



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर  
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH  
पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद - 380009  
FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD - 380009  
ई-मेल/E-Mail : ofadjhq-cgstamdnorth@gov.in, oaahmedabad2@gmail.com  
फोन/Phone : 079-27544599 फैक्स/Fax : 079-27544463



निवन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-75/OA/2020

आदेश की तारीख/Date of Order : - 10.12.2021

जारी करने की तारीख/Date of Issue :- 10.12.2021

DIN No: 20211264WT0000520159

द्वारा पारित/Passed by:-

आर गुलजार बेगम .R /GULZAR BEGUM

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 28/JC/GB/2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से) 60 साठ (दिन के अन्दर आयुक्त) अपील, (केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015 को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगाना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क) अपील (नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1)

उक्त अपील की प्रति।

## BRIEF FACSTS OF THE CASE

M/s. Delhi Bombay Road Carrier, B/12, C/O. Punjab Motors House, Opp. Ujala Hotel, Sarkhej Cross Road, Sarkhej, Ahmedabad (hereinafter referred to as "the said assessee" for the sake of brevity) is engaged in providing GTA services and for the same was registered with Service Tax Department having Registration (ST-2) No. BCXPS5642EST001. An analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 to 2015-16, and details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC). On going through the third party data received from CBDT of the said assessee for the F.Y. 2014-15 to 2015-16, the Sales/Gross Receipt from Services (Value from ITR) are not tallied with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2014-15 to 2015-16. The said assessee have declared less/not declared any taxable value in their Service Tax Return (ST-3) for the F.Y. 2014-15 to 2015-16 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2014-15 to 2015-16. The details of difference as per CBDT data for the F.Y. 2014-15 to 2015-16 are as detailed below.

Sr. No.	Financial Year	Amount as per Income Tax Return(ITR)/ Form 26AS (in Rs.)	Taxable value as per ST-3 Returns (in Rs.)	Differential amount (Less amount shown in ST-3 Return) (in Rs.)	Service Tax (in Rs.)
01	2014-15	2,87,83,807	1,52,100	2,86,31,707	35,38,879/-
02	2015-16	3,42,22,792	2,01,600	3,40,21,192	47,46,618/-
	<b>TOTAL</b>			<b>6,26,52,899</b>	<b>82,85,497/-</b>

2. A clarification regarding the above said differential value along with documents were called for from the said assessee for assessment purpose vide Supdt's letter F.No. CGST-06/04-14/TPD/AR-I/2018-19 dated 10/15.05.2019 followed by reminders dated 30.05.2019 & 18.09.2020. The said assessee has been asked to furnish the reason for the difference between taxable value shown in ST-3 Return vis-à-vis Income Tax Return filed by the said assessee for the F.Y. 2014-15 to 2015-16 alongwith submission of self-certified documents such as audited balance sheet, Profit & Loss account, ledgers, gross trial balance, ITR, Form 26AS, ST-3 Return and details of all the sales invoices issued during F.Y. 2014-15 to 2015-16 but the said assessee has neither produced any documentary evidences of the differential value nor submitted any reply. This act of non-cooperation of the said assessee has contravened the provisions of Section 72 of the Finance Act, 1994 and thus rendered themselves liable for penal action under Section 77 of Finance Act, 1994. Thus the said assessee have failed to pay/short paid/deposit service tax to the extent of Rs. 82,85,497/- on the difference of taxable value during the period F.Y. 2014-15 to 2015-16 by declaring less value in their ST-3 Returns vis-a-vis their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services received/provided by them with an intent to evade payment of service tax. Thus, the said assessee have failed to

discharge the service tax liability of Rs. 82,85,497/- (inclusive of Edu. Cess and S & H Edu. Cess) worked out on value of Rs. 2,86,31,707/- and therefore, service tax is required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

3. In view of above, the said assessee have contravened the provisions of Section 66, Section 68 and Section 70 of Finance Act, 1994. It has been noticed that at no point of time, the said assessee has disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Service of the differential value that has come to the notice of the Department only after going through the Third Party CBDT data generated for the F.Y. 2014-15 to 2015-16. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc., based on mutual trust and confidence are in place. From the evidences, it is noticed that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 82,85,497/-. Thus, it appears that there is a deliberate withholding of essential and material information from the department about service provided and value realized by them. All these material information have been concealed from the department deliberately, consciously and purposefully to evade payment of service tax. The said assessee has not discharged their Service tax liability and hence is liable to pay interest under Section 75 of the Finance Act.

4. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appear to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. Moreover, in addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appears that the said assessee has willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of service tax rendering themselves liable for penalty under Section 78 of the Finance Act, 1994.

5. In view of the above Show Cause Notice STC/15-75/OA/2020 dated 29.09.2020 was issued to M/s. Delhi Bombay Road Carrier asking them show cause as to why;

(i) Differential amount of Service Tax amounting to Rs. 82,85,497/- (Rupees Eighty two lakhs Eighty five thousand Four hundred Ninety seven only) (inclusive of Edu. Cess and S&H Edu. Cess) short paid/not paid by them, should not be confirmed/demanded under proviso to Section 73(1) of the Finance Act, 1994.

(ii) interest at the appropriate rates should not be recovered from them as prescribed under Section 75 of the Finance Act, 1994 from the due date on which the Service Tax was liable to be paid till the date on which the said Service Tax is paid.

(iii) penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for the failure to make payment of service tax payable by them within prescribed time-limit.

(iv) penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for the failure to assess the correct tax liability.

(vi) penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 as amended for suppressing and not disclosing the value of the said taxable service provided by them before the department with an intent to evade payment of service tax.

#### DEFENCE REPLY

6. The said assessee vide letter dated Nil, received on 29.01.2021 by this office, submitted that they are in the business of providing "Goods transport Agency Service" in which they are not liable to collect service tax as per Notification No.30/2012-ST dated 20.06.2012. The service receiver is liable to pay service tax on Reverse Charge Mechanism. Major portion of the customers were registered parties, so they were liable to pay service tax. So assessee has shown only the amount of services provided to unregistered persons on which he was liable to pay tax in service tax returns and not the whole amount of services provided to registered persons which is creating difference between STR & ITR. They have also furnished copies of ITR, 26AS, and audited Balanced sheet along with reconciliation statement for 2014-15 & 2015-16. They have also bifurcated the total income received by them from their operations as under

Financial Year	2014-15	2015-16
GTA service to Corporate body	28632052	34028792
GTA service to unregistered persons other than corporate body	152100	201600
Total freight income earned	28783807	34222792

#### PERSONNEL HEARING

7. Personnel Hearing was granted to the said assessee on 23.09.2021. Shri Rahul K Bhagchandani, CA and duly authroised representative appeared on behalf of the assessee. He submitted written submissions and explained that they are paying service tax for which they are liable to pay and requested to drop the notice.

#### DISCUSSION AND FINDGS

8. I have carefully gone through the records of the case, submission made by the noticee in reply to the show cause notice and also during the course of personal hearing, Audited Balance Sheet, 26 A, ITR, copies of ledger accounts for the year 2014- & 2015-16. In the present case, Show Cause Notice has been issued to the assessee demanding Service Tax of Rs.82,85,497/- for the financial year 2014-15 and 2015-16 on the basis of data received from Income Tax authorities. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75

of the Finance Act, 1994 and penalty under Section 76, 77 and 78 of the Finance Act, 1994.

9. In reply to the show cause notice, the assessee has stated that they are in the business of providing "Goods transport Agency Service" in which he is not liable to collect service tax as per Notification No.30/2012-ST dated 20.06.2012. The service receiver is liable to pay service tax on Reverse Charge Mechanism. Major portion of the customers were registered parties, so they were liable to pay service tax. So assessee has shown only the amount of services provided to unregistered persons on which he was liable to pay tax in service tax returns and not the whole amount of services provided to registered persons which is creating difference between STR & ITR. Now I would like to go through the legal aspects of the taxability of GTA services.

Rule 2(d)(B)(V) of the Service Tax Rules, 1994 provided that;

- (d) "person liable for paying service tax", -
- (i) (B) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—
- (I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (III) any co-operative society established by or under any law;
- (IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- (V) any body corporate established, by or under any law; or
- (VI) any partnership firm whether registered or not under any law including association of persons; any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage : Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

10. Para 1(A)(ii) and Para II of Notification No. 30/2012-ST dated 20.06.2012 as amended provided that service tax payable on services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (c) any co-operative society established by or under any law;
- (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- (e) any body corporate established, by or under any law; or
- (f) any partnership firm whether registered or not under any law including association of persons;
- (II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :-

TABLE

Sl. No.	Description of Service	Percentage of service tax payable by the	Percentage of service tax payable by the

		person providing service	person receiving service
01	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	NIL	100%

11. As per provisions contained in Rule 2(d)(B)(V) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, service tax on GTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) and dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder is payable in RCM by the service recipient. The said assessee has claimed RCM tax liability under above categories in reconciliation statement certified by the chartered accountant. I find that the status of the service recipient as body corporate and the partnership firm is organizational and has been verified by chartered accountant and also supported by fourth digit of PAN.

12. On perusal of reconciliation statement, ledger accounts and financial records, I find that the assessee has income of Rs. 1,52,100/- from GTA services provided to proprietary concerns and Rs. 2,86,32,052/- provided to other than proprietary concern i.e. corporate body for the year 2014-15 and Rs.2,01,600/- and Rs.3,40,28,792/- respectively for the year 2015-16.

13. As per provisions contained in Rule 2(d)(B) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, service tax on GTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) or a dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder is payable in RCM by the service recipient. The Noticee has claimed RCM tax liability under above categories in reconciliation statement certified by the chartered accountant. I find that the status of the service recipient as body corporate and the partnership firm is organizational and has been verified by chartered accountant and also supported by details in separate sheet indicating party wise service provided to body corporate and the partnership firms and total of such separate sheet matches with value taken in reconciliation statement. Therefore, in the above backdrop I accept bifurcation of GTA service provided by noticee to the body corporate and the partnership firms and the GTA service provided by the noticee to above extent are liable to be paid in RCM by the service recipients.

Description	2014-15	2015-16
Total income as per ITR and SCN	28783807	34222792
Total income declared as per ST3	152100	201600
Differential value on which service tax demanded	28631707	34021192
GTA services provided to body corporate under RCM	28632052	34028792
Difference	345	7600

14. On perusal of the records of the case, submissions of the assessee, Audited Balance Sheet, 26 AS, ITR, copies of ledger accounts and the above reconciliation statement for the year 2014 & 2015, I find that the assessee earned total freight income of Rs.2,87,83,807/- during the year 2014-15 and out of which Rs.2,86,32,052/- is the income earned by way of providing services to corporate body and the liability to service tax falls upon the service receiver as per Notification No.30/2012 and therefore the assessee i.e service provider is not required to pay service tax on the said amount. They are liable to pay service tax on the freight income of Rs.1,51,755/- earned by providing services to proprietary firms only. They have paid the service tax on Rs.1,52,100/- and also filed ST 3 return accordingly. In view of the above the service tax demand on the differential amount of Rs.2,86,31,707/- is not sustainable and therefore the demand of service tax demand of Rs.35,38,879/- is liable to be dropped.


15. Similarly on perusal of the records of the case, submissions of the assessee, Audited Balance Sheet, 26 AS, ITR, copies of ledger accounts and the above reconciliation statement for the year 2015 & 2016, I find that the assessee earned total freight income of Rs.3,42,22,792/- and out of which Rs.3,40,28,792/- is the income earned by way of providing services to corporate body and the liability to service tax falls upon the service receiver as per Notification No.30/2012 and therefore the assessee i.e service provider is not required to pay service tax on the said amount. They are liable to pay service tax on the freight income of Rs.1,94,000/- earned by providing services to proprietary firms. They have paid the service tax on Rs.2,01,600/- the said amount and also filed ST 3 return accordingly. In view of the above the service tax demand on the differential amount of Rs.3,40,21,192/- is not sustainable and therefore the demand of service tax demand of Rs.47,46,618/- is required to be dropped.

16. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, ITR, reconciliation statement, I find that the service tax demand of Rs. 82,85,497/- for the period 2014-15 & 2015-16 is not sustainable and accordingly Show Cause Notice dated 29.09.2020 is liable to be dropped. Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty upon noticee on this count.

Accordingly, I pass the following order;

ORDER

17. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 82,85,497/- along with interest and penalties vide SCN No. STC/15-75/OA/2020 dated 29.09.2020.

  
29/12/20

(R.GULZAR BEGUM)  
Joint Commissioner  
Central GST & Central Excise  
Ahmedabad North  
Dated

F.No. STC/15-75/OA/2020

To  
M/s DELHI BOMBAY ROAD CARRIER,  
B/12, C/O. PUNJAB MOTORS HOUSE,  
OPP. UJALA HOTEL SARKHEJ CROSS ROAD,  
SARKHEJ, AHMEDABAD

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1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Deputy Commissioner Division-VII, Central Excise & CGST, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Central Excise & CGST, Ahmedabad North
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