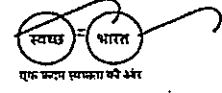




आयुक्त का कार्यालय

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
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-67/OA/2020

आदेश की तारीख/Date of Order:- 23.12.2021

जारी करने की तारीख/Date of Issue :- 23.12.2021

DIN NO: 20211264WT000011691D

द्वारा पारित/Passed by:-

आर गुलजार बेगम /R. GULZAR BEGUM

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 35-36/JC/GB/2021-22

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

This copy is granted free of charge for private use of the person(s) to whom it is sent.

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-380015को 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 हीना 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 या नि. की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

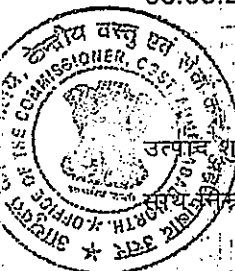
An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

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

संयुक्त आयुक्त लिखित दस्तावेज संलग्न किए जाएं।

(1)

उक्त अपील की प्रति।



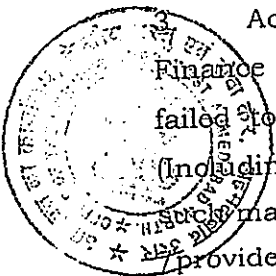
BRIEF FACTS OF THE CASE

M/s Patel Gautambhai Dahyabhai, 1, Hirav, Complex, Near Navdeep Hall, Opp. Navrang School, Ahmedabad-380013 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.ABCPP6254AST001 and is engaged in providing "Rent a cab scheme operator service". On going through the third party CBDT data for the Financial Year 2014-2015, 2015-16 and 2016-17, it has been observed that the assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2014-2015, 2015-16 and 2016-17 as compared to the Service related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

	F.Y.	Taxable Value of services provided as per ST-3 returns (In Rs.)	Difference Between Total Amount paid/Credited from TDS/ITR and Gross Value in Service Tax Provided or Higher value of Difference Between Total Amount paid/Credited from TDS/ITR and Gross Value in Service Tax Provided, as applicable(In Rs.)	Rate of Service Tax (in %)	Resultant Service Tax short paid, including Cess (in Rs.)
1	2014-15	48761929	39654712	12.36	4901322
2	2015-16	46707260	37573267	14.50	5448124
3	2016-17	1023846	43102862	15.00	6465429
Total		96493035	120330841		16814875

2. Letters dated 13.02.2018, 03.05.2018, 30.09.2019 and 06.07.2020 were issued to the assessee for clarification. The assessee vide their letter dated 19.03.2018 has submitted that they will submit the details within 07 days, but, no clarification was submitted by the assessee till the date of issuance of SCN. Since the said noticee has not provided any details/data for such difference, the reasons for such difference cannot be ascertained and therefore, the exact Service Tax liability cannot be adjudged. Therefore, for calculation and demand of the Service Tax, the maximum amount of difference between (i) Value of Services declared in ITR filed by the noticee & Value of Services provided as per Service Tax Returns or (ii) Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' & Value of Services provided as per Service Tax Returns i.e. the highest difference between these two is considered and the highest applicable rate is applied for Non-Payment/Short-Payment of Service Tax (Including Cess) for Financial Year 2014-15, 2015-16 and 2016-17. The same is worked out as shown in above table.

Accordingly the assessee has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of Rs.1,68,14,875/- (Including Cess), by declaring less value in their ST-3 Returns vis-a-vis their ITR, in such manner and within such period prescribed in respect of taxable services received/ provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994. It has



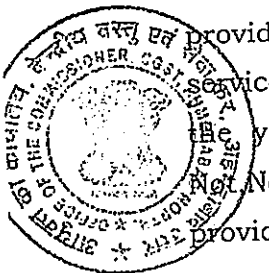
also been noticed that at no point of time, the Assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2014-2015, 2015-16 and 2016-17. 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 was found 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.1,68,14,875/-(Including Cess). The above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same is recoverable from them under the provisions of Section 73 of the Finance Act, 1994 along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

4. Accordingly Show Cause Notice dated 28.09.2021 was issued to M/s Patel Gauttambhai Dahyabhai asking them to show cause as to why :

- (i) The demand for Service tax to the extent of Rs.1,68,14,875/-(Including Cess) (Rupees One Crore Sixty Eight Lacs Fourteen Thousand Eight Hundred and Seventy Five Only) short paid /not paid by them, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty should not be imposed upon them for late filing of ST-3 Returns under the provisions of Section 70 of the Finance Act, 1994, if any

DEFENCE REPLY

5. The assessee vide their letter dated 05.02.202, 11.10.2021 & 16.11.2021 submitted their reply to SCN wherein they contended that they have provided school bus services to Hiramani School and give buses on rent as staff buses to Torrent Pharma Ltd, Piramal Enterprises Ltd, IFFCO, Rallis India Ltd, NICM and BAPS. As per Noti.No.30/2012 dt.20.06.2012, the service receiver is required to pay 100% Service Tax and as per mega exemption Noti.No.25/2012 dt.20.06.2012 service provided to educational institute is exempted in respect of education exempted from service tax. They further submitted that the services provided by Krishna Travels for year 2014-15, 2015-16 and 2016-17 is falls under reverse charge as per Noti.No.30/2012 dt.20.06.2021 and 100% is payable by service recipient and services provided by M/s.Bansari travels consists of school bus income as also exempted vide mega Noti.No.25/2012 dt.20.06.2012 as the same is provided to educational institution.. They have provided service to BAPS Swannarayan Herbal for which they



have paid service tax also. Therefore they are requested to drop the proceedings . They also submitted that as they have nothing to pay no penalty or interest if payable by them. For late filing of ST 3 return they have already deposited the late fee. The said assessee has also provided copies contract/agreement with various clients in support of their claim along with copies of invoices.

PERSONNEL HEARING

6. A Personnel Hearing was granted to the assessee on 29.09.2021. Shri Chirag Raval, CA, duly authroised representative, has attended P.H on behalf of the assessee. He reiterated the written submissions given on 05.02.2021 and requested time for reconciliation statement to prove that they have done only exempted services and accordingly reconciliation statement was also submitted on 11.10.2021 & 16.11.2021.

DISCUSSION AND FINDINGS

7. I have carefully gone through the records of the case, SCN, defence replies, reconciliation statement, duly audited Balance sheet for the FY 2014-15, 2015-16 and 2016-17, Form 26AS, ST 3 Returns as well as oral submissions made by the said assessee during the proceedings. In the instant case, I find that M/s Patel Gauttambhai Dahyabhai is registered under Service Tax having Registration No.ABCPP6254AST001 and was engaged in providing "Rent a cab scheme operator service" to various institutions such as educational institutions, Co-operative Society , manufacturing units etc.. On going through the third party CBDT data for the Financial Year 2014-2015, 2015-16 and 2016-17, it was observed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2014-2015, 2015-16 and 2016-17 compared to the Service related taxable value they have declared in their Income Tax Return (ITR) accordingly they failed to pay/ short paid/ deposit Service Tax to the extent of Rs.1,68,14,875/- (Including Cess), by declaring less value in their ST-3 Returns vis-a-vis their ITR.

8. On perusal of the above referred records, I find that the said assessee is providing Rent A Cab services to various schools and other organizations by operating two firms i.e M/s.Krishna Travels and M/s.Bansari Travels. M/s.Bansai Travels are providing Rent A Cab services to various educational institutions and such services are exempted from paying service tax by way of Notification No.25/2012 dated 20.06.2012. In this connection, I would like to go through the relevant portion of the Mega Exemption Notification No.25/2012 dated 20.06.2012 which is reproduced as under:

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (2) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services leviable thereon under section 66B of the said Act, namely:-

1. Services provided to the United Nations or a specified international organization;
2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;



3. Services by a veterinary clinic in relation to health care of animals or birds;
4. Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities;
5. Services by a person by way of-
 - (a) renting of precincts of a religious place meant for general public; or
 - (b) conduct of any religious ceremony;
6. Services provided by-
 - (a) an arbitral tribunal to -
 - (i) any person other than a business entity; or
 - (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;
 - (b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-
 - (i) an advocate or partnership firm of advocates providing legal services ;
 - (ii) any person other than a business entity; or
 - (iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or
 - (c) a person represented on an arbitral tribunal to an arbitral tribunal;
7. Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India;
8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;
9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-
 - (a) auxiliary educational services; or
 - (b) renting of immovable property

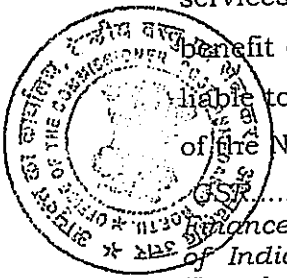
Further (a) auxiliary educational services has been defined as

(f) "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge - enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;

9. In view of the above Notification No.25/2012 Services provided to or by an educational institution in respect of education exempted from service tax, by way of auxiliary educational services such as transportation of students in this case is exempted from payment of service tax.

10. Further, the said assessee claimed that that they are providing Rent A Cab services to various companies who are not in similar line of business and availed the benefit of Notification No.30/2012 dt.20.06.2012 vide which the service recipients are liable to pay 100% service tax under Reverse Charge Mechanism. The relevant portion of the Notification is reproduced as under:

.....(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849



(E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

I. The taxable services,-

(A) (i) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;

(ii) 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;

(iii) provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory;

(iv) provided or agreed to be provided by,-

(A) an arbitral tribunal, or

(B) an individual advocate or a firm of advocates by way of support services, or

(C) Government or local authority by way of support services excluding,-

(1) renting of immovable property, and

(2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994,

to any business entity located in the taxable territory;

(v) **provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;**

(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;

(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 a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
1	in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Nil	100%
2	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%
3	in respect of services provided or agreed to be provided by way of sponsorship	Nil	100%
4	in respect of services provided or agreed to be	Nil	100%



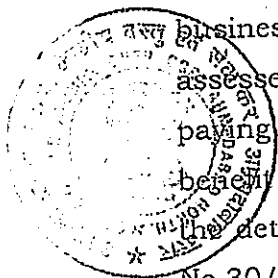
	provided by an arbitral tribunal		
5	in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services	Nil	100%
6	in respect of services provided or agreed to be provided by Government or local authority by way of support services excluding,- (1) renting of immovable property, and (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act,1994	Nil	100%
7	<u>(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business</u>	Nil	100 %
	(b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business	60%	40%
8.	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	25%	75 %
9.	in respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%
10	in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%

Explanation-I. - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Explanation-II. - In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

2. This notification shall come into force on the 1st day of July, 2012.

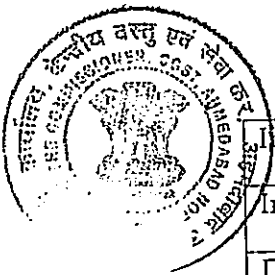
11. In view of the above Notification at Sl No.7 in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business, the liability to pay service tax falls on the service receiver. Accordingly the assessee provided services to various entities and regularly claiming exemption from paying service tax as the receivers are paying service tax under RCM by claiming benefit of above Notification. The said assessee is providing the services and shown the details in their ST 3 returns also by claiming benefit under the said Notification No.30/2012. I would like to examine the issue of taxability of services year wise for the sake of clarity.



FINANCIAL YEAR 2014-15

12. During the year under reference, the assessee filed ITR declaring total turnover as Rs.8,84,16,641/-. However on perusal of their ST 3 return, it was found that they have declared Rs.4,87,61,929/- only as their income receipts which leads to short payment of service tax on the differential value of Rs.3,96,54,712/-. Accordingly SCN was issued to the assessee demanding Service Tax of Rs.49,01,322/-. The assessee in their reply contended that they are providing rent a cab operator services by way of renting buses to educational institutions and such services are exempted from service tax by way of Mega Exemption Notification No.25/2012 dated 20.06.2012. During the year under reference, the assessee received an amount of Rs.3,32,70,229/- from bus services provided to various schools for transportation of students. Various documents such agreement with the schools and ledger accounts etc have been submitted by the said assessee in support of their claim. On perusal of the said documents, I find that the assessee was providing bus service to various educational institutions for transportation of students for which they have made agreements with the school management. From the financial statements and ledger accounts, it was noticed that they are providing services to various schools i.e.Hiramani school, National Institute of Co-Operative Management(Educational Institute), Columbia Global Centre and Crescent School for transporting students and rightly claimed benefit of Notification No.25/2012 dt.20.06.2012. In view of the above facts and records, I find that an amount of Rs.3,32,70,229/- received from education institutions in lieu of providing services is not a taxable income and therefore required to be considered as income derived from exempted service in view of the exemption Notification.

13. Further the assessee has provided rent a cab services to the tune of Rs.5,51,46,412/- to various manufacturing units who are not engaged in similar line of business claiming exemption from payment of service tax under Noti.No.30/2012 dt.20.06.2012, as amended, as the recipient of the service is liable to pay 100% service tax under RCM. However, the assessee has shown Rs.4,87,61,929/- only in their service tax return thereby shown Rs.63,84,483/- less by error. Hence they claimed that the difference in the value is also due to this mistake by them and claimed that the amount of Rs.63,84,483/- is rightly eligible for exemption under Noti.No.30/2012 dt.20.06.2012. I have also perused the ledger account and other documents and find that the assessee is eligible for benefit under Noti.No.30/2012 as claimed to the extent of Rs.63,84,483/- too. Accordingly the differential value is reconciled as under :



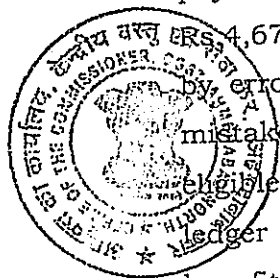
Income as per /ITR and SCN	8,84,16,641
Income as per ST 3 Return	4,87,61,929
Difference on which duty demanded	3,96,54,712

Services covered under Noti.No.25/2012 dt.20.06.212 (exempted) as discussed above	3,32,70,229
Difference	63,84,483
Services covered under Noti.No.30/2012 dt.20.06.212 (under 100% RCM) as discussed above	63,84,483
Difference	0

FINANCIAL YEAR 2015-16

14. During the year under reference, the assessee filed ITR declaring total turnover as Rs. 8,42,80,527/-. However on perusal of their ST 3 return it was found that they have declared Rs. 4,67,07,260/- only as their income receipts which leads to short payment of service tax on the differential value of Rs. 3,75,73,267/-. Accordingly SCN was issued to the assessee demanding Service Tax of Rs.54,48,124/-. The assessee in their reply contended that they are providing rent a cab operator services by way of renting buses to educational institution i.e.Hiramani School and such services are exempted from service tax vide Mega Exemption Notification No.25/2012 dated 20.06.2012. During the year under reference, the assessee received an amount of Rs. 3,28,83,401/- from bus services provided to Hiramani School for transportation of students. Various documents such agreement with the school and ledger accounts etc are submitted by the said assessee in support of their claim. On perusal of the financial statements, ledger accounts and other documents, I find that the assessee is providing bus service to Hiramani School for transportation of students for which they have made agreements with the school management and rightly claimed benefit of Notification No.25/2012 dt.20.06.2012. In view of the above facts, I find that an amount of Rs. 3,28,83,401/- received from educational institutions in lieu of providing Rent A Cab services is not a taxable and required to be considered as income from exempted service.

15. Further the assessee has provided rent a cab services to the tune of Rs.5,13,97,126/- to various manufacturing units who are not engaged in similar line of business and claiming exemption from payment of service tax under Noti.No.30/2012 dt.20.06.2012, as amended, as the recipient of the service is liable to pay 100% service tax under RCM. However, the assessee has shown Rs.4,67,07,260/- only in their service tax return thereby shown Rs.46,89,866/- less by error. Hence they claimed that the difference in the value is also due to this mistake by them and claimed that the remaining amount of Rs. 46,89,866/- is rightly eligible for exemption under Noti.No.30/2012 dt.20.06.2012. I have also perused the ledger account and other documents and find that the assessee is eligible to get this benefit under Noti.No.30/2012 as claimed by the assessee. Accordingly the differential value is reconciled as under :

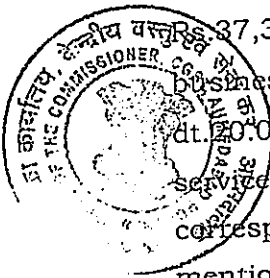


Income as per /ITR and SCN	8,42,80,527
Income as per ST 3 Return	4,67,07,260
Difference on which Service tax demanded	3,75,73,267
Services covered under Noti.No.25/2012 dt.20.06.212 (exempted) as discussed above	3,28,83,401
Difference	46,89,866
Services covered under Noti.No.30/2012 dt.20.06.212 (under RCM) as discussed above	46,89,866
Difference	0

FINANCIAL YEAR 2016-17

16. During the year under reference, the assessee filed ITR declaring total turnover as Rs. 4,41,26,708/-. However on perusal of their ST 3 return it was found that they have declared Rs. 10,23,846/- only as their income receipts which leads to short payment of service tax on the differential value of Rs. 4,31,02,862/-. Accordingly SCN was issued to the assessee demanding Service Tax of Rs. 64,65,429/-. The assessee in their reply contended that they are providing rent a cab operator services by way of renting buses to educational institutions and such services are exempted from service tax in view of Mega Exemption Notification No.25/2012 dated 20.06.2012. During the year under reference, the assessee received an amount of Rs. 3,93,68,190/- from bus services provided to Hiramani School for transportation of students. Various documents such agreement with the schools and ledger accounts etc are submitted by the said assessee in support of their claim. On perusal of the documents, I find that the assessee is providing bus service to Hiramani School for transportation of students for which they have made agreements with the school management. From the financial statements and ledgers, it was noticed that they are providing services to various schools for transporting students and rightly claimed benefit of Notification No.25/2012 dr.20.06.2012. In view of the above facts and records, I find that an amount of Rs. Rs.3,93,68,190/- received from education institutions in lieu of providing services is not a taxable income and therefore required to be considered as income from exempted service.

17. Further the assessee has provided rent a cab services to the tune of Rs.37,34,672/- to various manufacturing units who are not engaged in similar line of business and claiming exemption from payment of service tax under Noti.No.30/2012 dt.20.06.2012, as amended, as the recipient of the service is liable to pay 100% service tax under RCM. However the said value was not shown in their corresponding ST 3 returns. Hence they claimed that the difference in the value mentioned in the SCN is also due to this mistake by them. They claimed that the amount of Rs.37,34,672/- is rightly eligible for exemption under Noti.No.30/2012 dt.20.06.2012 from payment of service tax as the liability to pay the tax is on the service receiver under RCM. I have also perused the ledger account and other

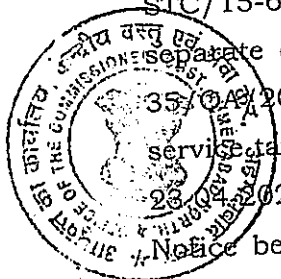


documents and find that the assessee is eligible to get this benefit under Noti.No.30/2012 dt.20.06.2012 as claimed. Accordingly the differential value is reconciled as under:

Income as per /ITR and SCN	4,41,26,708
Income as per ST 3 Return	10,23,846
Difference on which service tax demanded	4,31,02,862
Services covered under Noti.No.25/2012 dt.20.06.212 (exempted) as discussed above	3,93,68,190
Difference	37,34,672
Services covered under Noti.No.30/2012 dt.20.06.212 (under RCM) as discussed above	37,34,672
Difference	0

15. In view of the above discussion and findings and also on perusal of SCN, audited Balance Sheet for the year 2014-15 to 2015-16, ITR, ST 3 returns, reconciliation statement as well as submissions made by the said assessee, I find that the difference in value of service by comparing the value of services in ITR/TDS and gross value of services provided in ST-3 Returns is due to availment of exemption Notification No. 25/2012-ST & No.30/2012-ST both dated 20.06.2012 . As the income received is not taxable by way of above referred exemption Notifications, I find that the service tax demand of Rs. 1,68,14,875/- is not sustainable and accordingly Show Cause Notice dt.28.09.2020 is liable to be dropped. Further, as the SCN itself is not sustainable there is no reason to charge interest u/s.75 of Finance Act, 1994 or to impose penalty u/s.78 of Finance Act, 1994 upon the said assessee on this count.

16. In this connection, it is also mentioned here that another Show Cause Notice bearing No.STC/15-35/OA/2021 dated 23.04.2021 was also issued to the said assessee bearing STC No.ABCPP6254AST001 for the years 2015-16 and 2016-17 demanding Service Tax of Rs.81,01,793/-. However the instant SCN bearing STC/15-67/OA/2020 has already covered the same issue and same period, no separate discussion is made in this matter. As the issue in the said SCN No/15-35/OA/2021 dated 23.04.2021 is squarely covered in the instant SCN also and the service tax demanded in the instant SCN is higher than that of the second SCN dated 23.04.2021, no separate order/discussion is made. Accordingly the Show Cause Notice bearing No.STC/15-35/OA/2021 dated 23.04.2021 is also disposed off along with the instant SCN No.STC/15-67/OA/2020 dated 29.09.2021. In view of the above I pass the following order.



ORDER

17. I hereby order to drop the proceedings initiated for recovery of service tax of Rs. 1,68,14,875/- along with interest and penalties vide SCN No. STC/15-67/OA/2020 dated 29.09.2020.

19. I also drop the proceedings initiated for recovery of service tax of Rs. 81,01,793/- along with interest and penalties vide SCN No. STC/15-35/OA/2021 dated 23.04.2021.

R. Gulzar Begum
23/12/21

(R.GULZAR BEGUM)

Joint Commissioner

Central GST & Central Excise
Ahmedabad North

Dated-

F.No. STC/15-67/OA/2020

To
M/s Patel Gautambhai Dahyabhai,
1, Nirav Complex, Near Navdeep Hall,
Opp. Navrang School,
Ahmedabad-380013



Copy to:

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
- ✓ 4. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
5. Guard File

[Handwritten mark]