IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76688 of 2019

(Arising out of Order-in-Original No. 02/ST/Comm./2019 dated 09.04.2019 passed by the Commissioner of CGST & Central Excise, Patna-1 3RD Floor, C. R. Building (Annexe) B. C. Patel Path, Patna-80001)

M/s. Scorpion Express Pvt. Ltd. **: Appellant**
Ashok Cinema Building,
Budh Marg, Patna-800001

VERSUS

Commissioner of CGST & Central Excise, Patna-I **: Respondent**
3rd Floor, C. R. Building (Annexe)
B. C. Patel Path, Patna-80001

APPEARANCE:

Shri Navin Kumar Agrawal, Advocate for the Appellant
Shri Giridhar Dhelia, Advocate for the Appellant
Shri P. Das, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75647/ 2026

DATE OF HEARING: 21.05.2026
DATE OF PRONOUNCEMENT: 25.05.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s Scorpion Express Private Limited (herein after referred as the appellant) are engaged in the business of providing services such as Clearing & Forwarding Agency, Courier Agency, Cargo Handling, and Transport of Goods by Road, and holds a centralized service tax registration No AAJCS7860CST001. The appellant has four divisions in the name of **1) Scorpion Express, 2) Scorpion**

Cargo, 3) Scorpion Logistics and 4) Scorpion Courier.

1.1. Pursuant to a CERA audit conducted by the department for the relevant financial years i.e 2008-09 to 2011-12, certain objections were raised vide letter dated 14.03.2012, to which the appellant duly responded on 02.05.2012, accepting certain liabilities while contesting others. Thereafter, summons were issued, statements were recorded.

1.2. Subsequently, the department issued a show cause notice vide V-30/Pat/SCN-Cell/ST/Adjn/12/8610 dated 23.10.2013 (herein after referred as "SCN I"), proposing a demand of service tax amounting to Rs. 1,31,10,942/- for the period 2008-09 to 2011-12. The appellant filed a detailed reply dated 18.12.2013 contesting the allegations on facts and law.

1.3. Later, another SCN was issued vide V-26/Pat/SCN-Cell/ST/Adjn/2014/9351 dated 16.10.2014 (herein after referred as SCN II), for the period 2009-10 to 2012-13, demanding service tax (incl cess) amounting to Rs. 7,91,13,437/-. The demand made in the SCN II covered the period from 2009-10 to 2012-13, which significantly overlapped with the period already covered under SCN I, namely 2009-10 to 2011-12. The appellant duly filed a reply to SCN II on 15.12.2014. The second notice sought to re-examine and re-demand tax for the very same period already subject matter of the earlier notice.

1.4. Thereafter, the adjudicating authority passed a common Order-in-Original dated 09.04.2019, confirming the total demand of Rs. 9,16,35,358/- along with interest and equal amount of tax as penalty.

1.5. Aggrieved against the confirmation of the demands of service tax along with interest and penalty, the appellant has filed this appeal.

2. The appellant submits that the impugned order has been passed without properly appreciating the factual matrix, including the illegality arising from issuance of the second SCN covering an already adjudicated and overlapping period, and without granting adequate opportunity of hearing in respect of the second SCN .

Issues on which Demand confirmed in SCN-I dated 23.10.2013 and the submissions of the appellant in respect of each of the demands are as under:

Sl No.	Description / Issues	Year				Total
		2008-09	2009-10	2010-11	2011-12	
	- Demand on output services					
A.	Difference between ST-3 and Financial Statement Turnover values		48,27,875.00	8,95,658.00		57,23,533.00
B.	Levied ST @ 10.3% instead of 12.36%	11,17,742.00				11,17,742.00
C.	ST was not paid on advances received					4,88,183.00
D.	ST - Short payment on C&F	-	-	7,88,166.00	6,24,357.00	14,12,523.00
E.	ST - Detention charges	-	5,589.00	-	-	5,589.00
						87,47,570.00
	- Demand on CENVAT Credit					
F.	CC availed on the basis of invoices raised not in favour of the client.	9,37,828.00	8,50,430.00			17,88,258.00
G	CC availed on the basis of photocopy			1,42,637.00	13,26,991.00	14,69,628.00
H.	CC availed invoices could not be produced			5,16,465.00		5,16,465.00
						37,74,351.00
	- Total Demand Amount					
	Interest					
I.	Interest for late deposit of ST	1,372.00	846.00	2,984.00	5,421.00	**10,623.00**
	Grand Total					**1,25,32,544.00**

3. Demand amounting to Rs. 57,23,533/- has been confirmed on the alleged suppression of taxable value during the Financial Years 2009-10 to 2012-13 on account of difference between ST-3 and the values declared in the financial statements. In this regard, appellant submits that during the relevant period, i.e., F.Y. 2009–10 and 2010–11, service tax liability arose only upon actual receipt of consideration and not on accrual basis. Thus, service tax is not payable on amounts charged in the bills/invoices, but on the amount actually received. It is a settled legal position that financial statements are prepared on an accrual basis, whereas service

tax returns for the said period were filed on a realization basis. Thus, the appellant submits that the Learned Adjudicating Authority has erred in treating the book turnover as the taxable value without excluding unrealized income.

3.1. The appellant further submits that they are engaged in providing taxable services under the category of Goods Transport Agency (GTA) service. It is submitted that transportation of goods by road was taxable under the service tax regime. However, as per Rule 2(1)(d)(v) of the Service Tax Rules, 1994, the liability to pay service tax in respect of GTA services was cast upon the recipient of service, subject to the condition that the consignor or consignee falls within any of the specified categories mentioned therein. As per the said rule, where the consignor or consignee belongs to any of the seven specified categories, the person liable to pay freight is deemed to be the person liable to pay service tax. In the present case, the Applicant had primarily provided transportation services to persons falling under the specified categories and had duly issued consignment notes, thereby squarely qualifying as a Goods Transport Agency. Accordingly, in terms of Rule 2(1)(d)(v), the liability to discharge service tax was on the service recipient and not on the Appellant. However, in the instant case, the demand has been raised without properly examining the nature of transactions and the statutory provisions governing the liability. Further, it is submitted that an abatement of 75% of the gross value of taxable service was available in respect of services provided by a Goods Transport Agency, in terms of Notification No. 13/2008-ST dated 01.03.2008. The benefit of the said notification has not been extended to the Appellant at the time of passing the impugned order, which is contrary to the applicable legal provisions. Non-consideration of the available abatement has resulted in an inflated and unsustainable demand.

3.2. The Appellant submitted a detailed reconciliation statement supported by ledger extracts of income and sundry debtors, bank statements evidencing actual receipts, and reconciliation correlating the P&L figures with the ST-3 returns at the time of investigation as well as Adjudication. However, the Ld. Adjudicating authority has not examined the documents submitted by them. Such non-consideration of relevant material evidence amounts to violation of the principles of natural justice and renders the Impugned Order arbitrary and unsustainable.

4. Demand amounting to Rs. 11,17,742/- has been confirmed on account of short payment of Service Tax due to change of rate of tax (10.3% instead of 12.36%), which is factually incorrect. It is submitted that for the return periods **October 2008 to March 2009** and **April 2009 to September 2009**, the appellant has discharged its service tax liability at the rate of **12%** on all amounts received on or after 24.02.2009 for the service rendered before 24.02.2009. Thus, the demands confirmed on this count is not sustainable.

5. Demand amounting to Rs. 4,88,183/- has been conformed on the allegation of non payment of service tax from advances received from the customers during relevant period. In this regard, the appellant submitted that there are two types of advances on which demand has been confirmed.

5.1. Amount of Rs. 6,00,000/- received on account of unsecured loans. It is submitted by the appellant that the said amount has been received by appellant as an unsecured loan. Hence the liability under service tax law would not arise at all. The appellant submitted a confirmation and relevant ledger at the time of investigation as well as adjudication.

5.2. Amount of 39,61,658/- received as an advance for providing GTA service: The Applicant submits that during the relevant period, certain advances aggregating to Rs. 39,61,658/- were received, on which service tax liability amounting to Rs. 4,26,383/- has been confirmed in the Order-in-Original. Accordingly, no service tax liability would arise at all.

6. Demand amounting to Rs. 14,12,523/- has been confirmed on the allegation of non-payment of Service Tax liability under Cargo Handling services. In this regard, the appellant submits that the impugned Order-in-Original is contrary to the facts on record and settled provisions of law. The appellant submits that the activities undertaken by it were not in the nature of Clearing & Forwarding Agent Service. The Appellant was primarily engaged in handling export cargo belonging to M/s Alkem Labs Ltd., Mumbai, which included **packing, repacking, loading, unloading, transportation of export consignments, booking of cargo at ports, completion of export formalities and payment of freight and port related charges.** These activities are essentially connected with export cargo handling and cannot be classified as "Clearing & Forwarding Agent Service". The contracts dated 01.10.2010 and 01.10.2011 clearly establish that the goods handled by the Appellant were export

consignments meant for shipment outside India. Therefore, the services rendered by the Appellant were outside the ambit of taxable service. The Learned Commissioner has merely relied upon the title of the agreement described as "Contract for Clearing & Forwarding Agency" and concluded that the services fall under C&F category. Such finding is legally untenable. It is a settled principle of law that classification of taxable services must be determined based on the actual nature and substance of activities performed and not merely on nomenclature or title of the agreement. The demand has been erroneously raised on an amount of ₹1,37,13,817/-, upon which Service Tax liability of ₹14,12,543/- has been computed and proposed. It is submitted that the aforesaid amount does not represent consideration towards any taxable service rendered by the Appellant, but pertains purely to reimbursement of actual expenses incurred by the Appellant on behalf of Alkem Laboratories Limited in the course of execution of the assignment. The said reimbursements were received on actual basis towards port charges, freight paid to shipping lines/transporters, statutory levies, and various third-party expenses incurred by the Appellant as a pure agent of the client, without any element of profit, commission, or value addition. The said amounts were incurred exclusively on behalf of the client and were subsequently recovered at actuals strictly in terms of the agreement dated 01.10.2011 executed between the parties. Accordingly, such reimbursements cannot form part of the taxable value for the purpose of levy of Service Tax.

7. Demand amounting to Rs. 5,589/- has been confirmed on the allegation of Non-payment of

service tax on Detention Charges. It is submitted that the detention charges collected by the Appellant are not liable to service tax as the same are in the nature of penal charges and do not constitute consideration for any taxable service.

8. Demand amounting to Rs. 17,88,258/- has been confirmed on the allegation that some of invoices based on which Cenvat Credit was availed by the appellant are not in appellant's name. It has been alleged in the Show Cause Notice that the Appellant has wrongly availed CENVAT Credit amounting to Rs. 17,88,258/- on the basis of invoices which were not issued in the name of the Appellant company. It has been alleged that the disputed invoices were issued in the names of entities such as Scorpion Express, Scorpion Logistics, Scorpion Courier, Scorpion Cargo, as well as in the names of certain individuals namely Mr. Prakash N.A. Singh, Ms. Jyoti P. Singh, Ms. Shalini J. Singh, Mr. Anil Tiwari, Mr. Vijay Rahate, etc., and therefore the credit availed on such invoices is inadmissible. In this regard, the appellant submits that M/s Scorpion Express Private Limited was operating through various business divisions namely: **1) Scorpion Express, 2) Scorpion Cargo, 3) Scorpion Logistics and 4) Scorpion Courier.** The impugned invoices referred to in the SCN were issued in the names of the aforesaid Divisions operating from different locations. The said Divisions were subsequently brought under centralized service tax registration obtained by the Appellant. The services covered under the disputed invoices were duly received for the business activities of the Appellant and the corresponding expenditure was properly recorded and accounted for in the books of account

maintained by the Appellant.. The Appellant further submits that an application for centralized registration was filed before the Department on 01.12.2009 and the centralized registration was thereafter granted on 28.10.2010. Without prejudice to the above, it is submitted that denial of CENVAT Credit merely on account of procedural or clerical discrepancies in the names appearing on the invoices is contrary to the settled legal position. It is a settled principle that substantive benefit of CENVAT Credit cannot be denied when the receipt of input services, payment of service tax by the service provider, and utilization of such services for output taxable services are not in dispute. In the present case, the Department has not disputed the actual receipt and use of the services by the Appellant in the course of its business activities. Thus, the appellant submits that merely because certain invoices were issued in the trade names/divisions of the Appellant, the substantive benefit of CENVAT Credit cannot be denied when receipt and utilization of taxable services stands established

9. Demand amounting to Rs. 14,69,628/- has been confirmed on the allegation of irregular Cenvat credit availed on the basis of photocopies of invoices. The Appellant submits that the photocopies of invoices relied upon for availment of Cenvat credit were derived from the corresponding original invoices issued by the respective service providers. Further, the appellant currently possesses the original invoices on which such allegations were made. All the invoices on the basis of which Cenvat credit were availed by the appellant, are available with them for verification. In support of this claim, the appellant enclosed a CA certificate as well as

some sample invoices for perusal. The department has nowhere disputed the availment of such cenvat credit and utilization of the same in relation to their business. In view thereof, the allegation that the Cenvat credit has been irregularly availed solely on the basis of photocopies of invoices is unsustainable both in law and on facts.

10. Demand amounting to Rs. 5,16,465/-has been confirmed on the allegation of irregular Cenvat Credit on the basis of non-production of invoices. The appellant submits that the original invoices, books of accounts and financial statements of the Appellant were duly audited and certified by an independent Chartered Accountant in accordance with the applicable statutory requirements by the way of verification of these invoices as well as related documents. The Chartered Accountant has duly verified and certified that all the invoices are duly available with appellant. Further, to support such arguments, the appellant enclosed a CA certificate along with sample copies of such invoices.

11. Demand amounting to Rs. 10,623/- has been confirmed on the allegation of non-payment of interest for late deposit of service tax liability. The Applicant submits that the applicable interest, as required under the provisions of the Finance Act, 1994, had already been duly discharged by them. The said payment was made voluntarily and in compliance with the statutory provisions governing delayed payment of service tax. Hence, there remains no outstanding liability towards interest as alleged in the Show Cause Notice.

Issues on which Demand confirmed in SCN-II dated 16.10.2014 and the submissions made by the appellant are as under:

Sl No.	Description	Year				Total
		2008-09	2009-10	2010-11	2011-12	
	Demand on output services					
J.	ST - Mismatch in ST3 and BoA	1,25,33,674.00	1,53,53,265.00	-	-	2,78,86,939.00
K.	ST - Violation of Rule 3 of POTR	-	-	2,36,20,541.00	2,76,05,957.00	5,12,26,498.00
	Total Demand Amount					**7,91,13,437.00**

12. From the Table furnished above, it can be seen that Rs.2,78,86,939/- has been confirmed on account of mismatch in ST-3 returns filed by the appellant and the figures available in their Books of Account. Rs.5,12,26,498/- has been confirmed on account of violation of Rule 3 of Point of Taxation Rules. The appellant submits that both these issues were raised in the earlier SCN also, by invoking the extended period of limitation. Again extended period of limitation has been invoked to demand the service tax in the second show cause notice also.

12.1. The appellant also referred the Calculation of the demand as per SCN, which is reproduced as under:

Particulars	On receipt Method		On Accural Method	
	2009-10	2010-11	2011-12	2012-13
Income as shown in Annual Financial Statement	35,56,53,723	43,17,98,333	52,23,95,318	63,35,87,372
Add: Opening Debtors	6,84,67,349	7,41,73,618	11,28,24,782	
Less: Closing Debtors	7,41,73,618	11,28,24,782		
Amount on which ST liability has to be paid as SCN	**34,99,47,456**	**39,31,47,170**	**63,52,20,099**	**63,35,87,372**
Net Service tax demanded on differential amount after reconcilaition with ST-3 returns	**1,25,33,674**	**1,53,53,265**	**2,36,20,541**	**2,76,05,957**

13. Arguments on Limitation

13.1. The appellant submits that the first SCN was issued by invoking extended period of limitation on the alleged suppression of taxable value during the Financial Years 2009-10 to 2012-13 on account of difference between ST-3 and the values declared in the financial statements. The second show cause notice has also been issued on the basis of the same allegations by invoking the extended period of limitation. The appellant submits that the department was fully aware of the relevant facts from earlier proceedings, records, returns, and disclosures made by the appellant from time to time. Once the material facts were already within the knowledge of the department, issuance of a subsequent notice on the very same set of facts, without any fresh tangible evidence indicating fraud, collusion, wilful misstatement, or suppression of facts with intent to evade tax, is not permissible in law. The said view has been upheld in the case of Nizam sugar Factory reported in 2006 (197) ELT 149 (SC). Accordingly, the appellant submits that the demands raised and confirmed in the second SCN is not sustainable on the ground of limitation itself.

14. **Arguments on Merits**

14.1 The appellant submits that the demand has been confirmed in the impugned Order-in-Original without proper application of mind and without due consideration of the documents, reconciliations, and detailed submissions furnished by the Appellant during the course of adjudication proceedings. In the impugned Order-in-Original, the Ld. Adjudicating Authority has denied the benefit of liability payable under Reverse Charge Mechanism (RCM) in respect of GTA services on the ground that the consignment notes were not submitted by the Applicant. Further, the Ld. Adjudicating Authority has denied the benefit of abatement on the ground that the Applicant had availed CENVAT credit during the relevant period.

14.2. A bare perusal of the aforesaid tables clearly reveals that the Show-Cause Notice has proceeded on an erroneous and wholly presumptive basis by treating the entire amount reflected as sundry debtors as on 31.03.2011 as consideration allegedly received during the Financial Year 2011–12. The said assumption is entirely without any cogent basis, documentary evidence, or independent verification and has been made merely on conjectures and surmises. It is submitted that the mere reflection of an amount under the head "Sundry Debtors" in the books of accounts does not ipso facto establish actual receipt of consideration during the relevant period. It is further submitted that service tax liability under the provisions of the Finance Act, 1994 was governed by the receipt-based system prior to the introduction of the Point of Taxation Rules. Accordingly, service tax liability could be fastened upon the appellant only upon actual receipt of consideration for the taxable services rendered.

On GTA Service - liability is on Service recipient

14.3. In the present case, the Appellant was, inter alia, engaged in providing taxable services under the category of Goods Transport Agency (GTA) service. It is submitted that while transportation of goods by road was a taxable service during the relevant period, Rule 2(1)(d)(v) of the Service Tax Rules, 1994 specifically provided that the liability to pay service tax, in specified circumstances where the consignor or consignee falls within the prescribed categories, rests upon the recipient of the service and not the service provider. Transport of goods by road is a taxable service under service tax. However, the liability to pay service tax was on receiver of service if the consignor or consignee is from specified categories as per Rule 2(1)(d)(v). As per the aforesaid rule, in case of Goods Transport Agency Service, if the consignor or consignee falls under any of the seven specified categories, then the person who is making payment of freight is the person liable to pay service tax. Since, the applicant provided service of transportation mainly to the body corporate and also issued consignment note to them, they were aptly qualify under the definition of Goods Transport Agency. Accordingly, the service tax liability was on them in terms of the aforesaid notification. Since the appellant have provided service to mainly body corporates (specified category) who paid freight to us, hence, they are the person liable to pay service tax under Rule 2(1)(d)(v) of the Service Tax Rules. It is clear that their clients were mainly body corporates falling under the specified categories under rule 2(1)(d)(v). Hence, liability to pay service tax was on them

For Disallowance of benefit for availment of CENVAT Credit

14.4. The appellant submits that they are also engaged in providing the service under other category of ***Clearing & Forwarding Agent, Courier Agency, Cargo Handling, apart from Transport of Goods by Road***. The appellant has been duly discharging the service tax liability under the abovementioned categories of service after claiming abatement benefit vide Notification No. 1/2006-ST dated 01.03.2006 as amended for the period prior to 01.07.2012. Notification No. 1/2006-S.T. dated 1-3-2006 as amended provides that service provider will be entitled to claim the benefit of abatement subject to the condition that the CENVAT credit of duty on input or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. The SCN alleged that the appellant claimed abatement and availed cenvat Credit for the purpose of offsetting the liability of GTA services provided during the relevant period. Therefore, the appellant do not satisfy the conditions laid down in Notification 1/2006-ST dated 01.03.2006. In this regard, the appellant submits that they are not only engaged in providing the service under the above category of service, but also engaged in providing other services like **'Clearing & Forwarding Agent', 'Courier Agency'** and **'Cargo Handling'** on which they are duly discharging their service tax liability on 100% of the taxable value at the full rate of Service Tax, prevalent during the said period. In terms of the said notification, no credit of tax paid on input, input services, capital goods used for providing such output service on which the benefit of abatement is taken, would not be available. Therefore, credit on input services used in providing such output service on which abatement is claimed, is denied but the notification does not preclude the right of the appellant in relation to availing credit on input service used in providing other taxable output service, on which abatement is mainly on input services which are used for providing **'Clearing & Forwarding Agent', 'Courier Agency'** and **'Cargo Handling'** on which tax is discharged by the appellant on 100% of the taxable value. It may be noted that the appellant had not availed the credit on input services which are exclusively used in providing such taxable service on which abatement is claimed. Thus, the appellant submits that the benefit of abatement which has been availed by them is not violation of the terms and conditions specified in the said notification and accordingly, the allegation levied in the impugned SCN is baseless.

15. Regarding imposition of penalty, the appellant submits that the impugned Order has imposed equal penalty under Section 78 of the Finance Act, 1994. However, there is no case warranting penalty under Section 78 on the appellant. Penalty under section 78 is imposable only for willful violation or intention to evade taxes invocation of extended period. The appellant submits that the impugned order fails to bring on record any evidence to the effect that the appellant have willfully evaded payment of service tax. Hence, charges of suppression and willful violation are baseless, arbitrary and lack credibility. Hence, penalty imposed on them as per section 78 of the Finance Act, 1994 is legally not sustainable.

16. The Ld. A.R. reiterated the findings in the impugned order. It is his submission that the appellant has not furnished the details of issue of consignment note for the purpose of availing the benefit of exemption available to Goods Transport Agency service. They have also not properly explained the reasons for the difference in the amounts mentioned in the ST-3 returns filed by them and the figures available in their Books of Accounts. Accordingly, he supported the demands of service tax confirmed in the impugned order along with interest and penalty.

17. Heard both sides and perused the appeal documents.

18. We find that there are two show cause notices issued to the appellant. Service tax amounting to Rs. 1,25,32,544/-/- for the period 2008-09 to 2011-12 has been confirmed on various counts. Service tax (incl cess) amounting to Rs. 7,91,13,437/- for the period 2009-10 to 2012-13 has been demanded and confirmed in the second show cause Notice.

18.1. We find that demand amounting to Rs. 57,23,533/-has been confirmed on the alleged suppression of Taxable Value for the Financial Years 2009-10 to 2012-13, on account of difference between the ST-3 and the values declared in the financial statements. In this regard, it is observed that during the relevant period, i.e., F.Y. 2009–10 and 2010–11, service tax liability arose only upon actual receipt of consideration and not on an accrual basis. Thus, it is an established fact that service tax is not payable on the amounts charged in the bills/invoices, but on the amounts actually received. It is a settled legal position that financial statements are prepared on an accrual basis, whereas service tax returns for the said period were filed on a realization basis. Thus, we observe that the Learned Adjudicating Authority has erred in treating the book turnover as the taxable value without excluding unrealized income.

18.2. Regarding the liability of service tax on the amounts shown in the books of accounts, it is observed that the appellant are engaged in providing taxable services under the category of Goods Transport Agency (GTA) service. It is observed that as per Rule 2(1)(d)(v) of the Service Tax Rules, 1994, the liability to pay service tax in respect of GTA services is cast upon the recipient of service, subject to the condition that the consignor or consignee falls within any of the specified categories mentioned therein. As per the said rule, where the consignor or consignee belongs to any of the seven specified categories, the person liable to pay freight is deemed to be the person liable to pay service tax. In the present case from the facts available on record, we find that the appellant had primarily provided transportation services to persons falling under the specified categories and had duly issued consignment notes, thereby squarely qualifying as a Goods Transport Agency. Accordingly, we hold that in terms of Rule 2(1)(d)(v), the liability to discharge service tax was on the service recipient and not on the Appellant. Further, it is observed that an abatement of 75% of the gross value of taxable service is available in respect of services provided by a Goods Transport Agency, in terms of Notification No. 13/2008-ST dated 01.03.2008. The benefit of the said notification has not been extended to the Appellant in the impugned order, which is contrary to the applicable legal provisions. Thus, we find that non-consideration of the available abatement has resulted in an inflated and unsustainable demand.

18.3. It is observed that the Appellant has submitted a detailed reconciliation statement supported by ledger extracts of income and sundry debtors, bank statements evidencing actual receipts, and reconciliation correlating the P&L figures with the ST-3 returns at the time of investigation as well as Adjudication. They have also submitted a **certificate issued by an independent Chartered Accountant**. For ready reference, the said CA Certificate is extracted below;

M K K AGARWAL & ASSOCIATES

CHARTERED ACCOUNTANTS

[illegible]
KOLKATA – 700 [illegible]
Ph. No.- 9331077602
mukesh130691@gmail.com

TO WHOM IT MAY CONCERN

We have examined and verified the books of accounts, Audited Financial Statements, Service Tax records, ST-3 Returns, and other relevant documents of **M/s Scorpion Express Private Limited** (Hereinafter referred to as the **Company**), having their registered premises at Ashok Cinema Building, Budh Marg, Patna – 800001, having registration under erstwhile Service Tax regime bearing Registration No. **AAJCS7860CST001 for the Financial Year 2009-10 to 2012-13 (referred as 'Relevant Period' hereinafter).**

The Company is primarily engaged in providing services classifiable under the category of **"Cargo Handling", "Courier", "Transport of Goods by Road (GTA)" and "Clearing and Forwarding Agency (C&F)"**. We further certify that we have reconciled the gross turnover as reflected in the Audited Financial Statements with the taxable value disclosed in the ST-3 Returns filed by the Company for the Relevant Period. The reconciliation statements are annexed herewith as **Annexure** – A to D.

Upon such reconciliation and verification, we observed that the differences between the turnover reflected in the Financial Statements and the turnover disclosed in the ST-3 Returns were mainly attributable to the following reasons:

- **Difference in Method of Disclosure:** Certain receipts and accounting entries were disclosed differently in the Annual Financial Statements vis-à-vis the taxable value reported in the ST-3 Returns in accordance with the provisions of the Finance Act, 1994 and the applicable Service Tax Rules.
- **Liability under GTA Services:** In respect of Goods Transport Agency (GTA) Services, the liability to discharge Service Tax was payable by the service recipient under the Reverse Charge Mechanism, and accordingly such amounts were not liable to Service Tax in the hands of the Company.
- **Availment of Abatement under GTA Services:** The Company had availed eligible abatement of 75% of the gross amount charged under GTA Services in accordance with the applicable exemption notifications prevailing during the relevant period and accordingly Service Tax was discharged on the taxable portion only.

M K K AGARWAL & ASSOCIATES

CHARTERED ACCOUNTANTS

[illegible]
KOLKATA – 700 [illegible]
Ph. No.- 9331077602
mukesh130691@gmail.com

Based on the records and documents produced before us and subject to the explanations and information provided by the management, we hereby certify that the **Company has duly discharged the applicable Service Tax liability during the Relevant Period** in regard to the output service as disclosed in Audited Financial Statement in accordance with the provisions of the Finance Act, 1994 and the rules made thereunder.

We conducted our examination of the relevant documents for the purpose of this certificate in accordance with the Guidance note on "Report and Certificates for special purposes" issued by the Institute of the Chartered Accountants of India. The Guidance note requires that we comply with the ethical requirements of the code of ethics issued by the Institute of the Chartered Accountants of India. We have complied with the relevant applicable requirements of the Standard of the quality Control and other assurance and related services engagements.

This certificate has been prepared for and only for use by the company for the purpose of submission to Hon'ble Customs, Excise & Service Tax Appellate Tribunal and for no other purpose. We do not accept or assume any liability or duty of care for any other purposes or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

For M K K Agarwal and Associates
Chartered Accountants
FRN: 328816E

Mukesh Agarwal
Proprietor
(Membership No 307273)
Date: 11/05/2026
UDIN- [illegible]

18.4. It is observed that the Ld. Adjudicating authority has not examined the documents submitted by the appellant. Such non-consideration of relevant material evidence amounts to violation of the principles of natural justice and renders the Impugned Order arbitrary and unsustainable. In view of the above findings, we hold that the demand of Service Tax of Rs. 57,23,533/- confirmed on the alleged difference between the ST-3 and the values declared in the financial statements for the Financial Years 2009-10 to 2012-13, is not sustainable and hence we set aside the same.

19. Regarding the demand of service tax amounting to Rs. 11,17,742/-, confirmed on account of short payment of Service Tax due to change of rate of tax from 10.3% to 12.36%, we find that the said allegation is factually incorrect. It is on record that for the return periods **October 2008 to March 2009** and **April 2009 to September 2009**, the appellant has discharged its service tax liability at the rate of **12%** on all amounts received on or after 24.02.2009 for the service rendered before 24.02.2009. Further, they have also submitted a **certificate issued by an independent Chartered Accountant**. For ready reference, the said CA Certificate is extracted below;

M K K AGARWAL & ASSOCIATES
CHARTERED ACCOUNTANTS
[illegible], SHRUTI APARTMENT
KOLKATA – 700 0[illegible]
Ph. No.- 9331077602
mukesh130691@gmail.com

TO WHOM IT MAY CONCERN

We have examined and verified the books of accounts, Audited Financial Statements, Service Tax records, ST-3 Returns, and other relevant documents of **M/s Scorpion Express Private Limited** (Hereinafter referred to as the **Company**), having their registered premises at Ashok Cinema Building, Budh Marg, Patna – 800001, having registration under erstwhile Service Tax regime bearing Registration No. **AAJCS7860CST001 for the Financial Year 2008-09 to 2009-10 (referred as 'Relevant Period' hereinafter).**

Based on our examination of the aforesaid records and on the basis of the information and explanations furnished before us by the management of the Company, we hereby certify as under:

1. That the Company had rendered taxable services prior to 24.02.2009, in respect of which certain payments/consideration were received on or after 24.02.2009.
2. That we have specifically verified the receipts pertaining to such services and the corresponding discharge of Service Tax liability thereon from the ST-3 Returns, books of accounts and statutory records maintained by the Company.
3. That upon such verification, it is observed that the Company has discharged Service Tax on the aggregate amount of Rs. 5,13,31,990/- received on or after 24.02.2009 at the rate of 12% plus applicable Education Cess and Secondary & Higher Education Cess aggregating to 12.36%.
4. That the aforesaid Service Tax payments are duly reflected in the ST-3 Returns filed by the Company for the relevant return periods and are also duly reconciled with the books of accounts and financial records maintained in the ordinary course of business.
5. Based on the records and documents produced before us, we certify that Service Tax liability on the aforesaid receipts has been duly discharged at the applicable rate of 12.36% as summarized in table below.

M K K AGARWAL & ASSOCIATES
CHARTERED ACCOUNTANTS
[illegible], SHRUTI APARTMENT
KOLKATA – 700 0[illegible]
Ph. No.- 9331077602
mukesh130691@gmail.com

Amount on which Service has been paid @12.36% after 24.02.2009	
Month	Amount
Feb'09	1,63,56,275
Mar'09	2,08,07,204
Apr'09	70,89,327
May'09	47,87,206
Jun'09	13,74,347
Jul'09	8,71,017
Aug'09	37,924
Total	**5,13,31,990**

We conducted our examination of the relevant documents for the purpose of this certificate in accordance with the Guidance note on "Report and Certificates for special purposes" issued by the Institute of the Chartered Accountants of India. The Guidance note requires that we comply with the ethical requirements of the code of ethics issued by the Institute of the Chartered Accountants of India. We have complied with the relevant applicable requirements of the Standard. of the quality Control and other assurance and related services engagements.

This certificate has been prepared for and only for use by the company for the purpose of submission to Hon'ble Customs, Excise & Service Tax Appellate Tribunal and for no other purpose. We do not accept or assume any liability or duty of care for any other purposes or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

For M K K Agarwal and Associates
Chartered Accountants
FRN: [illegible]

Mukesh Agarwal
Proprietor
(Membership No. [illegible])
Date:- 11/06/2026
UDIN- 26307774BIDGFK8649

19.1. Thus, we hold that the demand of service tax amounting to Rs. 11,17,742/-, confirmed in the impugned order is not sustainable and hence we set aside the same.

20. Regarding the demand of service tax of Rs. 14,12,523/- has been confirmed on the allegation of non-payment of Service Tax liability under Cargo Handling services, we find that the demand has been confirmed on the allegation that the activities undertaken by the appellant were in the nature of Clearing & Forwarding Agent Service. However, we find that the said allegation is not supported by any evidence. It is observed that the Appellant was primarily engaged in handling export cargo belonging to M/s Alkem Labs Ltd., Mumbai, which included activities such as, **packing, repacking, loading, unloading, transportation of export consignments, booking of cargo at ports, completion of export formalities and payment of freight and port related charges.** These activities are essentially connected with export cargo handling and cannot be classified as "Clearing & Forwarding Agent Service". On perusal of the contracts dated 01.10.2010 and 01.10.2011, we find that the said contracts were meant for handling of export consignments meant for shipment outside India. Therefore, it is observed that the services rendered by the Appellant are outside the ambit of taxable service. We find that the Learned Commissioner has merely relied upon the title of the agreement described as "Contract for Clearing & Forwarding Agency" and concluded that the services fall under C&F category. Such finding is legally untenable. It is a settled principle of law that classification of taxable services must be determined

based on the actual nature and substance of activities performed and not merely on nomenclature or title of the agreement. Thus, we find that the demand has been erroneously raised and confirmed on an amount of ₹1,37,13,817/-, upon which Service Tax liability of ₹14,12,543/- has been computed. It is observed that the aforesaid amount does not represent consideration towards any taxable service rendered by the Appellant, but pertains purely to reimbursement of actual expenses incurred by the Appellant on behalf of Alkem Laboratories Limited in the course of execution of the assignment. The said reimbursements were received on actual basis towards port charges, freight paid to shipping lines/transporters, statutory levies, and various third-party expenses incurred by the Appellant as a pure agent of the client, without any element of profit, commission, or value addition. The said amounts were incurred exclusively on behalf of the client and were subsequently recovered at actuals strictly in terms of the agreement dated 01.10.2010 and 01.10.2011 executed between the parties. In support of their claim, they have also submitted a **certificate issued by an independent Chartered Accountant**. For ready reference, the said CA Certificate is extracted below;

M K K AGARWAL & ASSOCIATES

CHARTERED ACCOUNTANTS

82, BEE HIVE GARDENS, SHRISTI APARTMENT
KOLKATA – 700 056
Ph. No.- 9331077602
mukesh130691@gmail.com

TO WHOM IT MAY CONCERN

We have examined and verified the books of accounts, Audited Financial Statements, Service Tax records, ST-3 Returns, and other relevant documents of ***M/s Scorpion Express Private Limited*** (Hereinafter referred to as the **Company**), having their registered premises at Ashok Cinema Building, Budh Marge, Patna – 800001, having registration under erstwhile Service Tax regime bearing Registration No. **AAJCS7860CST001 for the Financial Year 2011-12 to 2012-13 (referred as 'Relevant Period' hereinafter).**

Based on our verification of the records and explanations furnished before us, we hereby certify as under:

1. That during the Relevant Period, the Company was engaged in activities relating to handling of export consignments of M/s Alkem Laboratories Limited, Mumbai, including packing, repacking, loading, unloading, transportation of export cargo, booking of consignments at ports, completion of export formalities and payment of freight, port charges and other incidental expenses connected with export of goods. Upon verification of the agreements dated 01.10.2010 and 01.10.2011 and related records, the said goods handled by the Company were export consignments meant for shipment outside India.

2. That upon verification of the books of accounts, invoices, reimbursement bills and supporting documents, it is observed that an amount aggregating to Rs. 1,37,13,817/- received from M/s Alkem Laboratories Limited during the Relevant Period represents reimbursement of actual expenses incurred by the Company on behalf of the said client towards freight charges paid to shipping lines/transporters, port charges, statutory levies, documentation charges and other third-party expenses incurred exclusively for execution of export assignments.

3. That it was also observed that as per the accounting treatment in the books of accounts that the aforesaid amounts have not been accounted for as income from services rendered by the Company. The same have been recorded as reimbursement/recovery of expenses incurred on behalf of the client and recovered strictly on actual basis without any markup, commission, profit element or value addition. It is further observed that the Company merely acted as a

Kolkata

M K K AGARWAL & ASSOCIATES

CHARTERED ACCOUNTANTS

82, BEE HIVE GARDENS, SHRISTI APARTMENT
KOLKATA – 700 056
Ph. No.- 9331077602
mukesh130691@gmail.com

facilitator/pure agent while making such payments on behalf of M/s Alkem Laboratories Limited.

4. Therefore, based on the books of accounts and other supporting records and explanations furnished before us, it is certified that the aforesaid reimbursements do not constitute consideration towards taxable output services rendered by the Company and are in the nature of pure reimbursements recoverable on actual basis.

We conducted our examination of the relevant documents for the purpose of this certificate in accordance with the Guidance note on "Report and Certificates for special purposes" issued by the Institute of the Chartered Accountants of India. The Guidance note requires that we comply with the ethical requirements of the code of ethics issued by the Institute of the Chartered Accountants of India. We have complied with the relevant applicable requirements of the Standard of the quality Control and other assurance and related services engagements.

This certificate has been prepared for and only for use by the company for the purpose of submission to Service tax authorities and for no other purpose. We do not accept or assume any liability or duty of care for any other purposes or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

For M K K Agarwal and Associates
Chartered Accountants
FRN: 328816E

Kolkata

Mukesh Agarwal
Proprietor
(Membership No 307279)
Date:- 11/05/2026
UDIN: 26307279BSNTHW5298

20.1. Accordingly, we hold that such reimbursements cannot form part of the taxable value for the purpose of levy of Service Tax. Thus, we hold that the demand of service tax of Rs. 14,12,523/- confirmed in the impugned order is not sustainable and hence we set aside the same.

21. Regarding the demand on advances, we find that the amount of Rs. 6,00,000/- received from M/s Rakesh Trading Company was an unsecured loan transaction and not consideration towards any taxable service. To substantiate the same, the appellant has produce confirmation from M/s Rakesh Trading Company and relevant ledger account. In absence of any material establishing provision of taxable service, we hold that no service tax liability is leviable on the said amount.

21.1. We find that the advances amounting to Rs. 39,61,658/- pertained to GTA services covered under the Reverse Charge Mechanism in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994, wherein the liability to discharge service tax rests upon the service recipient. In support of their claim, they have also submitted a **certificate issued by an independent Chartered Accountant**. For ready reference, the said CA Certificate is extracted below;

M K K AGARWAL & ASSOCIATES
CHARTERED ACCOUNTANTS
82, BEE HIVE GARDENS, [illegible] APARTMENT
KOLKATA – 700 056
Ph. No.- 9331077602
mukesh130691@gmail.com

TO WHOM IT MAY CONCERN

We have examined and verified the books of accounts, Audited Financial Statements, Service Tax records, ST-3 Returns, and other relevant documents of ***M/s Scorpion Express Private Limited*** (Hereinafter referred to as the **Company**), having their registered premises at Ashok Cinema Building, Budh Marge, Patna – 800001, having registration under erstwhile Service Tax regime bearing Registration No. **AAJCS7860CST001 for the Financial Year 2008-09 to 2011-12 (referred as 'Relevant Period' hereinafter).**

Based on our verification of the records and explanations furnished before us, we hereby certify as under:

1. That during the relevant period, the company had received certain amounts which were reflected in the books under the head "Advance from Custumers". The details are as under:

Period	Advance Amount
2008-09	9,84,503
2009-10	13,64,712
2010-11	77,69,841
2011-12	6,78,490
Total	1,07,97,546

2. That upon reconciliation and verification of the aforesaid advances with the underlying records and documents, it is observed that an amount aggregating to Rs. 39,61,658/- pertains to Goods Transport Agency (GTA) services provided to persons covered under the categories specified in Rule 2(1)(d)(v) of the Service Tax Rules, 1994.

M K K AGARWAL & ASSOCIATES
CHARTERED ACCOUNTANTS
82, BEE HIVE GARDENS, [illegible] APARTMENT
KOLKATA – 700 056
Ph. No.- 9331077602
mukesh130691@gmail.com

3. Accordingly, in respect of the aforesaid amount of Rs. 39,61,658/-, the liability to discharge service tax was required to be borne by the respective service recipients under the Reverse Charge Mechanism, in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994 read with the applicable provisions of the Finance Act, 1994, and not by the Company.

We conducted our examination of the relevant documents for the purpose of this certificate in accordance with the Guidance note on "Report and Certificates for special purposes" issued by the Institute of the Chartered Accountants of India. The Guidance note requires that we comply with the ethical requirements of the code of ethics issued by the Institute of the Chartered Accountants of India. We have complied with the relevant applicable requirements of the Standard of the quality Control and other assurance and related services engagements.

This certificate has been prepared for and only for use by the company for the purpose of submission to Hon'ble Customs, Excise & Service Tax Appellate Tribunal and for no other purpose. We do not accept or assume any liability or duty of care for any other purposes or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

For M K K Agarwal and Associates
Chartered Accountants
FRN: 329816E

Mukesh Agarwal
Proprietor
(Membership No 307279)
Date:- 11/05/2026
UDIN:- 26307299TR6OTJ2503

21.2. Accordingly, we hold that no service tax liability can be fastened upon the appellant in respect of the aforesaid advances.

22. Demand amounting to Rs. 5,589/- has been confirmed on the allegation of Non-payment of service tax on Detention Charges. The detention charges collected by the Appellant are not liable to service tax as the same are in the nature of penal charges and do not constitute consideration for any taxable service.

23. Regarding the demand of service tax of Rs. 17,88,258/-confirmed on the allegation that some of invoices based on which Cenvat credit was availed by the appellant are not in appellant's name, we find that the disputed invoices were issued in the names of entities such as Scorpion Express, Scorpion Logistics, Scorpion Courier, Scorpion Cargo, as well as in the names of certain individuals namely Mr. Prakash N.A. Singh, Ms. Jyoti P. Singh, Ms. Shalini J. Singh, Mr. Anil Tiwari, Mr. Vijay Rahate, etc. In this regard, we find that M/s Scorpion Express Private Limited was operating through various business divisions namely: **1) Scorpion Express, 2) Scorpion Cargo, 3) Scorpion Logistics and 4) Scorpion Courier.** The impugned invoices referred to in the SCN were issued in the names of the aforesaid Divisions operating from different locations. The said Divisions were subsequently brought under centralized service tax registration obtained by the Appellant. It is not disputed that the services covered under the disputed invoices were duly received for the business activities of the Appellant and the corresponding expenditure was properly recorded and accounted for in the books of account maintained by the Appellant. We also find that the appellant has obtained centralized registration on 28.10.2010. We observe that denial

of CENVAT Credit merely on account of procedural or clerical discrepancies in the names appearing on the invoices is contrary to the settled legal position. It is a settled principle that substantive benefit of CENVAT Credit cannot be denied when the receipt of input services, payment of service tax by the service provider, and utilization of such services for output taxable services are not in dispute. In the present case, the Department has not disputed the actual receipt and use of the services by the Appellant in the course of its business activities. Thus, we hold that merely because certain invoices were issued in the trade names/divisions of the Appellant, the substantive benefit of CENVAT Credit cannot be denied when receipt and utilization of taxable services stands established. Accordingly, we hold that the appellant has rightly taken the Cenvat credit and set aside the demand confirmed in the impugned order on this count.

24. Regarding the demand of Rs. 14,69,628/- confirmed on the allegation of irregular Cenvat Credit availed on the basis of photocopies of invoices, we find that, the appellant currently possesses the original invoices and the same are available with them for verification. In support of this claim, the appellant enclosed a CA certificate as well as some sample invoices for perusal. The said CA Certificate is extracted below for ready reference:

M K K AGARWAL & ASSOCIATES
CHARTERED ACCOUNTANTS
82, BEE HIVE GARDENS, SHRISTI APARTMENT
KOLKATA – 700 056
Ph. No.- 9331077602
mukesh130691@gmail.com

TO WHOM IT MAY CONCERN

This is to certify that we have examined and verified the books of accounts, Audited Financial Statements, Service Tax records, ST-3 Returns, Cenvat records, ledger accounts, purchase registers, bank statements, sample invoices and other relevant documents of **M/s *Scorpion Express Private Limited*** (Hereinafter referred to as the **Company**), having their registered premises at Ashok Cinema Building, Budh Marge, Patna – 800001, having registration under erstwhile Service Tax regime bearing Registration No. **AAJCS7860CST001** in connection with the availment of Cenvat Credit under the provisions of the Cenvat Credit Rules, 2004.

Based upon our verification of the records produced before us in relation to allegation of irregular Cenvat credit amounting to Rs. 14,69,628/- as per SCN No. V-30/Pat/SCN-Cell/ST/Adjn/12/8610 dated 23/10/2013 of and according to the information and explanations furnished by the Company, we hereby certify as under:

1. That the company are in possession of all the original invoices as alleged in the SCN. Details of such invoices are enclosed herewith and marked as **Annexure-A.**

2. That the Company had availed Cenvat Credit in respect of input services received during the relevant period and the corresponding transactions are duly recorded in the regular books of accounts maintained in the ordinary course of business.

3. That upon verification of the books of accounts, ledger accounts, purchase/service registers and supporting documents, it is observed that the input services in respect of which Cenvat Credit was availed were actually received and utilized for providing taxable output services of the Company.

4. That the invoices on the basis of which Cenvat Credit was availed pertain to genuine business transactions undertaken by the Company with respective service providers

M.K.K. AGARWAL & ASSOCIATES Kolkata Chartered Accountants

M K K AGARWAL & ASSOCIATES
CHARTERED ACCOUNTANTS
82, BEE HIVE GARDENS, SHRISTI APARTMENT
KOLKATA – 700 056
Ph. No.- 9331077602
mukesh130691@gmail.com

and the corresponding payments against such invoices are duly reflected in the books of accounts and banking records of the Company.

We conducted our examination of the relevant documents for the purpose of this certificate in accordance with the Guidance note on "Report and Certificates for special purposes" issued by the Institute of the Chartered Accountants of India. The Guidance note requires that we comply with the ethical requirements of the code of ethics issued by the Institute of the Chartered Accountants of India. We have complied with the relevant applicable requirements of the Standard of the quality Control and other assurance and related services engagements.

This certificate has been prepared for and only for use by the company for the purpose of submission to Hon'ble Customs, Excise & Service Tax Appellate Tribunal and for no other purpose. We do not accept or assume any liability or duty of care for any other purposes or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

For M K K Agarwal and Associates
Chartered Accountants
FRN: 328816E

M.K.K. AGARWAL & ASSOCIATES Kolkata Chartered Accountants

Mukesh Agarwal
Proprietor
(Membership No 307279)
Date:- 11/05/2026
UDIN:-26307279CUAGIT3918

24.1. We find that the CA Certificate categorically states that the original invoices are available with the appellant for verification and the CA has certified its correctness. Further, we find that the department has nowhere disputed the availment of Cenvat credit and utilization of the same in relation to their business. In view thereof, we hold the allegation that Cenvat Credit has been irregularly availed solely on the basis of photocopies of invoices is unsustainable both in law and on facts. Accordingly, we set aside the demand confirmed in the impugned order on this count.

25. Regarding the demand of Rs. 5,16,465/- confirmed on the allegation of irregular Cenvat Credit on the basis of non-production of invoices, we find that that the original invoices, books of accounts and financial statements of the Appellant were duly audited and certified by an independent Chartered Accountant in accordance with the applicable statutory requirements by the way of verification of these invoices as well as related documents. The Chartered Accountant has duly verified and certified that all the invoices are duly available with appellant. Further, to support such arguments, the appellant enclosed a CA certificate along with sample copies of such invoices. For ready reference, the said CA Certificate is extracted below:

M K K AGARWAL & ASSOCIATES
CHARTERED ACCOUNTANTS
82, BEE HIVE GARDENS, SHRISTI APARTMENT
KOLKATA – 700 056
Ph. No.- 9331077602
mukesh130691@gmail.com

TO WHOM IT MAY CONCERN

This is to certify that we have examined and verified the books of accounts, Audited Financial Statements, Service Tax records, ST-3 Returns, Cenvat records, ledger accounts, purchase registers, bank statements and other relevant documents of ***M/s Scorpion Express Private Limited*** (Hereinafter referred to as the **Company**), having their registered premises at Ashok Cinema Building, Budh Marge, Patna – 800001, having registration under erstwhile Service Tax regime bearing Registration No. **AAJCS7860CST001** in connection with the availment of Cenvat Credit under the provisions of the Cenvat Credit Rules, 2004.

Based upon our verification of the records produced before us in relation to allegation of irregular Cenvat credit amounting to Rs. 3,16,465/- as per SCN No. V-30/Pat/SCN-Cell/ST/Adjn/12/8610 dated 23/10/2013 of and according to the information and explanations furnished by the Company, we hereby certify as under:

1. That the company are in possession of all the original invoices as alleged in the SCN. Details of such invoices are enclosed herewith and marked as **Annexure-A.**
2. That the Company had availed Cenvat Credit in respect of various input services received during the relevant period and the corresponding transactions were duly accounted for in the regular books of accounts maintained in the ordinary course of business.
3. That upon verification of the expense invoices, ledger accounts, expense records, service tax records and financial statements of the Company, it is observed that the expenditure relating to the impugned Cenvat Credit, including the corresponding service tax component, has been duly recorded and reflected in the books of accounts and statutory records of the Company.
4. That the input services in respect of which Cenvat Credit was availed were utilized in connection with the provision of taxable output services of the Company and the corresponding accounting entries are identifiable and traceable from the books of accounts maintained by the Company.

M.K.K. AGARWAL & ASSOCIATES
Kolkata
Chartered Accountants

M K K AGARWAL & ASSOCIATES
CHARTERED ACCOUNTANTS
82, BEE HIVE GARDENS, SHRISTI APARTMENT
KOLKATA – 700 056
Ph. No.- 9331077602
mukesh130691@gmail.com

5. That although invoices pertaining to the impugned Cenvat Credit could not be produced during the course of investigation/adjudication or invoices reproduced on the basis of photocopies, on verification, it is certified the related transactions are duly supported by original invoices, corresponding ledger entries, payment records, expense accounts and other accounting documents maintained by the Company in the ordinary course of business.

We conducted our examination of the relevant documents for the purpose of this certificate in accordance with the Guidance note on "Report and Certificates for special purposes" issued by the Institute of the Chartered Accountants of India. The Guidance note requires that we comply with the ethical requirements of the code of ethics issued by the Institute of the Chartered Accountants of India. We have complied with the relevant applicable requirements of the Standard of the quality Control and other assurance and related services engagements.

This certificate has been prepared for and only for use by the company for the purpose of submission to Hon'ble Customs, Excise & Service Tax Appellate Tribunal and for no other purpose. We do not accept or assume any liability or duty of care for any other purposes or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

For M K K Agarwal and Associates
Chartered Accountants
FRN: 328816E

Mukesh Agarwal
Proprietor
(Membership No 308239)
Date:- 11/05/2026
UDIN:-26308239SKIVVN7460

25.1. We observe that the substantive benefit of CENVAT Credit cannot be denied when receipt and utilization of taxable services stands established. Accordingly, we hold that the appellant has rightly taken the Cenvat credit and set aside the demand confirmed in the impugned order on this count.

26. Regarding the demand of Rs. 10,623/- confirmed on the allegation of non-payment of interest for late deposit of service tax liability, we find that the appellant has already made the said payment voluntarily for the delay in payment of service tax. Hence, there remains no outstanding liability towards interest as alleged in the impugned order and hence we set aside this demand confirmed in the impugned order.

Issues on which Demand confirmed with respect to SCN-II dated 16.10.2014 are as under:

Sl No.	Description	Year				Total
		2008-09	2009-10	2010-11	2011-12	
	Demand on output services					
J.	ST - Mismatch in ST3 and BoA	1,25,33,674.00	1,53,53,265.00	-	-	2,78,86,939.00
K.	ST - Violation of Rule 3 of POTR	-	-	2,36,20,541.00	2,76,05,957.00	5,12,26,498.00
	Total Demand Amount					7,91,13,437.00

27.1. From the Table furnished above, we find that Rs.2,78,86,939/- has been confirmed on account of mismatch in ST-3 returns filed by the appellant and the figures available in their Books of Account. Rs.5,12,26,498/- has been confirmed on account of violation of Rule 3 of Point of Taxation Rules. We find that that both these issues were raised in the earlier SCN I also, by invoking the extended period of limitation. Again extended period of limitation has been invoked to demand the service tax in the second show cause notice, which is legally not permissible.

27.2. We find that the second show cause notice has also been issued on the basis of the same allegations by invoking the extended period of limitation. We observe that the department was fully aware of the relevant facts from earlier proceedings, records, returns, and disclosures made by the appellant from time to time. Once the material facts were already within the knowledge of the department, issuance of a subsequent notice on the very same set of facts, without any fresh tangible evidence indicating fraud, collusion, wilful misstatement, or suppression of facts with intent to evade tax, is not permissible in law. The said view has been upheld in the case of Nizam sugar Factory reported in 2006 (197) ELT 149 (SC). The relevant part of the said decision is reproduced below for ready reference:

27.3. We observe that the ratio of the decision of the Hon'ble Apex Court cited supra is squarely applicable to the facts and circumstances of the present case. Accordingly, by relying on the said decision, we hold that the demands raised and confirmed in the second SCN is legally not sustainable on the ground of limitation. Hence, the demand is liable to be set aside on this ground itself.

28. Regarding merits of the demand raised in the second Notice, we find that the said demand has been confirmed in the impugned Order-in-Original without due consideration of the documents, reconciliations, and detailed submissions furnished by the Appellant during the course of adjudication proceedings. In the impugned Order-in-Original, the Ld. Adjudicating Authority has denied the benefit of liability payable under Reverse Charge Mechanism (RCM) in respect of GTA services on the ground that the consignment notes were not submitted by the Applicant. Further, the Ld. Adjudicating Authority has denied the benefit of abatement on the ground that

the Applicant had availed CENVAT credit during the relevant period.

28.1. In this regard, a perusal of the aforesaid tables in paras 11 and 12.1 clearly reveals that the Show-Cause Notice has proceeded on an erroneous presumptive by treating the entire amount reflected as sundry debtors as on 31.03.2011 as consideration allegedly received during the Financial Year 2011–12. We find that the said assumption is entirely without any cogent basis, documentary evidence, or independent verification and has been made merely on conjectures and surmises. It is observed that mere reflection of an amount under the head "Sundry Debtors" in the books of accounts does not ipso facto establish actual receipt of consideration during the relevant period. It is an admitted fact that service tax liability under the provisions of the Finance Act, 1994 was governed by the receipt-based system prior to the introduction of the Point of Taxation Rules. Accordingly, we hold that service tax liability could be fastened upon the appellant only upon actual receipt of consideration for the taxable services rendered. Hence, we hold that the demand confirmed by taking the sundry Debtors as 'Taxable Value' received for the purpose of demanding service tax is not sustainable.

<u>On GTA Service - liability is on Service recipient</u>

28.2. Regarding Service Tax liability on GTA service, we observe that the Appellant was engaged in providing taxable services under the category of Goods Transport Agency (GTA) service. As discussed in pare 14.3 supra, the liability to pay service tax on the Transportation of Goods by Road service rendered by the appellant is on the receiver of service as per Rule 2(1)(d)(v). Since the appellant have provided service to mainly body corporates (specified category) who paid freight to them, we hold that the receivers are the persons liable to pay service tax under Rule 2(1)(d) (v) of the Service Tax Rules. Accordingly, we hold that service liability on transportation service cannot be demanded from the appellant and hence we set aside the same.

For Disallowance of benefit for availment of CENVAT Credit

28.3. In this regard, we observe that the appellant are engaged in providing the service under other category of ***Clearing & Forwarding Agent, Courier Agency, Cargo Handling, apart from Transport of Goods by Road***. The appellant has been duly discharging the service tax liability under the abovementioned categories of service after claiming abatement benefit vide Notification No. 1/2006-ST dated 01.03.2006 as amended for the period prior to 01.07.2012. Notification No. 1/2006-S.T. dated 1-3-2006 as amended provides that service provider will be entitled to claim the benefit of abatement subject to the condition that the CENVAT credit of duty on input or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. The SCN alleged that the appellant claimed abatement and availed Cenvat Credit for the purpose of offsetting the liability of GTA services provided during the relevant period. Therefore, the appellant do not satisfy the conditions laid down in Notification 1/2006-ST dated 01.03.2006. In this regard, we observe that the appellant are not only engaged in providing the service under the above category of service, but also engaged in providing other services like **'Clearing & Forwarding Agent', 'Courier Agency'** and **'Cargo Handling'** on which they are duly discharging their service tax liability on 100% of the taxable value at the full rate of Service Tax, prevalent during the said period. In terms of the said notification, no credit of tax paid on input, input services, capital goods used for providing such output service on which the benefit of abatement is taken, would not be available. Therefore, credit on input services used in providing such output service on which abatement is claimed, is denied but the notification does not preclude the right of the appellant in relation to availing credit on input service used in providing other taxable output service, on which abatement is mainly on input services which are used for providing **'Clearing & Forwarding Agent', 'Courier Agency'** and **'Cargo Handling'** on which tax is discharged by the appellant on 100% of the taxable value. It is an admitted fact that the appellant had not availed the credit on input services which are exclusively used in providing such taxable service on which abatement is claimed. Thus, we hold that the benefit of abatement availed by the appellant is not violation of the terms and conditions specified in the said notification and accordingly, we hold that the allegation levied in the impugned SCN is baseless. Hence, we set aside the demand confirmed in the impugned order on this count.

29. Regarding imposition of penalty, we find that the impugned Order has imposed equal penalty under Section 78 of the Finance Act, 1994. Penalty under section 78 is imposable only for willful violation or intention to evade taxes invocation of extended period. In the present case, we find that

the impugned order fails to bring on record any evidence to the effect that the appellant have willfully evaded payment of service tax. Hence, we hold that the charges of suppression and willful violation are not established. Accordingly, we hold that the penalty imposed on the appellant as per section 78 of the Finance Act, 1994 is legally not sustainable and hence we set aside the same.

30. In the result, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any as per law.

(Order Pronounced in Open court on 25.05.2026)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP