2008 that the impugned order needs to be set aside.

FINDINGS:

5. I have carefully gone through the facts of the case, impugned order, grounds of appeal and the submissions made during personal hearing. I find that the appellant has already deposited an amount equivalent to 1.5% of service tax contained in the impugned order and thus has complied with the requirement of Section 35H(1) of the Central Excise Act, 1944, as made applicable in service tax matters vide Section 93 of the Act. Therefore, I proceed to decide this appeal. The issue to be decided in the present case is as to whether confirmation of demand of service tax on movement of empty containers from port to CFS and vice versa provided by the appellant is correct or not.

6. It is not disputed that the appellant has undertaken the activity of bringing empty containers from the port to their CFS and vice-versa and has provided handling services like on/off and storing them in their empty container yard. It is also not disputed that the appellant has issued bills to the container lines informing them of two parts - transportation charges and handling charges but they have not discharged/paid service tax on transportation charges on the ground that it is a GTA service and it is below the exemption limit. However, for handling charges, they have paid service tax. I find that the definition of Cargo Handling Service, provided under Section 85(32) of the Finance Act, 1991, as it stood during the relevant time, reads as under:-

(23) 'cargo handling service' means loading, unloading, packing or unpacking of cargo and includes,

- (a) cargo handling services provided for freight in service containers or for non-containerized freight services provided by a container freight terminal or any other freight terminal for all modes of transport and cargo handling services incidental to freight; and
- (b) service of packing together with transportation of cargo or goods,

without one or more of other services like loading, unloading, unpeaking, but does not include handling of export cargo or passenger baggage or mere transportation of goods.

(Emphasis supplied)

5.1 Thus, for classifying any activity/service as Cargo Handling Service the presence of cargo is a must. I find that the transportation of empty containers to, without cargo cannot be considered as cargo handling service in view of the fact that there is no cargo and in view of Para 14 of Annexure - II to Board's Circular No. 67 M/2002-TRU dated 01.08.2002, which reads as under: -

14. CFRs also sometimes undertake stowage/unstowage/peaking and handling of empty containers for the shipping line for which they charge the shipping lines. Empty containers cannot be treated as cargo. Therefore, the activities mentioned above do not come within the purview of cargo handling services.

(Emphasis supplied)

5.2 In view of aforesaid, I hold that the transportation of empty containers from port to C-6 and vice versa can't be called Cargo Handling Service and no service tax is payable on such transportation charges under Cargo Handling Service as held in Order-in-Appeal No. KCH-EXCUS-052-APM-183-TD-194-2017-18 dated 5.3.2018 in the case of Siddhi Vinayak Logistics.

6. I also find that the lower adjudicating authority has held that the appellant had not issued consignment notes, therefore, the service cannot be considered as GTA service. I find that the statute defines Goods Transport Agency, as under: -

'Goods transport agency' means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

7.1 Thus, to classify a person as GTA service provider first condition is that he should be providing service in relation to transport of goods. I find that the first condition of goods transport agency is not disputed. The second condition is that consignment note should have been issued and it is also undisputed that consignment notes have not been issued. Regarding issuance of consignment notes, the appellant contended that there was no requirement to issue consignment note as provided in Explanation to Rule 4A of Gen. and Tax Rules, 1964.

7.2 I find that Rule 18 of Service Tax Rules, 1994, reads as under:

'Any goods transport agency which renders service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the recipient of service.'

Provided that where, as a result of the service in relation to transport of goods by road in a goods carriage to road transport agency, section 33 of the Act, the goods transport agency shall also be required to issue the consignment note.

Explanation:- For the purposes of this rule and as secured proviso to rule 4A, 'consignment note' means a document issued by a goods transport agency

against the receipt of goods for the purpose of transport of goods by road in a goods carriage which is serially numbered and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax together consignee/consignor or the goods transport agency.

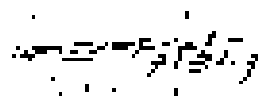
(Typist's signature)

7.3 I find that Notification No. 34/2004 Service Tax dated 03-12-2004, as amended and Notification No. 12/2012-Service Tax dated 20.06.2012 granted exemption to GTA service if the amount charged for GTA service did not exceed Rs. 1,500/- I find that in this case there is no allegation in SDN that the amount charged is more than Rs. 1,500/- whereas the appellant has submitted that amount is less than Rs. 1500/- in each and every case. Thus I hold that since the Notification exempted payment of Service Tax, the appellant providing services of Goods Transport Agency was not required to pay Service Tax on the transportation charges of empty containers, which were below exemption limit of Rs. 1,500/-

8. In view of above, I set aside the impugned order and allow the appeal filed by the appellant.

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

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


 (Kumar Sanjay)
 प्रधान जायक (अधीन)

By Speed Post

To,
 M/s. Mundra Container Freight Station Private
 Limited,
 Bharal CHS, Zone-1,
 MPSEZ, Mundra

श्री एच. मुंद्रा कंटेनर फ्रीट स्टेशन प्राइवेट
 लिमिटेड,
 भारत सी.एस.एच. ज़ोन-1
 एम्पीएसईजेड, मुंद्रा

प्रति

(1) प्रधान जायक, केन्द्रीय वस्तु व सेवा कर एवं कर्नाटक राजस्व शुल्क, अहमदाबाद क्षेत्र, अहमदाबाद को जातकरी है।

(2) जायक, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय राजस्व शुल्क, गांधीधाम को जायकक आयोगी है।

(3) जायक, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय राजस्व शुल्क, मुंद्रा को जायकक आयोगी है।

(1) गार्ड फाइल

①

②