



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: ofad/jhq-cgstamdnorth@gov.in, oaahmedabad2@gmail.com
फोन/Phone : 079-27544599 फैक्स/Fax : 079-27544463



निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-167/OA/2020

आदेश की तारीख/Date of Order : - 27.12.2021

जारी करने की तारीख/Date of Issue :- 27.12.2021

DIN No: 20211264WT0000333ACF

द्वारा पारित/Passed by:- आर गुलजार बेगम .R /GULZAR BEGUM

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 38/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 रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना 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।

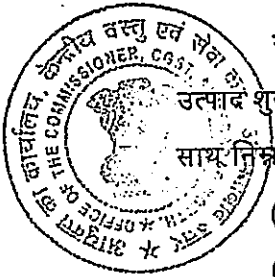
An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

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।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक

प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।



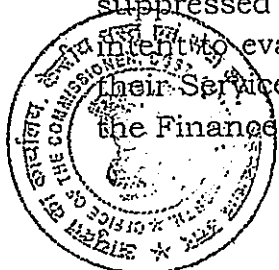
by them with an intent to evade payment of service tax. Thus, it appears that the said assessee have failed to discharge the service tax liability of Rs. 55,33,398/- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) worked out on value of Rs. 3,83,41,750/- and therefore, service tax is required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

In view of above, the said assessee have contravened the provisions of :

- (a) **Section 66** of the Finance Act, 1994 in as much as they have failed to collect and pay the service tax as detailed above, to the credit of Central Government.
- (b) **Section 68** of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they have not paid the service tax as mentioned above to the credit of the Government of India within the stipulated time limit;
- (c) **Section 70** of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, as amended, in as much as they had failed to properly assess their Service Tax liability under Rule 2(1)(d) of Service Tax Rules, 1994 and failed to declare correct value of taxable services as well as exempted services to the department in the prescribed return in Form ST-3.

5. 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 Financial Year 2015-16 to 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 appears 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.55,33,398/-. Thus there is a deliberate withholding of essential and material information from the department about service provided and value realized by them. It was also found that all these material information have been concealed from the department deliberately, consciously and purposefully to evade payment of service tax.

6. In view of the above, it was noticed that the said assessee has short paid/non-payment of Service Tax of Rs.55,33,398 /- on the actual value received towards taxable services provided which appears to be recoverable under proviso to Section 73(1) of the Finance Act along with interest under Section 75 ibid not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee has suppressed the facts to the department and contravened the provisions with an intent 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.



7. 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. In view of the above, it appears that the said assessee have contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee appear to have rendered themselves liable to penalty under Section 76 & Section 77 of the Finance Act. 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. Accordingly Show Cause Notice dated 23.10.2020 was issued to the said assessee called upon them to show cause as to why:

(i) Differential amount of Service Tax amounting to Rs.55,33,398/- (Rupees Fifty Five lakhs Thirty Three thousand Three hundred Ninty Eight 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.

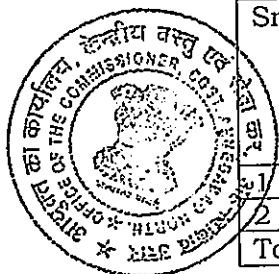
(iv) penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for the failure to assess the correct tax liability.

(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.

DEFENCE REPLY

8. Vide letter dated 12.11.2020, the said assessee submitted that they are providing service of transportation of goods by Road. In their reply to SCN they have furnished the correct bifurcation of turnover shown in the income tax return as under.

Sr.No.	Financial Year	Value on which the assessee has been paid service tax (as per STR)	Value on which the service tax has been paid by the service recipient	Total turnover as per ITR
1	2015-16	8,31,818	1,92,71,126	2,01,02,944
2	2016-17	10,83,217	1,90,70,614	2,01,53,841
Total		19,15,035	3,83,41,750,	4,02,56,785



Whereas Reverse Charge Mechanism Noti.30/2012 dt.20.06.2012

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

Person liable for paying service tax under Noti.No.30/2012 dt.20.06.2012 and 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.

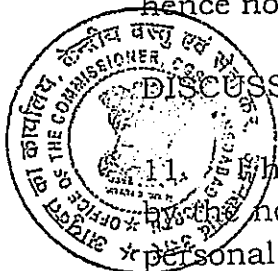
9. The said assessee further submitted that they have provided service of transportation of goods by road which covered under GTA which covered under Reverse Charge Mechanism hence they are not liable to pay service tax. They have also case laws of M/s.Amrita Moulding P.Ltd Vs Com.of C.E, Ghaziabad (2013(0) TMI 33-CESTAT NEW DELHI, M/s.Parry Sugars & Tubes P.Ltd Vs Com of CE, Coimbatore (2013 (8) TMI 294 - CESTAT CHENNAI in support of their claim. In view of the above facts, they requested to consider the reply and drop the proceedings.

PERSONNEL HEARING.

10. Personnel Hearing was granted to the said assessee on 17.11.2021. Shri Kiritbhai Dave, employee and authorised representative attended on behalf of the assessee. He reiterated the written reply submitted on 12.11.2020. He added that the liability mentioned in SCN, pertains to exempted payment and hence not liable to service tax and also requested to drop further proceedings.

DISCUSSION AND FINDINGS

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 2015-16 & 2016-17. In the present case, Show Cause Notice has been issued to the assessee demanding Service Tax of Rs.55,33,398/- for the financial year 2015-16 and 2016-17 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.

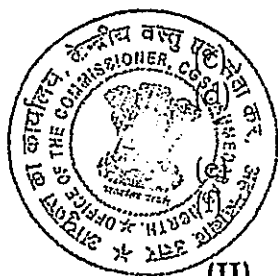
12. In reply to the show cause notice, The said assessee further submitted that they have provided service of transportation of goods by road which covered under GTA which covered under Reverse Charge Mechanism hence they are not liable to pay service tax. They have also referred case laws of M/s. Amrita Moulding P.Ltd Vs Com.of C.E, Ghaziabad (2013(0) TMI 33-CESTAT NEW DELHI, M/s.Parry Sugars & Tubes P.Ltd Vs Com of CE, Coimbatore (2013 (8) TMI 294 - CESTAT CHENNAI in support of their claim. They furnished bifurcation of turnover of where the assessee is liable to pay service tax as well as value on which service tax has been paid by the service recipient. 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.

13. 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;
- any co-operative society established by or under any law;
- any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- any body corporate established, by or under any law; or
- 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 person providing service	Percentage of service tax payable by the 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%

14. 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.

15. On perusal of reconciliation statement, ledger accounts and financial records, I find that the assessee have income of Rs. 8,31,818/- from GTA services provided to proprietary concerns and Rs. 1,92,71,126/- provided to other than proprietary concern i.e. corporate body & partnership firm for the year 2015-16. Similarly they have an income Rs. 10,83,217/- provided to other than proprietary concern i.e. corporate body & partnership for the year 2016-17.

16. I find that the aforementioned records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company/ individual during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Service provider is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as

provided by statute and give a true and fair view on the affairs of the company/ individual. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

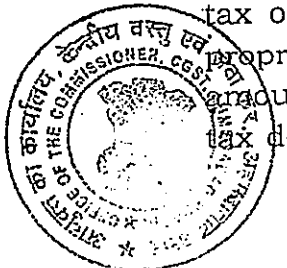


17. As per provisions contained in Rule 2(d)(B) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, service tax on GTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including 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. Therefore, in the above backdrop I accept bifurcation of GTA service provided by noticee to the body corporate and the GTA service provided by the noticee to above extent are liable to be paid in RCM by the service recipients.

Description	2015-16	2016-17
Total income as per ITR and SCN	2,01,02,944	2,01,53,841
Total income declared as per ST3	8,31,818	10,83,217
Differential value on which service tax demanded	1,92,71,126	1,90,70,624
GTA services provided to body corporate under RCM	1,92,71,126	1,90,70,624
Difference	0	0

18. 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.2,01,02,944/- during the year 2015-16 and out which Rs. 1,92,71,126/- 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. 8,31,818/- earned by providing services to proprietary firms only. They have paid the service tax on Rs. 8,31,818/- and also filed ST 3 return accordingly. In view of the above, the service tax demand on the differential amount of Rs.1,92,71,126/- is not sustainable and therefore the demand of service tax demand of Rs.26,88,696/- is liable to be dropped.

19. 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 2016-17, I find that the assessee earned total freight income of Rs.2,01,53,841/- and out which Rs. 1,90,70,624/- 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.10,83,217/- earned by providing services to proprietary firms. They have paid the service tax on Rs. 10,83,217/- the said amount and also filed ST 3 return accordingly. In view of the above the service demand on the differential amount of Rs. 1,90,70,624/- is not sustainable



and therefore the demand of service tax demand of Rs.28,44,701/- is required to be dropped.

20. 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. 55,33,398/- for the period 2015-16 & 2016-17 is not sustainable and accordingly Show Cause Notice dated 23.10.2020 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 assessee on this count.

Accordingly, I pass the following order;

ORDER

21. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 55,33,398/- along with interest and penalties vide SCN No. STC/15-167/OA/2020 dated 23.10.2020.



R. Gulzar Begum ¹⁴/_{27/12/21}

(R.GULZAR BEGUM)
Joint Commissioner

Central GST & Central Excise
Ahmedabad North
Dated

F.No. STC/15-167/OA/2020

M/s Crescent Transport Company,
32-A, Suvidha Estate, Opp.Jaipur Golden Transport,
Gandhinagar Bavla Highway, Sarkhej, Ahmedaabd -380010

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Deputy Commissioner Division-VI, Central Excise & CGST, Ahmedabad North.
3. The Superintendent, Range-I, Division-VI, Central Excise & CGST, Ahmedabad North
- ✓ 4. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
5. Guard File