भारत सरकार
GOVERNMENT OF INDIA
वस्तु एवं सेवा कर और केंद्रिय उत्पाद शुल्क प्रधान आयुक्त के कार्यालय
OFFICE OF THE PRINCIPAL COMMISSIONER OF CGST AND CENTRAL EXCISE
चेन्नई उत्तर आयुक्तालय CHENNAI NORTH COMMISSIONERATE
ने26/1 महात्मा गांधी रोड नूंगमबाक्कम चेन्नई – 600 034
No. 26/1, MAHATMA GANDHI ROAD, CHENNAI – 600 034

सी.सं.C. No. GEXCOM/GST/ADC/ 1339/2024-ADJN–CGST-CHENNAI (N) दिनांक/Date:29.11.2024
DIN: 20241159TK0000888D43

मूल आदे शसं / ORDER-IN-ORIGINAL No.159/2024-GST CH.N (JC)
(Passed By Shri. K.Balaji, I.R.S, Joint Commissioner)

उद्देशिका/ **PREAMBLE**

यह प्रति संबंधित व्यक्ति के निजी उपयोग केलिए निशुल्क दी जाती है।
This copy is granted free of charge for the private use of the person.

1. इस आदेश से स्वयं को व्यथित समझने वाला कोई भी व्यक्ति माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क के अपर / संयुक्त आयुक्त को प्रतिवादी बनाकर इस आदेश के खिलाफ आयुक्त (अपील-I), सं.26/1,महात्मागांधीसालै, चेन्नई -34 केसमक्षअपीलकरसकताहै।
   Any person deeming himself aggrieved by this order may appeal against the same to the Commissioner (Appeals-I) at No. 26/1, Mahatma Gandhi Salai, Chennai – 34 with Additional / Joint Commissioner of GST & Central Excise as respondent.
2. ऐसे मामलों में जहां सी.जी.एस.टी. या / एवंएस.जी.एस.टी. तथा जुर्माना विवादित है या जुर्माना,जहां केवल जुर्माना विवादित है, मांगेगए सी.जी.एस.टी. औरएस.जी.एस.टी. के 10%के भुगतान पर, इस आदेश के खिलाफ अपील आयुक्त (अपील - I) केसमक्षरहेगी।
   An appeal against this order shall lie before the Commissioner (Appeal-1) on payment of 10% of the CGST & SGST demanded where CGST or / and SGST and penalty are in dispute, or penalty, where penalty alone is in dispute.
3. जिस आदेश के विरुद्ध अपील की जानी है, उसके संप्रेषण की तारीख से 90 दिनों के भीतर सी.जी.एस.टी. नियम, 2017 केनियम 108 (1) के तहत निर्धारित जी.एस.टी. ए.पी.एल. – 01 प्रपत्र में अपील दायर की जानी है।
   The appeal must be filed in Form GST APL – 01 prescribed under Rule 108 (1) of the CGST Rules, 2017 within 90 days from the date of which the order sought to be appealed against is communicated to him.
4. जी.एस.टी. ए.पी.एल.-01 प्रपत्र में अपील की एक हार्ड कॉपी तीन प्रतियों में अपीलीयप्राधिकारी को प्रस्तुत की जाए तथा उप-नियम (1) के अध्यधीन अपील दायर करने के सात दिन के भीतर, जिस निर्णय या आदेश के विरूद्ध अपील की जारही हैं, उसकी प्रमाणित प्रति समर्थक दस्तावेज सहित संलग्न की जाए।
   A hard copy of the appeal in FORM GST APL-01shall be submitted in triplicate to the Appellate Authority and shall be accompanied by a certified copy of the decision or order appealed against along with the supporting documents within seven days of filing of the appeal under sub-rule (1)

Sub:- GST – M/s. GLOTTIS (GSTIN: 33AAMFM1317L1ZA) – Show Cause Notice No.141/2024-Audit-I dated 12/07/2024 - Passing of Order - Reg.

******

M/s. GLOTTIS, 1st Floor, New no. 46 / Old No. 311, Thambu Chetty Street, Chennai, Tamil Nadu, 600001, a Partnership company (hereinafter referred to as the "taxpayer") registered with GST vide GSTIN: 33AAMFM1317L1ZA, are engaged in providing service of freight forwarding by providing services of ocean freight import & export, air freight import & export, terminal handling charges, clearing and forwarding services and other support services in relation to transport of goods by way of ocean & air. The taxpayer is availing Input Tax Credit of CGST and IGST paid on the goods/services received by them, under the provision of Section 16 and 17 of Central Goods and Services Tax Act, 2017 (CGST Act 2017, for short) and made applicable to IGST Act vide Section 20 of the Integrated Goods and Services Tax Act, 2017 (IGST Act 2017, for short) and the Rules made thereunder. Similarly, the taxpayer is availing input tax credit of SGST paid on account of inward supplies of Goods/Services received by them as provided under section 16 and 17 of Tamil Nadu Goods and Services Act, 2017 (TNGST Act 2017, for short). The taxpayer falls under the territorial jurisdiction of Range III, Parrys Division, Chennai North GST Commissionerate [TK0403].

2. Audit of the records of the taxpayer for the period from July 2017 to March 2022 was conducted by the Officers of the CGST & Central Excise, Audit-I Commissionerate, Chennai-600101 and following issues were observed, the details of which are given below:

Sl. No.	Issue Involved	Amount Payable (in Rs.)			
		IGST	CGST	SGST	Total
1.	Short Payment of Tax on reconciliation of GSTR-3B and GSTR1 Return	93,808	353,557	353,557	800,922

2.	Short payment of GST due to wrong classification of Taxable Services	810,756,204	231,069,933	231,069,933	1,272,896,070
Total		**810,850,012**	**231,423,490**	**231,423,490**	**1,273,696,992**

3. Short Payment of Tax on reconciliation of GSTR-3B and GSTR1 Return

During the course of Audit for the F.Y. 2017-18, 2018-19, 2019-20, 2020-21 & 2021-22 and verification of statutory monthly returns, it was noticed that taxpayer had short paid GST in GSTR-3B return when compared to tax liability declared in GSTR-1 return. The tax involved was Rs.8,00,922/- (IGST-Rs.93,808/, CGST-Rs.353,557/- & SGST- Rs.353,557/-) and the Financial Year wise details of short payment of tax are given below:

Short Payment of Tax upon reconciliation of GSTR-3B and GSTR1 Return (in Rs.)						
F.Y.	**Tax payable as per GSTR-1**			**Tax paid as per GSTR-3B**		
	IGST	**CGST**	**SGST**	**IGST**	**CGST**	**SGST**
2017-18	54,073,590	9,859,550	9,859,550	54,962,242	9,616,155	9,616,155
2018-19	82,951,658	21,677,297	21,677,297	82,929,954	21,577,511	21,577,511
2019-20	97,917,488	28,977,699	28,977,699	97,908,802	28,988,164	28,988,164
2020-21	127,821,320	46,464,012	46,464,012	127,762,077	46,638,006	46,638,006
2021-22	337,720,400	83,424,344	83,424,344	337,716,225	83,413,968	83,413,968
TOTAL	**700,484,457**	**190,402,902**	**190,402,902**	**701,279,301**	**190,233,804**	**190,233,804**

F.Y.	**Difference (GSTR1-GSTR3B) Short Payment (+)**			
	IGST	**CGST**	**SGST**	**Total**
2017-18		2,43,395	2,43,395	**4,86,790**
2018-19	21,704	99,786	99,786	**2,21,276**
2019-20	8,686			**8,686**
2020-21	59,243			**59,243**
2021-22	4,175	10,376	10,376	**24,927**
TOTAL	**93,808**	**353,557**	**353,557**	**800,922**

3.1 As per the provisions of Section 37 of CGST Act, 2017 read with Rule 59 of the CGST Rules, 2017, the taxpayer is liable to furnish the details of his outward supplies in GSTR-1 return and discharge the duty liability within the prescribed date vide prescribed returns. The taxpayer is also liable to furnish GSTR-3B in terms of Section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017, furnishing the details of inward and outward supplies of goods or services or

both, the ITC availed, tax payable, tax paid and any other particulars as may be prescribed.

3.2 Further, as per Section 59 of the CGST Act, 2017, the taxpayer under self-assessment scheme is required to assess the tax liability, levying the tax under Section 9 of the CGST Act, 2017 / Section 5 of the IGST Act, 2017 (for IGST) on all supply of goods or services or both on the transaction value arrived at as per the provisions of Section 15 of the CGST Act, 2017.

3.3 In the instant case, the taxpayer had declared tax liability in GSTR-1 but failed to discharge the same in relevant GSTR-3B, leading to short payment of GST. In as much as all the services supplied by the taxpayer are taxable as per Section 2(108) ibid, it appeared that the taxpayer is liable to pay such differential tax amount, which arose on account of reconciliation between GSTR-1 and GSTR-3B.

3.4 On being informed vide Audit Memo dated 20/02/2024, the taxpayer vide their reply dated 26.02.2023, contended that they have discharged excess IGST to the extent of Rs.8,88,652/- & Rs.17,261/- for the period 2017-18 & 2021-22 and excess CGST & SGST to the extent of Rs.20,930/- & Rs.3,47,988/- for the period 2019-20 & 2020-21, respectively, and hence, the demand were discharged under the wrong heads and same can be adjusted. The contention of the taxpayer is not acceptable for the reason that the taxpayer has short paid GST in GSTR-3B return than the liability declared in corresponding GSTR1 return and there is no provision in CGST Act, 2017 to adjust the GST paid under wrong heads. Hence, it appeared that taxpayer have contravened the provisions of Section 49(8) of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 and is liable to pay the GST on differential value along with appropriate interest as per Section 50(1) of CGST Act, 2017.

3.5 From the foregoing, it appeared that the taxpayer had contravened the provisions of Section 9 of the CGST Act, 2017 / Section 5 of the IGST Act, 2017 (for IGST) read with Section 59 of the CGST Act, 2017 inasmuch as they had failed

to discharge the self-assessed tax liability of GSTR1 in GSTR3B, which led to short payment of IGST, CGST and SGST as detailed above.

3.6 **Brief of Legal provisions invoked or contravened:**

Section 39. Furnishing of returns-
(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed:

Rule 59. Form and manner of furnishing details of outward supplies.-
(1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in FORM GSTR-1 for the month or the quarter, as the case may be, electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.

Rule 61. Form and manner of furnishing of return.-
(1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in FORM GSTR-3B**,** electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, as specified under -

Section 9. Levy and collection:
(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Section 15. Value of Taxable Supply.-
(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

S**ection 74 of the CGST Act, 2017. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts:**
(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under Section 50 and a penalty equivalent to the tax specified in the notice.

Explanation 2.- For the purposes of this Act, the expression "suppression" shall mean non-

declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Section 122 of CGST Act, 2017: Penalty for certain offences. -
(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-
(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

3.7 Though, the taxpayer was well aware of the fact that they were liable to pay the tax liability declared in GSTR-1 returns, the taxpayer had willfully declared a lesser liability in GSTR-3B returns for the period from July 2017 to March 2022 with an intention to evade payment of tax and thereby, deliberately mis-declared the facts with a malafide intention to evade payment of tax and rendered themselves liable for invocation of provisions of Section 74(1) of the CGST Act, 2017. This issue/ discrepancy would not have been unearthed had the audit of the accounts of the unit was not conducted. Hence, it appeared that provision to Explanation 2 of Section 74 of CGST Act, 2017 would squarely be applicable in this case inasmuch the taxpayer has suppressed the facts from the department in order to evade tax.

3.8 In view of foregoing, it appeared that the taxpayer was liable to pay GST short paid to the tune of Rs.8,00,922/- (IGST-Rs.93,808/-, CGST-Rs.3,53,557/- & SGST- Rs.3,53,557/-), which appeared demandable and recoverable under the provisions of Section 74(1) of CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017) along with appropriate interest under the provisions of Section 50(1) of CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017). Further, the taxpayer also appeared liable for applicable penalty under sub-section (1) of Section 74 read with sub-section (2)(b) of Section 122 of CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017).

4. Short payment of GST due to wrong classification of Taxable Services

4.1 During audit of records furnished by the taxpayer, it was observed that the taxpayer was engaged in supply of services relating to facilitating Import/Export of goods. They were further arranging foreign shipping line companies for transportation of goods for their customers (Indian Importer) and for which, the foreign shipping liner companies were raising bills for freight charges (Ocean Freight) to the taxpayer and the taxpayer further raises bills to their customers. Once the goods reached at Indian Port, the taxpayer further engages into various Cargo handling Services (SAC 9967) such as Container cleaning, Container maintenance, loading and unloading and freight forwarding (GTA) etc. and for all these services, the taxpayer was paying GST @18%.

4.2 As per Section 2(30) of the CGST Act, 2017 "Composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

4.3 On perusal of the invoices/details furnished by the taxpayer, it was observed that the taxpayer had charged 18% GST on services viz. Custom Clearance Charges, Import Service Charges, Liner Documents Charges, Documents Charges, Manifestation Charges, CFS Charges, Destination Charges under SAC 99671 and the taxpayer has discharged 18% of GST. However, in respect of Ocean Freight Services, classified under SAC code 996521, the taxpayer had discharged 5% GST only. As per Section 8(a) ibid, classification of GST services will have to be done based on supply which constitute as Principal Supply and accordingly, GST will have to be discharged on par with the tax applicable to such principal supply. In the instant case, the principal service is Cargo Handling Service forming part of Business Support Service. Therefore, GST on Ocean Freight and related services will also have to be discharged at the rate of 18% and not at the rate of 5%. Since, the taxpayer have discharged GST @ 5% on the service mentioned as 'Ocean Freight', the same will have to be classified as composite service and GST at the rate of 18% is demandable, as principal service being Business Support Service, which attracts GST @ 18%. As the taxpayer have discharged 5% GST on Ocean

Freight, the remaining 13% of GST is required to be paid along with appropriate interest and applicable penalty.

4.4 Accordingly, the revised duty calculation reflecting short-paid GST on account of mis-classification of services as provided by the taxpayer is mentioned hereunder:

Table-I					
Tax payable @18%					
F.Y.	**Taxable Value**	**IGST @18%**	**CGST@9%**	**SGST@9%**	**Total**
2017-18	289,290,675	32,533,582	9,769,381	9,769,381	52,072,344
2018-19	411,386,308	43,986,182	15,031,692	15,031,692	74,049,566
2019-20	576,414,043	60,092,726	21,830,918	21,830,918	103,754,563
2020-21	1,565,975,356	147,095,414	67,390,422	67,390,422	281,876,258
2021-22	6,948,426,421	838,877,609	205,920,572	205,920,572	1,250,718,754
Total	**9,791,492,803**	**1,122,585,513**	**319,942,985**	**319,942,985**	**1,762,471,485**

Table-II					
Tax already paid@5%					
F.Y.	**Taxable Value**	**IGST @5%**	**CGST@2.5%**	**SGST@2.5%**	**Total**
2017-18	289,290,675	9,037,106	2,713,717	2,713,717	14,464,540
2018-19	411,386,308	12,218,384	4,175,470	4,175,470	20,569,324
2019-20	576,414,043	16,692,424	6,064,144	6,064,144	28,820,712
2020-21	1,565,975,356	40,859,837	18,719,563	18,719,563	78,298,963
2021-22	6,948,426,421	233,021,558	57,200,159	57,200,159	347,421,876
Total	**9,791,492,803**	**311,829,309**	**88,873,053**	**88,873,053**	**489,575,415**

Table-III					
Details of Short paid Tax {13%(18%-5%)}					
F.Y.	**Taxable Value**	**IGST @13%**	**CGST@6.5%**	**SGST@6.5%**	**Total**
2017-18	289,290,675	23,496,476	7,055,664	7,055,664	37,607,804
2018-19	411,386,308	31,767,798	10,856,222	10,856,222	53,480,242

2019-20	576,414,043	43,400,302	15,766,774	15,766,774	74,933,850
2020-21	1,565,975,356	106,235,577	48,670,860	48,670,860	203,577,297
2021-22	6,948,426,421	605,856,051	148,720,413	148,720,413	903,296,877
Total	**9,791,492,803**	**810,756,204**	**231,069,933**	**231,069,933**	**1,272,896,070**

4.5 From the foregoing, it appeared that the taxpayer had contravened the provisions of Section 9 and Section 59 of CGST Act, 2017 relating to self-assessment scheme, and Section 5 of IGST Act, 2017 (For IGST) read with Section 8(a) ibid relating to Composite Supply inasmuch as the taxpayer has failed to self-assess the GST liability by wrongly classifying the service and paying less tax.

Section 2 of CGST Act, 2017
(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Section 8 of CGST Act, 2017: Tax liability on composite and mixed supplies:
The tax liability on a composite or a mixed supply shall be determined in the following manner, namely: -
(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

Section 50 of CGST Act, 2017: Interest on delayed payment of tax. -
(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:
Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]
(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.
(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.

4.6 In the era of self-assessment, the Government places full trust on the taxpayer and demands voluntary compliance of the provisions of GST law by the

taxpayer, therefore, the governing statutory provisions create a liability on taxpayer when any provision is contravened.

4.7 From the above, it appeared that the taxpayer has deliberately suppressed the facts with a mala-fide intention to evade payment of tax making it a fit case for invoking suppression under the provisions of Section 74(1) of the CGST Act, 2017. The above act of the taxpayer would not have come to the notice of the department but for the verification conducted by the Audit, warranting invocation of extended period as well as equivalent amount of penalty under Section 74(1) of the CGST Act, 2017 in respect of the issues discussed in the preceding Para 4 above. Hence, it appeared that provision to Explanation 2 of Section 74 of CGST Act, 2017 would squarely be applicable in this case inasmuch the taxpayer has suppressed the facts from the department in order to evade tax.

4.8 In view of above, it appeared that the taxpayer was liable to pay the short-paid GST of Rs.127,28,96,070/- (IGST: Rs.81,07,56,204/-, CGST: Rs.23,10,69,933/- and SGST: Rs.23,10,69,933/-), which appeared demandable and recoverable under the provisions of Section 74(1) of CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017) along with appropriate interest under Section 50(1) of CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017). Further, the taxpayer also appeared liable for applicable penalty under sub-section (1) of Section 74 read with sub-section (2)(b) of Section 122 of CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017).

5. Therefore, M/s. GLOTTIS (GSTIN: 33AAMFM1317L1ZA), 1st Floor, New no. 46 / Old No. 311, Thambu Chetty Street, Chennai- were issued Show Cause Notice No.201/2024-Audit-I dated 31/07/2024 calling upon them to show-cause to the Additional/ Joint Commissioner of GST & Central Excise, Chennai North GST Commissionerate, No.121, Mahatma Gandhi Road, Nungambakkam, Chennai as to why:

(i) Short Payment of GST of Rs.8,00,922/- (Rupees Eight Lakhs Nine Hundred Twenty Two only) (IGST-Rs.93,808/-, CGST-Rs.3,53,557/- & SGST-Rs.3,53,557/-), as discussed in **Para 3** above, for the period from July 2017 to March 2022, should not be demanded and recovered under the provisions of Section 74(1) of the CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017);

(ii) Interest at the applicable rate should not be demanded under the provisions of Section 50(1) of the CGST, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017) on the amount mentioned at clause (i) above;

(iii) Penalty should not be imposed under the provisions of sub-Section (1) of Section 74 read with Section 122(2)(b) of CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017) on the amount demanded at clause (i) above;

(iv) Short-payment of GST of Rs.127,28,96,070/- (Rupees One Hundred and Twenty-Seven Crore Twenty-Eight Lakh Ninety-Six Thousand and Seventy only) (IGST: Rs. 81,07,56,204/-, CGST: Rs.23,10,69,933/- and SGST: Rs.23,10,69,933/-) due to wrong classification as discussed in **Para 4** above, for the period from July 2017 to March 2022, should not be demanded and recovered under the provisions of Section 74(1) of CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017);

(v) Interest at the applicable rates should not be demanded under the provisions of Section 50(1) of CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017), on the amount mentioned at clause (iv) above;

(vi) Penalty should not be imposed under the provisions of sub-Section (1) of Section 74 read with sub-section (2)(b) of Section 122 of the CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017), on the demand made at clause (iv) above;

Taxpayer's Defense & Personal Hearing:

6. In line with the principles of natural justice, the taxpayer was provided an opportunity for personal hearing on 27/09/2024 wherein, their authorized representatives, Mr. Vijay Anand V, Charted Accountant, represented the taxpayer and sought time to make written submissions.

7. In reply to the show cause notice, the taxpayer made their written submissions vide their letter dated 06/11/2024 wherein the taxpayer submitted as follows,

"

B1. Alleged short-payment of GST under Ocean Freight - FY 2017-18 to 2021-22 - Rs.1,27,28,96,070/-

We wish to state that we are engaged in freight forwarding for import and export transaction and also provide other services such as documentation, customs clearance charges, manifestation charges, CFS charges etc. and these two set of distinct services are being provided by us for decades including under the service tax regime.

We wish to submit that in the freight forwarding business, we purchase the slots in the vessel and the shipping line or the forwarder charges GST at the rate of 5% for transportation of goods by vessel under ocean freight and we in turn sell the slot to our customer and charge the customer for ocean freight with GST at 5%.

We wish to state that when GST was introduced from 2017, ***ocean freight in the import segment*** *was subjected to tax at the rate of 5% while air freight was at 18%. Subsequently, when exemptions were introduced in the context of air freight- export segment and sea freight – export segment, the ocean freight in the import segment continued to be taxed at 5%. Later, from 01.10.2022, when the exemption for air freight – export segment was withdrawn, GST rate was at 18% and continues to apply. However, there is no change in the GST rate for sea freight / ocean freight and whether it is export segment or import segment, the rate remains at 5%.*

We wish to submit that this is a well settled position across the Country and no other jurisdiction has issued any Show Cause Notice in the lines adopted by your goodself and across the country, for various other members in the industry, the GST Department and the audit department have accepted that there are two distinct supplies being made, one which is ocean freight that attracts GST at 5% and the other services that attract GST at 18%. We wish to submit that GST is a one nation one tax law and when across India 5% for ocean freight has been adopted and accepted, the Chennai authority cannot take a different view and tax the same at 18% by applying the concept of composite supply, which in any event has no application.

We wish to state that in the present case we have raised two kinds of invoices on our customers on FOB import transactions. One where we have charged ocean freight of CGST and SGST at 2.5% each for customers within the same State and IGST ocean

freight at 5% for customers who are inter-State separately; and invoices where we have charged freight GST at 5% and GST on other services such as seal charges, terminal charges, BL charges, IHC charges, customs clearance charges etc. at 18%.

We wish to state that the Department has raised the present demand on the premise that the said supply is a composite supply with the principal supply being cargo handling services forming part of business support, therefore as per Section 2(30) read with Section 8(a) of the CGST/TNGST Act, 2017 we are liable to discharge GST at 18% on all the services including ocean freight. Since we have discharged 5% already the balance 13% of differential tax is being proposed against us.

We wish to state that as per the decision taken in the 17th GST Council Meeting dated 18.06.2017 in respect of the service of transport of goods by a vessel the GST rate would be 5% and the same is available with ITC in respect of input services and GST paid on ships, vessels including bulk carriers and tankers.

We wish to state that ocean freight is taxable at 5% GST under Entry 9(ii), Notification No.11/2017-CTR dated 28.06.2017 we have discharged GST at the rate of 5%. It is pertinent to note that from the inception of GST, the rate on ocean freight has been 5% while the rate on air freight is 18%.

We wish to state that we have also discharged GST at 18% on other services provided by us such as customs clearance charges, import service charges, liner documentation charges, documents charges, manifestation charges, CFS charges, destination charges under SAC 99671 under Entry 35, Notification No.11/2017-CTR dated 28.06.2017.

We wish to state that the aforesaid proposal completely goes against the statute; the will and mandate of the Parliament and the State Legislature and the decision of the GST Council to maintain GST at the rate of 5% on ocean freight; and goes against the plain meaning of composite supply and principal supply.

We wish to state that export freight and import freight are not even taxed in other countries but India chose to tax ocean freight in the import segment at 5%.

We wish to state that we are a freight forwarder and we purchase freight from shipping lines who charge 5% GST as transportation of goods by vessel attract GST at 5%. When we bill our customers for the ocean freight, we also charge GST at 5%. Given the fact that certain separate services which could be procured by the client from any service provider are sought from us by way of convenience, we extend those services and charge the applicable GST rate of 18% on such separate supplies.

It is a well settled position of law in GST that there can be separate supplies with the same client and each supply would attract the relevant rate of GST. In the instant case, the principles of composite supply have no application for the following reasons:

Supplies must be naturally bundled. In the instant case, the client of the Querist can procure the freight directly or from any other freight forwarder and separately procure the documentation and clearance support services from another supplier.

The Querist Company can provide the freight forwarding services independently, without bundling them with cargo handling and other services.

For a composite supply, one supply must be a principal supply and the other supply must be incidental to the principal supply.

In the instant case, considering all these services as business support services and as the principal supply is fundamentally incorrect. A bare perusal of the amounts charged for freight as well as amounts charged for the other services by itself would show that the amount charged for freight is much higher than the amounts charged for other services.

The Company is engaged in providing two sets of supplies. The first is transportation of goods by sea (freight forwarding in ocean freight) which attracts the GST rate of 5%. The other supply is that of customs clearance, documentation manifestation charges, CFS charges, destination charges and GST at 18% has been charged.

Section 2(30) of the CGST Act, 2017 dealing with composite supply would be relevant only when two or more taxable supplies of goods or services or both or any combination thereof are made which are naturally bundled and supplied in conjunction with each other in the ordinary course of business and one of which is a principal supply.

In the instant case, there is no composite supply involved and the Querist as well as other members in the industry are engaged in providing separate and distinct supply each attracting different GST rates.

We wish to state that the concept of having different supplies attracting different rates with a single invoice being raised showing different categories of supplies is not confined only to this industry and is applicable to many industries and also recognised in GST. A classic example is a case where a person goes to a departmental store and purchases fruits and vegetables; paneer; snacks and savouries; sauces and jams; etc. While fruits and vegetables are exempt from GST, the other items attract different rates of GST and in a single invoice all the items are mentioned with different GST rates.

We wish to state that the transport of goods by vessel (ocean freight) was an activity which was examined by the GST Council in detail and a decision was taken at the 17th GST Council Meeting held on 18.06.2017 to provide for a GST rate of 5%. The Press Release at the relevant point of time explained this by stating that "It has been decided in respect of the service of transport of goods by a vessel that GST rate of 5% will be available with ITC in respect of input services and GST paid on ships, vessels including bulk carriers and tankers". The format of Entry 5, Notification No.11/2017 was also decided and thus the 5% GST rate on ocean freight was born and continues till date.

We wish to state that when the GST Council has specifically decided that the ocean freight rate is 5% and the notification of rate as approved by the Council is part of the mandate under Section 9(1) of the CGST Act, the same cannot be artificially defeated by treating support services as a principal supply and thus imposing 18% on ocean freight or transportation of goods by vessel.

*We wish to state that in the context of **UPS and batteries**, the CBIC vide Circular No. 163/19/2021-GST dated 06.10.2021 has clarified that even if the UPS/inverter and external battery are sold on the same invoice, their price are separately known, and*

they are two separately identifiable items. Thus, this constitutes supply of two distinctly identifiable items on one invoice. Therefore, it is clarified that in such supplies, UPS/ inverter would attract GST rate of 18% under heading 8504, while external batteries would attract the GST rate as applicable to it under heading 8507 (28% for all batteries except lithium-ion battery).

We wish to state that the CBIC vide Circular No.47/21/2018-GST dated 08.06.2018 has clarified that where supply involves both goods and services and the ***value of such goods and services supplied are shown separately, the goods and services would be liable to be taxed at the rates applicable to such goods and services.***

We wish to state that the CBIC vide Circular No.34/8/2018-GST dated 01.03.2018 has explained the concept of composite supply with reference to the activity of retreading of tyres and has clarified that which part of a composite supply is the principal supply, must be determined keeping in view the nature of the supply involved. Value may be one of the guiding factors. Applying rationale of this Circular, in all these cases, the value of freight is much higher than the other charges and hence freight should constitute the principal supply even if the concept of composite supply is applied. However, as stated earlier, the industry including the Noticee Company have not adopted 5% for the other services and have in fact paid 18%.

We wish to state that the definition of composite supply itself has no application and we are engaged in providing distinct and separate supplies for identified and separate consideration. We have in fact invoices only for performing the other services and not for ocean freight as the customers have approached us only for other services. Therefore, it is not a composite supply.

We wish to state that the Department has not made any finding on invoices which involve only ocean freight and has simply imposed 18% GST even when there are no other services for it to be a composite supply.

We wish to state that each supply is a distinct supply and cannot be considered as a bundled supply merely because the same parties are involved.

We wish to state that it is always possible that the ocean freight supply could be done by one person and the support services could be provided by another supplier. There is nothing in law that prohibits or restricts a supplier from providing different categories of supplies attracting different rates.

We wish to state that the Delhi Tribunal in the case of ***CGST Vs. Ambassador Sky Chef (2024) 21 Centax 26 (Tri. - Del)*** *has held that it is further impressed upon that the contract with the airline is twofold divisible contract, distinctly identifiable and value of consideration is also separately defined. The dominant intention from both these agreements is that the respondent has agreed to supply food to the airlines. The said supply of food is also not dependent on the other services as the airlines have an option of not availing the transport services of food from the caterer themselves. A joint reading of all these definitions makes it crystal clear that for an activity to be called as outdoor catering, there has to be the preparation of food, supply of food and serving of the food. Apparently and admittedly, the activity of the respondent herein is that they are providing/supplying food to various airlines along with the responsibility of packing and*

handling of food, loading in transportation thereof along with the requisite equipments and of providing the laundry services. This admitted fact is sufficient shown that there is no activity of serving the food. Thus it is clear that the issue involved in the present case is no more res-integra that supply of F&B per se is not the "outdoor catering service". It rather amounts to sale of F&B.

We wish to state that in the case of ***Commissioner of Customs (Post) Vs. JK Corporation Ltd. (2007) 208 ELT 485****, the agreement had two parts where Part-A covered license, knowhow and technology whereas Part-B covered supply of plant, machinery and equipment. The Department wanted to add both the identified revenue for Part-A and Part-B on the ground that the same forms part of an integrated contract. The Supreme Court held that the value of license and knowhow is not includable in the value of imported goods.*

We wish to state that in the case of ***RLRE Tellmer Property Sro Vs. Tax Directorate of Ustinad Labem (2012) 36 STT 257 (ECJ)****, the European Court of Justice held that letting of apartment and cleaning services of common parts are separate transactions. Cleaning services might be obtained from third party as well, not necessarily it was to be obtained from landlord.*

We wish to state that in the service tax regime, the Tribunal in the case of ***HN Coal Transport Pvt. Ltd. Vs. CCE (2019) 26 GSTL 214*** *has held that when the appellants have entered into two different agreements namely contract for loading and contract for transportation and carried out activity in terms of each contract under its own terms, it cannot be said that the appellants have been contracted for lifting of coal at the coal face and transportation of the lifted coal upto railways wagon. The two contracts have been executed irrespective of each other. These contracts indicate the rates separately for the respective activities. The machinery used for the two activities are independent and unconnected with each other. Further, it is seen that the total quantum of coal loaded at the coal face has no correlation with the coal transported from the coal face to the railway sliding. Simply because both the activities are to be performed within the mining area, is no reason to bundle the two together and take the view that provision of one service is combined with an element of provision of the other service. The difference in the quantity of coal loaded and the quantity being transported clearly show that the appellant is not doing transportation of loaded coal as a continuous activity. Perusal of the terms of the contract clearly indicates that the two are independent contract. Service tax on transportation activity has to be paid by the recipient of service. Transportation of coal from coal face to railway sliding will continue to enjoy the benefit available to goods transport agency and cannot be bundled into a single service under Section 66F along with the lifting of coal at the coal face in the activity of mining.*

We wish to state that under the service tax regime, a similar question was raised in the context of natural bundling with reference to freight and other similar services and the AAR in the case of ***Global Transportation Services Pvt. Ltd. (2016) 45 STR 574*** *held as under:-*

Second issue raised by the Revenue is that the service provided by the applicant is single indivisible bundled service in terms of Section 66F of the Finance Act, 1994. 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 submitted by the applicant that the activities of the applicant are mutually exclusive and can be provided on standalone basis. It is observed that applicant has since commenced business operations and performing following activities and paying Service Tax on all activities except "international air/ocean freight". They are local transportation at origin; loading, unloading and handling service at origin; customs clearance at origin; international air/ocean freight; loading, unloading and handling services at destination and customs clearance at destination. On the other hand, 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 international air/ocean freight. In the absence of any tangible ground, it is incorrect on the part of Revenue to state that the service provided by the applicant is single indivisible bundled service in terms of Section 66F ibid.

We wish to state that the Tribunal in the context of EU VAT in the case of ***Equitable Life Insurance Society*** *held that to identify a composite transaction in a way that deprives its major part of the exemption otherwise applicable under law is to distort the functioning of the VAT system. Just as a single service should not be split in a way which distorts the system, so also separate services should not be artificially aggregated.*

We wish to submit that The Constitutional Bench of the Supreme Court in the case of ***Kone Elevator India Pvt Ltd (2014) 34 STR 641*** *has laid down the law as to how the contract should be looked into. In fact in para 64 of the judgment the Supreme Court had held that it is necessary to state that if there are two contracts namely, purchase of the components of the lift from a dealer it would be a contract for sale and similarly, if separate contract is entered into for installation, that would be contract for labour and service.*

We wish to submit that the Supreme Court in the case of ***Ishikawajma Harima Heavy Industries Ltd Vs DIT (2007) 3 SCC 481*** *has held that a contract must be construed keeping in view the intentions of the parties. No doubt, the applicability of the tax laws would depend upon the nature of contract but the same should not be construed keeping in view the taxing provisions. The Delhi High Court in the case of* ***D.S Bist & Sons Vs CIT (1984) 149 ITR 276*** *has held that the Act does not clothe the taxing authorities with any power or jurisdiction to rewrite the terms of the agreement arrived at between the parties.*

We therefore wish to submit that we have affected two separate and distinct supplies, each attracting different GST rates and hence, they cannot be artificially aggregated which is completely against the intention of the parties. Further, it does not meet the requirement of composite supply in any manner.

Without prejudice to the above and for the purpose of debate, if the principles of composite supply was indeed applicable, the principal supply would be the freight and hence, the other services would attract GST at 5% whereas we had discharged GST on those other services at 18%.

B2. Short-payment of tax on reconciliation of GSTR-3B and GSTR-1 - FY 2017-18 to 2021-22 - Rs.8,00,923/-

We wish to state that the difference between our GSR-3B and GSTR-1 is due to the reason that for the period 2017-18 we have discharged excess IGST to the extent of Rs.8,88,652/- and for the period 2021-22 we have discharged excess IGST to the extent of Rs.17,261/- by mistake.

We wish to state that also for the period 2019-20 we have discharged excess CGST and SGST to the extent of Rs.20,930/- and for the period 2020-21 we have discharged excess CGST and SGST to the extent of Rs.3,47,988/- by mistake.

We wish to state that therefore the demands have been discharged under the wrong heads.

We wish to state that therefore the same can be set off by the Department instead of initiating a refund.

INTEREST & PENALTY

We wish to state that there is no question of interest under Section 50(1) of the CGST/TNGST Act, 2017 as there is no liability to pay tax in the first instance.

We wish to state that interest partakes the character of compensation and is only leviable in instances of any deliberate withholding of tax thereby creating a deprival of such amounts to the Department. The Supreme Court in the case of ***Pratibha Processors Vs Union of India*** *-* ***2002-TIOL-273-SC-CUS*** *observed as under:*

In fiscal Statutes, the import of the words - "tax", "interest", "penalty", etc. are well known. They are different concepts. Tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforce by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty - which is penal in character.

We wish to state that Section 122(2)(b) has no application whatsoever since Section 122(2)(b) will come into play only when any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

We wish to state that Section 122(2)(b) has no application given the fact that no penalty can be imposed under Section 74 since none of the ingredients referred to therein are met.

We wish to state that penalty cannot be imposed. This view is upheld by the Tribunal in the case of ***Mundra Port and Special Economic Zone Vs. CCE (2009) 18 STT 314****. Similar view has been taken in the following decisions:*

Haryana Roadways Engg. Vs CCE (2001) 131 ELT 662
Biolwara Spinners Ltd. Vs CCE (2001) 135 ELT 719
Century Cement Vs CCE (2002) 150 ELT 1065
Cosmos Detective & Security Services Vs CCE (2010) TIOL 108

We wish to state that when there is no input tax credit that is wrongly availed, there shall be no interest or penalty payable. The Supreme Court in the case of ***CCE Vs. Balakrishna Industries (2006) 201 ELT 325*** *has held that when duty itself is not payable there is no question of penalty.*

We therefore request your goodselves to drop all further proceedings. We also request for an opportunity of being heard in person."

"*The services rendered by customers would not fall under "Composite supply".*

Services Provided:

1. *Ocean Freight, (SAC Code:9965)*
2. *Clearing and Forwarding Agent Services, (SAC Code:9967)*
3. *Container Handling Services (SAC Code:9967)*

Ocean Freight Charges: (SAC Code:9965)

As a Separate Supply of Ocean Freight Charges, Independent Pricing in Ocean freight charges are often calculated separately from the cost of goods being shipped. They can be based on distance, container size, weight, etc., which reflects that they are distinct from the goods themselves.

Ocean freight is a logistics service aimed at the transportation of goods from Outside India to Place within India. While it can be part of a broader transaction (such as buying goods), its nature as a service is distinct so it is considered as a Separate Nature of Service

Customers may choose their freight service provider independently from their scope of services. This option allows for flexibility and indicates that the freight service is not necessarily tied to the sale of goods. By understanding and applying these principles, one can clarify that ocean freight charges do not constitute a composite supply.

In the course of providing the Ocean Freight Service, the Taxpayer engages the services of the Shipping liners for booking a space in the vessel for the transportation of goods. The taxpayer is approached by customers to provide transportation of goods from outside India to a location within India. For booking a space in the Vessel we pay Ocean Freight charges along with GST at the rate of 5% to the Shipping liners.

As per the Freight Forwarder industry the selling terms that the buyer and seller of goods both agree to during international transactions. These rules are accepted by governments and legal authorities around the world. Understanding Incoterms is a vital part of International Trade because they clearly state which tasks, costs and risks are associated with the buyer and the seller.

The Incoterm states when the seller's costs and risks are transferred onto the buyer, typically at the point they deliver the goods. It's also important to understand that not all rules apply in all cases. Some encompass any mode or modes of transport. Transport by all modes of Sea/Inland waterway transport (Sea) covers FAS, FOB, CFR and CIF.

In choosing the right Incoterm®, businesses must consider the nature of their goods and the specifics of their trade agreements. For instance, DDP (Delivered Duty Paid) is often used when sellers want to provide a clear, all-inclusive price to buyers. In FOB (Free On Board), commonly used in bulk shipping, the seller is responsible to deliver the goods on board the vessel, after which the buyer controls the shipping process. Each Incoterm® plays a unique role in balancing cost, control, and risk of loss or damage between import and export.

Freight Terms	*Explanation*
FOB	*FOB is an acronym for "free on board" or "freight on board". It's a shipping term that indicates who is responsible for the goods during transit and who pays for the costs associated with transporting them*
CIF	*CIF stands for Cost, Insurance, and Freight, and it's an international shipping agreement that defines the costs of shipping goods by sea or inland waterway. Under CIF, the seller is responsible for the following costs while the goods are in transit*

Freight Terms	***Seller***	***Buyer***	***Key Points***
FOB	*The seller is responsible for the cost of goods being shipped*	*The consignee is responsible for the main freight charges from the port of shipment to the destination port*	*The specific responsibilities can vary based on the exact terms outlined in the sales contract, so it's essential to clarify "FOB Origin" versus "FOB Destination."* *Sometimes, the seller and buyer can negotiate responsibilities and costs to suit their business needs* *Though the consignee is*
	The shipper typically covers the cost of transportation from their facility to the port of shipment	*Arranging and paying for insurance is typically the buyer's responsibility once the goods are on board.*	
	The shipper is responsible for loading the goods onto the	*The consignee is usually responsible for any unloading charges at the*	

	vessel at the port of shipment.	*destination port.*	*typically responsible for insurance, they may opt to coordinate with the shipper regarding coverage during transit.*
	In some arrangements, the seller might take care of export customs clearance.	*The consignee generally takes care of import customs clearance and any associated duties and taxes.*	

Freight Terms	***Seller***	***Buyer***	***Key Points***
CIF	*The actual selling price of the merchandise.*	*Customs duties and VAT/GST that may be applicable in the destination country upon arrival of the goods*	*CIF obligates the seller (shipper) to bear the primary costs of shipping, insurance, and freight to the designated port, while the buyer (consignee) will be responsible for any duties, taxes, and local handling fees after the goods have arrived. It's essential that both parties understand their responsibilities clearly to avoid any misunderstandings during the shipping process.*
	The cost of transporting the goods from the seller's location to the port of destination.	*Fees for unloading the goods at the destination port*	
	Charges for insuring the goods while in transit to cover any potential loss or damage.	*Charges that may apply if the goods remain at the port for an extended period before being picked up.*	
	Any fees for loading the goods onto the vessel.	*Costs associated with transporting the merchandise from the port of discharge to the consignee's final location*	
	Charges for preparing and processing shipping documents. Any fees associated with clearing the goods through customs at the point of origin.	*If the consignee hires a customs broker, there may be fees for clearing goods through customs upon arrival*	

As a Freight Forwarder, we registered as a Multimodal Transport Operator (MTO) and we takes the responsibility for the safety of goods and issues Multimodal Bill of Lading and commits to deliver the goods safely to the consignee end.

A multimodal transport contract is on his behalf or through another person acting on his behalf. Act as principal, and not as an agent withers of the consignor, or consignee or of the carrier participation in the multimodal transportation, and who assumes responsibility for the performance of the said contract.

We wish to state that the aforesaid proposal completely goes against the statute; the will and mandate of the Parliament and the State Legislature and the decision of the GST Council to maintain GST at the rate of 5% on ocean freight; and goes against the plain meaning of composite supply and principal supply.

We wish to state that export freight and import freight are not even taxed in other countries but India chose to tax ocean freight in the import segment at 5%.

We wish to state that we are a freight forwarder and we purchase freight from shipping lines who charge 5% GST as transportation of goods by vessel attract GST at 5%. When we bill our customers for the ocean freight, we also charge GST at 5%. Given the fact that certain incidental services are also sought for by our client, we provide the incidental services of transportation of goods, cargo handling, container cleaning, container maintenance, lift on lift off, loading and unloading and freight forwarding. We have charged 18% GST as these are identified as separate supplies.

We wish to state that it is a well settled position of law in GST that there can be separate supplies with the same client and each supply would attract the relevant rate of GST. In our case, the definition of composite supply itself is not attracted for the following reasons:

i. *Supplies must be naturally bundled. In the instant case, our client can procure the freight directly or from any other freight forwarder and separately procure the documentation and clearance support services from another supplier.*
ii. *We can provide the freight forwarding services independently, without bundling them with cargo handling and other services.*
iii. *For a composite supply, one supply must be a principal supply and the other supply must be incidental to the principal supply.*
iv. *In the instant case, considering all these services as business support services and as the principal supply is fundamentally incorrect. A bare perusal of the amounts charged for freight as well as amounts charged for the other services by itself would show that the amount charged for freight is much higher than the amounts charged for other services.*
v. *The CBIC vide Circular No. 163/19/2021-GST dated 06.10.2021 has clarified that even if the UPS/inverter and external battery are sold on the same invoice, their price are separately known, and they are two separately identifiable items. Thus, this constitutes supply of two distinctly identifiable items on one invoice. Therefore, it is clarified that in such supplies, UPS/ inverter would attract GST rate of 18% under heading 8504, while external batteries would attract the GST rate as applicable to it under heading 8507 (28% for all batteries except lithium-ion battery).*

We wish to state that the definition of composite supply itself has no application and we are engaged in providing distinct and separate supplies for identified and separate consideration.

We wish to state that each supply is a distinct supply and cannot be considered as a bundled / mixed supply merely because the same parties are involved. In the case of ***Commissioner of Customs (Post) Vs. JK Corporation Ltd. (2007) 208 ELT 485****, the agreement had two parts where Part-A covered license, knowhow and technology whereas Part-B covered supply of plant, machinery and equipment. The Department wanted to add both the identified revenue for Part-A and Part-B on the ground that the same forms part of an integrated contract. The Supreme Court held that the value of license and knowhow is not includable in the value of imported goods.*

We wish to state that in the case of ***RLRE Tellmer Property Sro Vs. Tax Directorate of Ustinad Labem (2012) 36 STT 257 (ECJ)****, the European Court of Justice held that letting of apartment and cleaning services of common parts are separate transactions. Cleaning services might be obtained from third party as well, not necessarily it was to be obtained from landlord.*

We wish to state that therefore based on all the above submissions since the services are not bundled or composite the ocean freight charged at 5% GST is correct and need not be classified under a higher rate of duty of 18% as contended by the Department.

We wish to state that without prejudice to the above if composite supply has to be made applicable then the principal supply is the ocean freight and therefore we could be entitled to pay 5% on the other services where we have discharged 18%.

We wish to state that therefore going by the argument of the Department the principal supply is ocean freight which is chargeable at 5% and the other supplies are also to be charged at 5% and not 18% GST as discharged by us and hence we would qualify for a refund.

We wish to state that moreover the demand is also imposed on the mark-up claimed by us. When freight and other services are identified as independent services and taxes are discharged independently any mark-up on the same does not change the character of the supplies. Ocean freight is chargeable to 5% and the profits on the same are not chargeable to 5% GST.
"

Discussions & Findings

8. I have carefully gone through the entire case records including the Show Cause Notice, submissions made by the taxpayer and the relevant provisions of law. Before proceeding further, I would like to mention that the provisions of the CGST Act, 2017 as mentioned in the entire discussions are similar to the TNGST Act, 2017. Hence, I would only be discussion the legal provision of CGST Act, 2017 herein and the same may be read with similar provision of the TNGST Act, 2017. I would also like to mention that all the legal provisions mentioned herein under the CGST Act, 2017 may be read with the provisions of the IGST Act, 2017. I find that the issues to be decided are

(i) Short Payment of GST on reconciliation between GSTR 1 and GSTR 3B
(ii) Short payment of GST due to wrong classification of Taxable Services

Issue 1: Short Payment of GST on reconciliation between GSTR 1 and GSTR 3B

9. I find that the show cause notice has alleged that on comparison of GSTR 1 and GSTR 3B returns filed by the taxpayer, the taxpayer has reported higher tax

payable in their GSTR 1 and have discharged lesser tax payments vide their GSTR 3B returns resulting in short payment of tax of Rs.8,00,922/- (IGST-Rs.93,808/, CGST-Rs.353,557/- & SGST- Rs.353,557/-) as detailed below.

F.Y.	Difference (GSTR1-GSTR3B) Short Payment (+)			
	IGST	CGST	SGST	Total
2017-18		2,43,395	2,43,395	4,86,790
2018-19	21,704	99,786	99,786	2,21,276
2019-20	8,686			8,686
2020-21	59,243			59,243
2021-22	4,175	10,376	10,376	24,927
TOTAL	93,808	353,557	353,557	800,922

10. I find that the taxpayer in their reply have submitted that for the period 2017-18 they have discharged excess IGST to the extent of Rs.8,88,652/-, for the period 2021-22 they have discharged excess IGST to the extent of Rs.17,261/-, for the period 2019-20 they have discharged excess CGST & SGST to the extent of Rs.20,930/- and for the period 2020-21 they have discharged excess CGST & SGST to the extent of Rs.3,47,988/- by mistake, which the taxpayer sought to be adjusted against the demand proposed under the show cause notice.

11. I find that the taxpayer has submitted that excess payments paid under IGST head may be adjusted against CGST & SGST heads and vice versa. I find that the same submissions have been submitted to the officers of Audit I Commissionerate and as seen from para 3.4 of the Show cause Notice, the show cause notice has not denied such excess payments under wrong heads but has only put forth that the contention of the taxpayer is not acceptable for the reason that there is no provision in CGST Act, 2017 to adjust the GST paid under wrong heads.

12. I find that in a similar matter wherein Tax was collected and paid under wrong heads, in the case of Shree Nanak Ferro Alloys Pvt. Ltd. Versus Union of

India [2020 (35) G.S.T.L. 393 (Jhar.)], the Hon'ble High Court of Jharkhand had held as follows,

> *"17. In that view of the matter, we direct the petitioner-Company to deposit the amount of Rs. 41,98,642/-, under the IGST head within a period of 10 days from today, towards the liability of September, 2017. The petitioner shall not be liable to pay any interest on the said amount. The petitioner shall also be entitled to get the refund of the amount of Rs. 41,98,644/- deposited by them under the CGST head, or they may get the amount adjusted against their future liabilities, in accordance with law, as they may choose."*

13. I also find that in a similar case, wherein it was contested that the tax paid under wrong head be adjusted against the tax payable under the correct head, in the case of OLA Fleet Technologies Pvt. Ltd. Versus Union of India [(2023) 2 Centax 69 (Telangana)], the Hon'ble High Court of Telangana had held as follows,

> *"we are of the view that calling upon the respondents to adjust IGST paid by the petitioner with CGST and SGST would amount to adopting a procedure, which is not provided under the relevant statute. It would be going beyond the statute."*

14. Further, I find that Section 77 of the CGST Act, 2017 and Section 19 of the IGST Act, 2017 relating this issue provides as reproduced below.

> "*Section 77. Tax wrongfully collected and paid to Central Government or State Government.-*
>
> *(1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.*
>
> *(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable."*

> *"Section 19. Tax wrongfully collected and paid to Central Government or State Government. -*
>
> *(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.*
>
> *(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable."*

15. I find that the taxpayer in their submissions have not contested the allegation that taxes were due from them under respective tax heads, whereas, they have merely requested that such tax dues be adjusted against the excess tax payments made by them under the wrong tax heads.

16. I find from the decisions as reproduced above that there are no provisions under the Act to adjust tax paid under wrong heads against tax dues under the correct head. Section 77 of the CGST Act, 2017 and Section 19 of the IGST Act, 2017 read with Circular No. 162/18/2021-GST dated 25/09/2021 also provide that the taxpayer is only eligible for refund of such taxes paid under wrong heads subject to such conditions as prescribed. In view of the above, I find that the sum of Rs.8,00,922/- (IGST-Rs.93,808/, CGST-Rs.353,557/- & SGST- Rs.353,557/-) being GST short paid is recoverable from the taxpayer.

Issue 2: Short payment of GST due to wrong classification of Taxable Services

17. I find that the Show Cause notice has alleged that the taxpayer was providing a composite supply of services consisting of Ocean Freight (SAC Code 996521), Clearing and Forwarding Services (SAC Code 996713), Container Handling Services (SAC Code 996711), Customs House Agent Services (SAC Code 996712), GTA services (SAC Code 996511); that the principal service being Cargo

Handling Service; that GST on Ocean Freight and related services will also have to be discharged at the rate of 18% and not at the rate of 5%.

18. In this regard, I find that as per Section 8(a) of the CGST Act, 2017, a Composite Supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply. Further, Section 2(30) of the CGST Act, 2017 defines "composite supply" as follows,

> *"composite supply" means a supply made by a taxable person to a recipient consisting of **two or more taxable supplies of goods or services or both**, or any combination thereof, which are **naturally bundled** and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.*

19. From, the above, definition of composite supply, it can be established that the pre-requisites for composite supply are

(i) The supply should consist of two or more taxable supplies and the supply must be made by taxable person
(ii) One of the supplies must be a principal supply
(iii) The supplies should be naturally bundled & must be supplied in conjunction with each other in the ordinary course of business.

I. <u>The supply should consist of two or more taxable supplies and the supply must be made by taxable person</u>

20. By definition a composite supply, must consist of two or more taxable supplies of goods or services or both, or any combination thereof, to be made by a taxable person to a recipient. In the instant case, the taxpayer, M/s. GLOTTIS is a taxable person who is providing various taxable services like Ocean Freight (SAC Code 996521), Clearing and Forwarding Services (SAC Code 996713), Container Handling Services (SAC Code 996711), Customs House Agent Services (SAC Code 996712), GTA services (SAC Code 996511) to their clients as per the client's requirements.

II. <u>One of the supplies must be a principal supply</u>

21. As per the definition of composite supply, for the various taxable services rendered by the taxpayer to be composite supply, one of them must be a principal supply. I find that the primary contention of the show cause notice is that the supplies provided by the taxpayer is naturally bundled and is a composite supply of which the primary supply is Cargo Handling Services forming part of the Business Support Service. The description of the various services rendered by the taxpayer is as follows

Service Name	SAC Code	Description
	9965	Goods Transport Services
Ocean Freight	996521	Coastal and transoceanic (overseas) water transport services of goods by refrigerator vessels, tankers, bulk cargo vessels, container ships etc
GTA services	996511	Road transport services of Goods including letters, parcels, live animals, household & office furniture, containers etc by refrigerator vehicles, trucks, trailers, man or animal drawn vehicles or any other vehicles.
	9967	Supporting services in transport
Container Handling Services	996711	Container handling services
Customs House Agent Services	996712	Customs House Agent services
Clearing and Forwarding	996713	Clearing and forwarding services

Services		

22. The question now before the Adjudicating Authority is, assuming the supplies made by the taxpayer are composite, then, which is the principal supply amongst the various supplies. Principal Supply refers to the supply of goods or services which constitutes the predominant element of a composite supply providing its essential character and to which any other supply forming part of that composite supply is ancillary. In general, a service is regarded as ancillary to a principal service if it does not constitute for customers an aim in itself but a means of better enjoying the principal service supplied. The Hon'ble High Court Of Gujarat in the case of M/s.Torrent Power Ltd. Versus Union Of India (2020 (34) G.S.T.L. 385 (Guj.) [19-12-2018]) had viewed that,

> *"As to what is a principal supply is defined in Section 2(90) of the CGST Act to mean the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary. In other words, "principal supply" is the supply which gives the bundle its essential character."*

23. The Chapter Heading 9965 pertains to services relating to Transport of Goods whereas the Chapter Heading 9967 pertains to Supporting Services in Transport. In line with such a classification of Services, it is only conspicuous that wherever services such as Ocean Freight, Clearing and Forwarding Services, Container Handling Services, Customs House Agent Services, GTA services are provided to the same client, the provision of the supporting services falling under HSN 9967 such as Clearing and Forwarding Services, Container Handling Services, Customs House Agent Services, GTA services are only ancillary to Ocean Freight service falling under HSN 9965. Also, based on the values of services as per invoices submitted, it is identifiable that the Ocean Freight Service is predominant. I find that the show cause notice has failed to elucidate as to how the support services will exist without causing the oceanic movement of goods. In view of these finding, I find that the allegation in the Show Cause Notice, that the

Cargo handling Service is the Principal Service is not suitably justified therein.

24. I find that the show cause notice has alleged that in as much as the original Ocean Freight services is rendered by the Liner/Vessel Operator, the services rendered by the taxpayer are of the nature of Business Support Service and not entirely Ocean Freight (SAC Code 996521) and that of the various services provided by the taxpayer Container Handling Services (SAC Code 996711) is the principal supply. In this regard, it is pertinent to note that under the erstwhile Service Tax Act, CBIC had vide Circular No.197/7/2016-Service Tax dated 12/08/2016 had clarified that

> *"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."*

25. Similarly, the customs, excise and service tax appellate tribunal west zonal bench at Mumbai, in the case of Greenwich Meridian Logistics (India) Pvt Ltd Vs Commissioner of Service Tax, Mumbai had held that,

> *"...According to section 2 of the Multi-modal Transportation of Goods Act, 1993 multimodal transport operator means any person who--*
>
> *(i) concludes a multimodal transport contract on his own behalf or through another person acting on his behalf;*
>
> *(ii) acts as principal, and not as an agent either of the consignor, or consignee or of the carrier participating in the multimodal transportation,*

and who assumes responsibility for the performance of the said contract; and

(iii) is registered under sub-section (3) of section 4; and

(a) carrier means a person who performs or undertakes to perform for a hire, the carriage or part thereof, of goods by road, rail, inland waterways, sea or air;

12. The appellant takes responsibility for safety of goods and issues a document of title which is a multi-modal bill of lading and commits to delivery at the consignees end. To ensure such safe delivery, appellant contracts with carriers, by land, sea or air, without diluting its contractual responsibility to the consignor. Such contracting does not involve a transaction between the shipper and the carrier and the shipper is not privy to the minutiae of such contract for carriage. The appellant often, even in the absence of shippers, contract for space or slots in vessels in anticipation of demand and as a distinct business activity. Such a contract forecloses the allotment of such space by the shipping line or steamer agent with the risk of non-usage of the procured space devolving on the appellant. By no stretch is this assumption of risk within the scope of agency function. Ergo, it is nothing but a principal-to-principal transaction and the freight charges are consideration for space procured from shipping line. 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."

26. I find that in the instant case, the taxpayer has submitted copies of Bills of Lading issued by them, transit insurance obtained in their name and their Multi Modal Transport Operator registration certificate, invoices issued to their clients thereby distinctly establishing themselves as a principal who is undertaking all the legal responsibility for the transportation of the goods and undertakes all the attendant risks in providing the service of freight forwarders by negotiating the terms of freight with the ocean liner as well as the actual rate with the exporter. I find that in as much as the taxpayer has provided the services on a principal-to-

principal basis, I find that the allegation as brought out in the notice that the services supplied by the taxpayer are to be classified as Business support services and not as Ocean Freight is not well founded.

III The supplies should be naturally bundled & must be supplied in conjunction with each other in the ordinary course of business

27. I find that the taxpayer has vide their submissions contested that they primarily books the cargo space on the vessel of shipping lines on principal-to-principal basis; that pursuant to booking of the cargo space on the vessel, the taxpayer identifies or is approached by customers who requires such space on vessel; that the taxpayer undertakes to sell the cargo space to such customers at specified rates on principal-to-principal basis; that once the goods are imported into India by the customer, the taxpayer undertakes handling of the said goods for their customers; that the Ocean Freight and charges for services rendered is charged on the customer based on the payment terms negotiated; that the services rendered by them would not fall under the ambit of Composite Supply.

28. CBIC Flyer on the Composite Supplies (https://gst.kar.nic.in/latestupdates/compltn-51-gst-fliers.pdf) provides explanation as follows:

> *"Under GST, a composite supply would mean a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;*
>
> *..*
>
> *In respect of composite supplies, the need to determine the supply as a composite supply will arise, so as to determine the appropriate classification of such supply, as a supply of goods or supply of services, as also the appropriate rate of tax. It will be necessary to determine as to whether a particular supply is naturally bundled in the ordinary course of business and what constitutes principal supply in such composite supplies.*

The concept of composite supply under GST is identical to the concept of naturally bundled services prevailing in the erstwhile service tax regime. This concept has been explained in the Education Guide issued by CBEC in the year 2012 as under - "'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. An example of 'bundled service' would be air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different. The rule is – 'If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character'

…

Further, whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below

- *The perception of the consumer or the service receiver.*
- *Majority of service providers in a particular area of business who provide similar services.*
- *The nature of the various services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service.*
- *Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are -*

  –is a single price or the customer pays the same amount; no matter how much of the package they actually receive or use.

  – The elements are normally advertised as a package.

  – The different elements are not available separately.

  – The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected.

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above."

29. Hence, to ascertain if the services rendered by the taxpayer are composite supply, firstly it has to be ascertained if the services are naturally bundled and supplied in conjunction with each other in the ordinary course of business. In order to demonstrate that a set of services are supplied naturally bundled and are supplied in conjunction with each other in the ordinary course of business, the supply of services should meet some of the following criterion which are indicative, not conclusive:

- *The perception of the recipient of service:- If the recipient of the services perceives and expect the services being received by them as one package for better enjoyment of the services being offered by the service providers operating in that particular industry, then those services may be considered as naturally bundled in the ordinary course of business.*

  In the instant case, the taxpayer has emphasized that the are suppliers of services such as Ocean Freight (SAC Code 996521), Clearing and Forwarding Services (SAC Code 996713), Container Handling Services (SAC Code 996711), Customs House Agent Services (SAC Code 996712), GTA services (SAC Code 996511); that their clients from time to time depending on their business requirements may prefer for any individual service or a combination of two or more services, which is indicative that the services are not naturally bundled as they can be provided mutually exclusively and are commonly being provided by different service providers.

- *Majority of similar service provider in the industry provide similar bundle of service :*

As regards this parameter, the taxpayer has submitted that in the industry the majority of the service providers are purely providing only Ocean Freight (SAC Code 996521) / Clearing and Forwarding Services (SAC Code 996713) / Container Handling Services (SAC Code 996711) / Customs House Agent Services (SAC Code 996712) / GTA services (SAC Code 996511) and that only a selective few Freight Forwarders are having the capabilities to provide all these services. The clients of the taxpayer are at their liberty to chose any one service or a combination of various services provided by the taxpayer as per their requirement.

- *One service is the main service and other services provided in the bundle are incidental or ancillary to the main service.*

In the instant case, the taxpayer has submitted that among the services rendered by them, the Ocean Freight Services (SAC Code 996521- GST @ 5%) is the highest contributing towards their revenue and that the other services (which are at GST @ 18%) such as Clearing and Forwarding Services (SAC Code 996713), Container Handling Services (SAC Code 996711), Customs House Agent Services (SAC Code 996712), GTA services (SAC Code 996511) are actually arising on account of provision of Ocean Freight Services (SAC Code 996521) only.

- *The service recipient pays single price regardless of the services within the package:*

In the instant case, the taxpayer has submitted that the taxable value for various services are individually decided upon and are invoiced separately after the provision of each service, contrary to the indicative criterion of the composite supplies.

- *The elements are normally advertised as a package. The different elements are not available separately. The different elements are integral*

to one overall supply – if one or more is removed, the nature of the supply would be affected.

The taxpayer has submitted screenshot of their website https://www.glottislogistics.in/services.php, wherein it is seen that the various services rendered by the taxpayer are separately and specifically available but not sold as a package. Moreover, the taxpayer has submitted that the supplies rendered by them are mutually exclusive and are available separately.

30. Moreover, the above observations also draw support from GST flyer issued by the Central Board of Indirect Tax and Customs ("CBIC") on Composite Supply and Mixed Supply which has relied upon Education Guide on Service tax for the determination of any group of services as composite supply. The GST Flyer, issued in this regard, proposes that "Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate" and the same will be determined by the principles of the natural bundling as stipulated under Education Guide on Service tax.

31. In order to understand if the Ocean Freight Services is naturally bundled, it is pertinent to note that as depicted in table below, only in certain cases like Export under CIF terms and Import under FOB terms, the Ocean Freight is borne by the Indian Exporter/Importer. Whereas in case of Import under CIF terms and Export under FOB terms, the Ocean Freight is borne by the overseas Importer/Exporter.

Service Availed	Freight Terms	Implication
Import	CIF	Ocean Freight is provided by overseas logistics operator to Overseas Exporter who bears the Ocean Freight Charges, whereas services such as Clearing and Forwarding Services, Container Handling Services, Customs House Agent Services, GTA services

		are provided by the taxpayer to the Indian Importer, upon whom such charges are billed
Export	CIF	Ocean Freight as well as other services borne by Indian Exporter and all the services are either wholly supplied by the taxpayer or the Indian Exporter avails the services of two or more logistics operators, one of which is the taxpayer.
Import	FOB	Ocean Freight as well as other services borne by Indian Importer and all the services are either wholly supplied by the taxpayer or the Indian Importer avails the services of two or more logistics operators, one of which is the taxpayer.
Export	FOB	Ocean Freight is provided by overseas logistics operator in non-taxable territory to Overseas Importer who bears the Ocean Freight Charges, whereas services such as Clearing and Forwarding Services, Container Handling Services, Customs House Agent Services, GTA services are provided by the taxpayer to the Indian Exporter, upon whom such charges are billed.

32. In order for the services to be classified as composite supply, it is important that the services are provided as a bundle; are generally not separately available; and different elements are integral to one overall supply – if one or more is removed, the nature of the supply and its essential character would be affected. However, as depicted in table above, it is seen that in certain instances, namely import under CIF terms and Export under FOB terms, the Ocean Freight Services are separately provided by an overseas logistics operator to an overseas exporter/importer outside the taxable territory and billed on such overseas exporter/importer whereas the other services are separately provided by the taxpayer singly or jointly with other logistics operator and billed on Indian importer/exporter even without providing any Ocean Freight Services to such person. Thus, I find that it is indicative of the fact that the various services like Ocean Freight (SAC Code 996521), Clearing and Forwarding Services (SAC Code 996713), Container Handling Services (SAC Code 996711), Customs House Agent Services (SAC Code 996712), GTA services (SAC Code 996511) are neither

naturally bundled nor provided in conjunction with each other & thus not forming part of Composite Supply.

33. I find from the sample job orders/quotations and invoices submitted by the taxpayer that the taxpayer has not made any services as a package as each service has been separately discussed and terms and price of each service clearly mentioned. I find that even during invoicing each service has been separately invoiced as and when such service was rendered and even in cases where such services were part of same invoice, they have been separately charged under respective line items clearly mentioning the corresponding HSN Codes.

34. From the discussions above, I find that in respect of the various services rendered by the taxpayer their clients have the option to choose and select the services required by them and that the taxpayer provides such services separately and not as a package. I find that in this sector it is common knowledge that such services are separately available from various logistics operator and can be availed from any of them. In view of the above discussions, I find that the services rendered by the taxpayer are not naturally bundled and are hence not falling under the ambit of Composite Supply as defined under the Act. Hence, I find that the demand of Differential GST as demanded in the Show Cause Notice is not sustainable. In as much as the demand of duty is not sustainable, it is a natural corollary that the demand of interest and penalty are also not sustainable. In view of the above findings, I pass the following order.

ORDER

(i) I confirm the demand of Rs.8,00,922/- (Rupees Eight Lakhs Nine Hundred & Twenty-Two only) (IGST-Rs.93,808/-, CGST-Rs.3,53,557/- & SGST-Rs.3,53,557/-), being the Short Payment of tax as discussed above, under the provisions of Section 74(1) of the CGST Act, 2017 and TNGST Act, 2017 and order recovery of the same as provided under Section 74(9) of the CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017);

(ii) I confirm the demand of Interest as applicable under Section 50 of the CGST, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017) on the amount mentioned at clause (i) as discussed above and order recovery of the same as provided under Section 74(9) of the CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017);

(iii) I impose Penalty of Rs.8,00,922/- (Rupees Eight Lakhs Nine Hundred & Twenty-Two only) (IGST-Rs.93,808/-, CGST-Rs.3,53,557/- & SGST-Rs.3,53,557/-) under the provisions of sub-Section (1) of Section 74 read with Section 122(2)(b) of CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017) on the amount demanded at clause (i) above and order recovery of the same as provided under Section 74(9) of the CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017); however as per Section 74(11) of the CGST Act, 2017, where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty percent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

(iv) I drop the demand of Rs.127,28,96,070/- (Rupees One Hundred and Twenty-Seven Crore Twenty-Eight Lakh Ninety-Six Thousand and Seventy only) (IGST: Rs. 81,07,56,204/-, CGST: Rs.23,10,69,933/- and SGST: Rs.23,10,69,933/-) as discussed above, under the provisions of Section 74(1) of CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017);

(v) I drop the demand of Interest under the provisions of Section 50(1) of CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable

vide Section 20 of the IGST Act, 2017), on the amount mentioned at clause (iv) above;

(vi) I drop the demand of Penalty under the provisions of sub-Section (1) of Section 74 read with sub-section (2)(b) of Section 122 of the CGST Act, 2017 and TNGST Act, 2017 read with IGST Act, 2017 (made applicable vide Section 20 of the IGST Act, 2017), on the demand made at clause (iv) above;

Signed by
Balaji Kandavel
Date: 29-11-2024 16:29:53

(के. बालाजी / K Balaji)

संयुक्त आयुक्त /Joint Commissioner

To,

M/s. GLOTTIS, (GSTN: 33AAMFM1317L1ZA)
1st Floor, New no. 46 / Old No. 311,
Thambu Chetty Street, Chennai, Tamil Nadu, 600001. (BY RPAD/E-MAIL)

Copy submitted to:

1. The Pr. Commissioner of GST & Central Excise, Chennai North Commissionerate (Review Section)

Copy to:

1. The Assistant/Deputy Commissioner of GST & Central Excise, Parrys Division, Chennai North Commissionerate
2. The Superintendent of GST & Central Excise, Parrys Division, Range –III, Chennai North Commissionerate
3. Guard File/Master File.