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|--|---|---|
| <p>आयुक्त का कार्यालय<br/>केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद<br/>शुल्क ,अहमदाबाद उत्तर,<br/>कस्टम हाँउस(तल प्रथम)<br/>नवरंगपुरा- अहमदाबाद ,380009</p> |  | <p>Office of the Commissioner of<br/>Central Goods &amp; Services Tax &amp;<br/>Central Excise,<br/>Ahmedabad North,<br/>Custom House(1<sup>st</sup> Floor)<br/>Navrangpura, Ahmedabad-380009</p> |
| <p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>      |   |   |

**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा .सं/. STC/15-49/OA/2020

DIN-20211264WT0000510235

आदेश की तारीख / Date of Order : 25.11.2021  
जारी करने की तारीख / Date of Issue : 02.12.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV  
आयुक्त / COMMISSIONER

**मूल आदेश संख्या / AHM-EXCUS-002-COMMR-35/2021-22**

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-35/2021-22**

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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

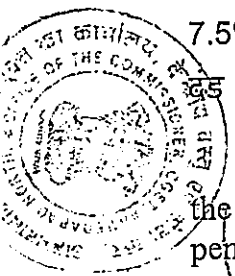
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 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 Tribunal 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)



**BRIEF FACTS OF THE CASE:**

M/s. Shri Gurukrupa Trading Co., situated at Ramdevnagar, 109 21, Rambaug Road, Opp. Municipal Garden, Ramnagar, Sabarmati, Ahmedabad, Gujarat (hereinafter referred to as the 'Assessee' for the sake of brevity) are engaged in providing taxable services and are holding Service Tax Registration No. ABIPP9247PST001.

2. Analysis of "Sales/Gross Receipts from the 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 and the details of the said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

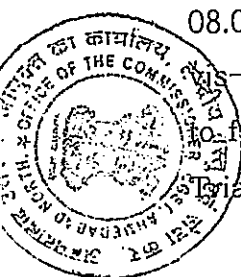
3. As per the records available with the Divisional Office of Division-VII, CGST, Ahmedabad North and on going through the Third Party Data provided by CBDT of the said assessee for the F.Y. 2014-2015, the Sales/Gross Receipt from Services (Value from ITR) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return for the F.Y. 2014-15. Therefore, it appeared that the said assessee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for the F.Y. 2014-15 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2014-15. The difference in value as observed for FY 2014-15 was as under:

(Amount in Rs.)

| Sr No | F. Y.   | Sales/Gross Receipts from Services (Value from ITR) | Gross Value of Services provided (STR) | VALUE DIFFERENCE in ITR and STR | Resultant Service Tax short paid (including Cess) |
|-------|---------|---|--|---------------------------------|---|
| 1     | 2014-15 | 204078825/-   | 1418096/-                              | 202660729/-                     | 25048866/-  |

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. Rs. 2,50,48,666/- (including Cess) on the differential taxable value of Rs. 20,26,60,729/-.

4. The assessee were requested to provide their explanation vide letter dated 08.02.2018, 25.06.2019 and 17.07.2020 for difference in value shown in ST-3 Returns a-vis that shown in Income Tax return filed for FY 2014-15. It was also requested to furnish the documents viz. Audited Balance Sheet/ Profit and Loss Account, Gross Trial Balance, Ledger, Invoices, Form 26AS, ITR and ST-3 Returns for FY 2014-15.



But, the assessee neither produced any documentary evidences nor submitted any reply in the matter.

As per the provisions of Section 70 of the Finance Act,1994,

(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.

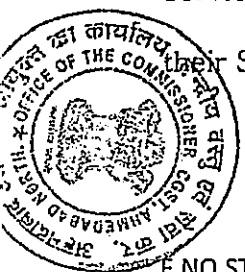
(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

If any person, liable to pay Service Tax having made a return, fails to assess the tax, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

5. As per the provisions of *Section 73(1)* of the Finance Act,1994, where any Service Tax has not been levied or paid or has been short levied or short paid by reasons of willful mis-statement or suppression of facts with intent to evade payment of Service Tax, the Central Excise Officer may within five years from the relevant date, serve a notice on the person chargeable with Service Tax which has not been levied or paid or which has been short levied or short paid requiring him to show cause why he should not pay the amount specified in the notice.

6. As per Rule 6 of the Service Tax Rules, 1994, the Service Tax shall be paid to the credit of the Central Government by 5<sup>th</sup> day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that assessee shall submit

Service Tax returns in the form ST-3 within the prescribed time.



7. From the documentary evidence available at the relevant time, it appeared that the said assessee had failed to pay/short paid/deposit Service Tax to the extent of Rs.2,50,48,866/- which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 2014-2015 vis-à-vis their ITR/Form 26AS. The said short payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 2,50,48,866/- (inclusive of Cess) worked out on value of Rs.20,26,60,729/- and therefore, Service Tax was 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.

8. Therefore, it appeared that the said assessee had (i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994; (ii) failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994. (iii) failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994. (iv) All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (v) The said assessee was also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994 (vi) the said assessee also appeared to have contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data/documents as called for, from them. (vi) the assessee appeared to have committed these acts by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid was required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years.

9. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2014-2015. From the evidences gathered/



available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table herein below and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs.2,50,48,866/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department as the service provided and value realized by the assessee were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

TABLE

| Sr. No. | Financial Year | VALUE DIFFERENCE in ITR & STR / TDS & STR (Whichever is higher) (in Rs.) | Service Tax Payable (in Rs.) |
|---------|----------------|--|------------------------------|
| 01      | 2014-2015      | 20,26,60,729/-   | 2,50,48,866/-                |

10. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (at such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appeared that the said assessee had short paid/not-paid Service Tax of Rs.2,50,48,866/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the Finance Act, 1994 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 had suppressed the facts from the department and had contravened the provisions with an intent to evade payment of Service Tax. The said assessee had not discharged their Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.

11. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax and they appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of Service Tax as discussed in the foregoing pages and therefore, the said amount of Service Tax amounting to Rs.2,50,48,866/-



(inclusive of Cess) not paid was required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

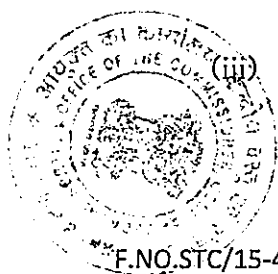
12 All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it appeared that the said assessee had contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee appeared to have rendered the assessee liable to penalty under Section 76 & Section 77 of the Finance Act.

13. In addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appeared that the said assessee had willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of Service Tax rendering them liable for penalty under Section 78 of the Finance Act, 1994.

14. Therefore, a Show Cause Notice No. STC/15-49/OA/2020 dated 28.09.2020 was issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North to M/s SHRI GURUKURPA TRADING CO., RAMDEVNAGAR, 109 21, RAMBAUG ROAD, OPP. MUNICIPAL GARDEN, RAMNAGAR, SABARMATI , AHMEDABAD asking them as to why;

- (i) The Service Tax to the extent of Rs. 25048866/- (Rupees Two Crore Fifty Lakhs Forty Eight thousand Eight Hundred Sixty Six only ) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;
- (ii) Service Tax liability not paid during the financial year 2015-16 to 2017-18 (upto June-2017), ascertained in future, as per paras no. 9 and 10 of the SCN, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.

(iii) Interest at the appropriate rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;

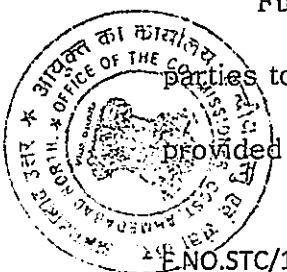


- (iv) Penalty under the provisions of Section 77(1) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.
- (v) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

DEFENCE REPLY:

15. The assessee vide letter dated 27.10.2020 submitted their written submission. The assessee submitted that they had carried out business as dealer of Fly Ash and Goods Transport Agency under the Finance Act, 1994. During the F.Y. 2014-15, their turnover was Rs.20,40,78,825/- including GTA services. The assessee were registered under Gujarat VAT Act vide TIN 24073200311 and Service Tax Registration No. ABIPP9247PST001 for the F.Y.2014-15. They have submitted that the notice refers to the difference of Rs.20,26,60,729/- between the amount of Sale of Services as mentioned in Income Tax Return and amount of Services shown in ST3, this confusion had been created due to filing of ST3 returns where figures were quoted in incorrect manner, the service tax return contained only those amount on which Service Tax was payable. They have submitted that, as per Provision of Notification No.30/2012 Entry No. I(A)(ii), the assessee being an individual, was not liable to collect Service Tax where GTA services were provided to factories, body corporate or partnership firms, where tax needs to be paid by the service recipient under reverse charge mechanism on 100% value of the service. The assessee had provided GTA service to parties which were factories, body corporate or partnership firms in most of the cases, so the assessee had not paid service tax on the same. They have submitted that considering both the nature of service rendered and provisions of the act, there is no further liability of Service Tax other than as submitted in the Service Tax returns. Further, they have submitted that no short payment of Service Tax is made by them, therefore, no question with regard to levy of interest and penalty u/s 75 and 76 arises. In view of their submission, they have requested to drop the impugned Show Cause Notice.

Further, vide letter dated 06.10.2021, the assessee have submitted the list of parties to whom service were provided by them, they have submitted that total service provided were Rs.20,40,78,825/-, out of which Rs.18,52,93,934/- were provided to



companies, partnership firms & factories, which was covered under RCM pursuant to provisions of Notification No.30/2012 (Entry No. I(A)(ii)). They have submitted that trucks were given on hire to the transporters amounting to Rs.1,10,99,036/- which do not attract Service Tax pursuant to provisions of Notification No.25/2012 (Entry No.22) for F.Y.2014-15. They have submitted the copies of Form 26AS for F.Y.2014-15, Audit Report with Balance Sheet/Profit & Loss Accounts for F.Y. 2014-15/2015-16/2016-17/2017-18, Schedule of Fixed Assets showing trucks, Sample RC Books of trucks, list of parties with available PAN Numbers, ST3 returns for the period April to September and October to March, 2014-15, Copies of Challan through which Service Tax was paid.

#### PERSONAL HEARING:

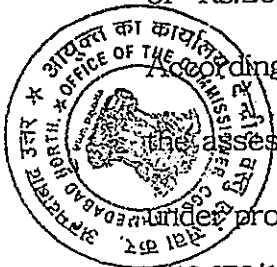
16. Personal hearing on the subject matter was fixed on 06.10.2021. Shri Shaidhar Shah, C.A. appeared for personal hearing on behalf of the assessee. He reiterated the contentions /arguments raised in the earlier written submission. He requested to drop the proceeding in light of earlier submissions and plea made at the time of PH that there is no Service Tax liability on M/s. Gurukrupa Trading Co.

#### 17. DISCUSSION AND FINDINGS:

17.1 I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 27.10.2020 and 06.10.2021, and the documents submitted by the assessee.

17.2 On going through the SCN, I find that basically the essence of the case is that data of Sales /Gross receipt from services were shared by the CBDT with CBIC for FY 2014-15, which was then compared with the gross value declared in ST-3 Returns filed for F.Y.2014-15 by the assessee. The difference in value of service to the extent of Rs.20,26,60,729/- was noticed and therefore, the subject SCN was issued.

Accordingly, I find that the issue which requires determination as of now is whether, the assessee is liable to pay service tax on the differential value of Rs.20,26,60,729/- under proviso to section 73(1) of Finance Act, 1944 or not.





17.3 I find that the assessee in their reply dated 27.10.2020 had stated that the difference in value of service between the sales/ gross receipts shown in their ITR and the gross value of service provided declared in their ST-3 returns filed for FY 2014-15, is basically on account of GTA service. They have stated that they were doing business as dealer of Fly Ash and they were also registered for providing taxable service under the category of Goods Transport Agency Service with Service Tax department.

17.4 I find that the assessee has been audited by Pinky Prajapati & Associate, Chartered Accountants, M.No.120924 (Firm Reg No.126817W) and they had issued audit report dated 30.09.2012 under Section 44AB of the Income Tax Act, 1961. On going through Profit & Loss Account of audit report, I find that at Sch 13 of Profit & Loss Account transport income of Rs. 20,40,78,824.91 had been shown, the same amount had been reflected in the data provided by the CBDT data as Sales/Gross receipts from services (Value from ITR). It was established that amount of Sales/Gross Receipts from Services (Value of ITR) shown in SCN was being tallied with the Trading and Profit & Loss Account for the FY 2014-2015, the same had been shown in S-13 as direct income of Transportation Income. The assessee has submitted the Copy of Certificate of Registration for Vehicle No.GJ01DY0055, GJ01DX8555, GJ18AX7055, GJ18AX8755, GJ18AX6855, GJ18AX5755, GJ18AX6255 and GJ18AX6355, all the vehicles are registered in the name of Shri Ashokbhai Prajapati S/o. Shri Rambhai Prajapati. The assessee have submitted the Transport Income ledger account for the period from 01.04.2014 to 31.03.2015 on going through the same it is seen that sale of services under the GTA service was accounted to Rs. 20,40,78,824.91.

Further, the assessee vide letter dated 06.10.2021 has provided the list of entities to whom they have provided the service of Rs.18,52,93,934/- (Companies, Partnership firms & factories) which are covered under RCM pursuant to the provision of Notification NO.30/2012-ST dated 20.06.2012. The service of Rs. 1,10,99,036/- provided on account of trucks being given on hire to transporters which do not





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).....

(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;

17.6 Further, I find that assessee vide letter dated 06.10.2021 have submitted that as per Notification NO.25/2012 (Entry No.22) Service Tax is not leviable on trucks which were given on hire to transporters. The CBIC Notification NO.25/2012-ST dated 20.06.2012 as amended reads as under;

*Notification No. 25/2012-Service Tax dated- 20th June, 2012, as amended. Incorporating changes made till issuance of notification no 10/2017-Service Tax dated 8-3-2017*

*G.S.R. 467(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 (i) 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 from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-*

*1. Services provided to the United Nations or a specified international organization;*

*2.(i) Health care services by a clinical establishment, an authorised medical practitioner or para-medics; (ii) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above;*

*.....*  
*22. Services by way of giving on hire -*

*(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or*

*(b) to a goods transport agency, a means of transportation of goods;*

18

Having gone through the reply and documents submitted by the assessee,

I discern from the P&L account for FY 2014-15, that the assessee had Transportation

Income of Rs. 20,40,78,824.91 as shown in S-13 of the Profit & Loss Accounts. The assessee had provided the service of Rs.18,52,93,934/- to companies, partnership firms and factories which are covered under RCM pursuant to the provision of Notification NO.30/2012-ST dated 20.06.2012 (Sr. No. IA(ii)) and service of Rs.1,10,99,036/- were provided on account of trucks which were given on hire to transporters which do not attract Service Tax pursuant to provisions of Notification No.25/2012- (Entry No.22). The assessee had to pay the Service Tax on taxable value of Rs.76,85,855/-, as they were not covered under exemption category mentioned in Notification No.30/2012 30/2012-ST i.e. (a) any factory registered under or governed by the Factories Act, 1948 (b) any society registered under the Societies Registration Act, 1860 (c) any co-operative society established by or under any law;(d) any dealer of excisable goods,(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. Further, they were not covered under the Mega Exemption Notification NO.25/2012-ST i.e. service by giving hiring to a GTA. I find from the details submitted by the assessee that they have not paid service tax in respect of M/s. Shiv Shakti Enterprise & M/s. Krishna Transport Co., on taxable value of Rs. 35,48,543/- as they were not eligible for exemption notification no.25/2012-ST & 30/2012-ST.

18.1 Further, on going through the details submitted by the assessee for the year 2015-16 & 2016-17 service tax in respect of M/s. Dnb Ehgicon, HDFC Bank, Matrushakti Industries, Myriad Chemical, Rakesh Chemical, Tannotary Associates had not been paid by the assessee on the total taxable valule of Rs.89476/- under the category of GTA and for the year 2016-17 service tax in respect of M/s. Alcock Cement pipe, Ambica Pipe, Arose Engineering, Ashapura Carriers, K. D. Prajapati, New Aman Store, Om shiv Infrastructure, Shree Rajashakti Transprot, Shree Vaibhav Laxmi Carrier had not paid by the assessee on the total taxable value of Rs. 562798/- under the category of GTA. The assessee were required to pay the service tax for the year 2014-15, 2015-16 and 2016-17. The list of the service receiver who had not paid the service tax, as it was required to be paid by the assessee is as under;



SHREE GURUKRUPA TRADING CO. 2015-16

| Particulars                              | PAN        | Amount    | ST       |
|--|------------|-----------|----------|
| AHMEDABAD CEMENT PIPE-VADAGAM            | AAQPA4430Q | 4,82,317  | 19,961   |
| AMBICA PIPE-VADAGAM                      |            | 1,94,873  | 7,988    |
| ARCHIT CORPORATION                       |            | 7,61,760  | 32,763   |
| AUTO TRANSPORT SERVICE                   |            | 12,01,621 | 50,871   |
| Blue Ark Industries                      | AAZPP4582H | 8,832     | 384      |
| Dnb Ehgicon                              |            | 21,326    |          |
| GITA DISTRIBUTORS                        | ADGPP9750G | 5,89,830  | 25,658   |
| GURUKRUPA FLY ASH BRICKS & ACTA CEM-Main | AAHHA1625G | 28,45,322 | 1,20,642 |
| HDFC BANK -10831930001214                |            | 6,068     |          |
| I M Industries                           | AJSP18785C | 57,619    | 2,382    |
| K.D.PRAJAPTI                             | ABCPP2412N | 45,820    | 1,957    |
| KESHAV ENTERPRISE                        |            | 3,29,017  | 12,789   |
| LAAKOONAA REACTION                       |            | 2,919     |          |
| Mahalaxmi Associates Kutch               | AABHR7056A | 2,01,592  | 8,467    |
| Matrushakti Industries                   |            | 11,057    |          |
| Myriad Chemical Technologies             |            | 15,000    |          |
| RAJINI MARKETING                         | ANSP56988C | 12,23,671 | 53,229   |
| Rakesh Chemical Industries               |            | 1,681     |          |
| Rudraraj Builders A,Bad                  |            | 28,359    | 1,191    |
| Shivam Transport                         |            | 2,21,123  | 30,957   |
| Shradha Earth Movers                     |            | 2,65,595  | 37,297   |
| Tannotary Associates                     |            | 31,425    |          |
| VUJAYLAXMI TRANSPORT                     | AJEPM7043A | 90,188    | 12,626   |
| Binani Cement Ltd.                       |            | 10,69,386 | 1,46,953 |
|  |            | 97,06,401 | 5,66,115 |

| Particulars                                      | PAN        | Amount    | ST       |
|--|------------|-----------|----------|
| AHMEDABAD CEMENT PIPE-VADAGAM                    | AAQPA4430Q | 9,34,441  | 41,943   |
| Akokok Cement Pipe-Rakhiyal                      |            | 13,312    |          |
| AMBICA PIPE-VADAGAM                              |            | 19,463    |          |
| ARCHIT CORPORATION                               |            | 7,61,730  | 33,826   |
| AROSE ENGINEERING & PROJECTS                     |            | 10,341    |          |
| ASHAPURA CARRIERS                                |            | 3,04,302  |          |
| DHANESHWAR SOLUTION(A DIVISION OF BINANI CEMENT) |            | 17,31,426 | 77,914   |
| GURUKRUPA FLYASH BRICKS & ACTA CAM-MAIN          | AAHHA1625G | 30,30,284 | 1,35,306 |
| I M Industries                                   | AJSP18785C | 43,956    | 1,967    |
| Jagdish Roadways                                 | AITPB9642G | 76,722    | 3,452    |
| K.D.PRAJAPATI                                    | ABCPP2412N | 28,921    |          |
| NEW AMAN STORE ENTERPRISE-RAJ                    |            | 2,050     |          |
| Om Shiv Infrastructure                           | AGXPP2815H | 7,309     |          |
| RAJINI MARKETING                                 | ANSP56988C | 8,42,118  | 36,717   |
| Shradha Earth Movers                             |            | 3,82,184  | 17,001   |
| SHREE RAJSHAKTI TRANSPORT                        | APMPK2433C | 1,60,000  |          |
| SHREE KUTCH COAL AGENCY                          |            | 2,20,857  | 9,938    |
| SHREE VAJBHAV LAXMI CARRIER -INCOME              | AIDPP9436H | 17,109    |          |
| Ambuja Cement Ltd-Magdhulla                      |            | 8,046     | 1,167    |
| Binani Cement Ltd.                               |            | 32,701    | 4,742    |
| Saurashtra Cement Limited-Ranavav                |            | 707       | 103      |
|  |            | 86,27,970 | 3,64,076 |

I find that assessee has submitted the list of the service receiver who was neither covered under notification no. 25/2012-ST nor notification no.30/2012-ST and liability for payment of service tax was on the assessee for the F.Y. 2014-15,2015-16 & 2016-17. On going through the list I find that assessee had made short payment of Service Tax for the F.Y. 2014-15, 2015-16 & 2016-17, details of the same given below;

| Year    | Taxable value on which service tax have to be paid by the assessee | Taxable value on service tax paid by assessee | Taxable value on service tax not paid by the assessee |
|---------|--|---|---|
| 2014-15 | 7685855/-  | 4137312/-                                     | 3548543/-   |
| 2015-16 | 9706401/-  | 9616925/-                                     | 89476/-   |
| 2016-17 | 8627970/-  | 8065172/-                                     | 562798/-  |

On going through the detail submitted by the assessee, it had been found that Service Tax on the taxable value of Rs.35,48,543/- for F.Y.2014-15, Rs.86,476/- for F.Y.2015-16 and Rs.562798/- for F.Y. 2016-17 has not been paid by the assessee, as they were not covered under exemption category mentioned in Notification No.30/2012 30/2012-ST i.e. (a) any factory registered under or governed by the Factories Act, 1948 (b) any society registered under the Societies Registration Act, 1860 (c) any co-operative society established by or under any law;(d) any dealer of taxable goods,(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. Further, they were not covered under the Mega Exemption Notification



NO.25/2012-ST i.e. service by giving hiring to a GTA. The assessee was required to pay the Service Tax on the taxable value for F.Y. 2014-15, 2015-16 & 2016-17 under the category of GTA.

19. The assessee has submitted the Audit Report for F.Y.2014-15,2015-16, 2016-17 and 2017-18 issued by Pinky Prajapati , Chartered Accountant, M.No.120924 (Firm Reg.No.126817W), G-26, Platinum Plaza, Navjivan Mill Compount, Kalol 382 721 under Section 44AB of the Section 44AB of the Income Tax Act,1961;

Section - 44AB, Income-tax Act, 1961-2021

Audit of accounts of certain persons carrying on business or profession.

44AB. <sup>6</sup>Every person,—

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year <sup>7</sup>[\*\*\*]:

<sup>8</sup>[Provided that in the case of a person whose—

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment:

<sup>9</sup>[Provided further *that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash,*]

this clause shall have effect as if for the words "one crore rupees", the words "<sup>10</sup>[ten] crore rupees" had been substituted; or]

(b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or

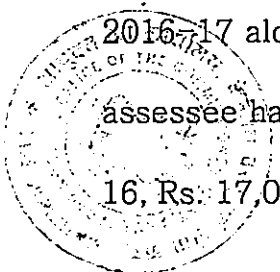
(e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

I find that in Form No.3CD issued by the auditor (Pinky Prajapati & Associates), in para 4 of the said form it has been established that the assessee are liable to pay Sales Tax/VAT and Service Tax, the assessee were holding Sales Tax/VAT and Service Tax registration, para 11 of the said audit report state that Cash Book, Bank Book, Sales and Purchase Register, Income and Expense Register, Journal Register has been examined, to the best of his information and knowledge, the said accounts, read with notes thereon financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed. I find that the assessee had submitted the copy of Audit Report under Section 44AB of the Income Tax, 1961 for F.Y.2014-15, 2015-16, 2016-17 & 2017-18 alongwith Profit & Loss Accounts including all Annexure.

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 assessee during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee 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. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

20. I find that assessee has submitted the copy of Audit Report under Section 44Ab of the Income Tax Act,1961 for the F.Y. 2014-15, 2015-16 and 2016-17 alongwith Profit & Loss Accounts including all Annexure. I find that the assessee has received transportation income of Rs.20,95,91,908/- for F.Y.2015-16, Rs. 17,05,17,732- for F.Y.2016-17 and Rs.12,02,59,086.25 for F.Y.2017-18.

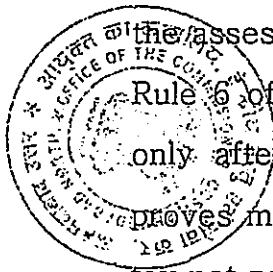


21. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments that they were eligible for exemption of Notification No.25/2012 (entry no.22) and 30/2012 (entry no. I(A)(ii)). I am therefore of the view that the assessee has established their case quite clearly that the difference in value of service is on account of sale of services provided by them for Goods Transport Agency Service, and the same is covered under the Notification NO.25/2012-ST dated 20.06.2012 and Notification No.30/2012 dated 20.06.2012.

22 Further, in view of the findings at para 18 above, the assessee were however liable to pay Service Tax on income for transportation for the F.Y.2014-15, 2015-16 and 2016-17, and the same had not been paid by the assessee. Hence, the same is demanded and required to be recovered from the assessee under Section 73 of the Finance Act,1994, details of the same are as given below;

| Year    | Gross Taxable value | Abatemnt   | Taxable Value | Service tax to be paid |
|---------|---------------------|------------|---------------|------------------------|
| 2014-15 | 3548543             | 2661407.25 | 887135.8      | 109650                 |
| 2015-16 | 89476               | 67107      | 22369         | 3244                   |
| 2016-17 | 562798              | 422098.5   | 140699.5      | 21105                  |
| TOTAL   |                     |            |               | 133998                 |

23. I find that as discussed in para18, the assessee had rendered taxable service namely "GTA Service" and had not paid the service tax on taxable value of Rs. 42,00,817/-, as they were not covered under exemption category mentioned in Notification No.30/2012-ST i.e. (a) any factory registered under or governed by the Factories Act, 1948 (b) any society registered under the Societies Registration Act, 1860 (c) any co-operative society established by or under any law;(d) any dealer of excisable goods,(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. Further, they were not covered under the Mega Exemption Notification NO.25/2012-ST i.e. service by giving hiring to a GTA during F.Y. 2014-15,2015-16 and 2016-17, which is required to be confirmed, demanded and recovered from the assessee. They thereby have violated the provision of Section 68 read with Rule 6 of the Service Tax Rules. It had come to the notice of the department only after the submission of the documents by the assessee, which clearly proves malafide intention of the assessee. I therefore find that the said service tax not paid is required to be demanded and recovered along with interest from





them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years and the demand sustainable on above ground shall be recovered under Section 75 of the Finance Act, 1994 for the delayed payment.

24. Further, it is my considered view that the Government has, from the very beginning, put in place mechanism of trust-based compliance on the part of manufacturers/ supplier of goods/ output service providers/ taxpayers and accordingly, measures such as self-assessment etc., based on mutual trust and confidence have been in place. In the spirit of mutuality of trust and transparent tax administration with reduced compliance burden vis-à-vis rules & procedures the government has consciously promoted the industries interest. Further, a manufacturer/ supplier of goods/ service provider/ taxpayer is not required to maintain any statutory or separate records under the provisions of the Finance Act, 1994 and Rules made thereunder, as considerable amount of trust is placed on them and private records maintained by them, for their normal business purposes, are accepted, practically for all the purposes. All these operate on the basis of expectation of honesty, truthfulness and due diligence on the part of the assessee. Therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on them. From the evidences, it is observed that the assessee had knowingly suppressed the fact of receiving income under GTA service. This deliberate act of suppressing income under Finance Act, 1994 is in utter disregard to the requirements of law and breach of trust reposed on them and is certainly not in tune with Government's efforts in the direction to create a voluntary tax compliance regime.

25. Further, it is observed that the assessee was fully aware about the fact that they were receiving such income which was chargeable under the Service Tax. However, in spite of knowing the facts; they chose not to pay the said applicable dues related to Service Tax. This appears to have been done to escape from the eyes of the department with intent to evade the payment of dues related to Service Tax under the Finance Act, 1994. This fact of non-payment of dues related to Service Tax would have remained unnoticed, but for the third party data received from CBDT and the consequent chain / sequence of events. These acts on the part of the assessee tantamounts to willful

suppression, concealment and mis-statement of facts, with intent to evade the payment of dues related to Service Tax.

In view of the above discussion and findings, invoking of extended period of limitation under Section 73 of the Finance Act, 1994 appears to be applicable in the present case.

26. Since in the instant case, suppression of material facts have been established beyond doubt as discussed in details in the paras supra, I consider this as a fit case for imposition of penalty under Section 78 of the Finance Act, 1994 which reads as under:

***“SECTION 78. Penalty for failure to pay service tax for reasons of fraud, etc. —***

*(1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :*

*Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the 24 date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined :*

*Provided further that where service tax and interest is paid within a period of thirty days of — the date of service of notice under the proviso to (i) sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded; (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :*

*Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period :*

*Explanation. — For the purposes of this sub-section, “specified records” means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of accounts shall be considered as the specified records.”*

26.1 Since, it is already proved that the assessee had suppressed the relevant facts from the department obviously with an intent to evade payment of



legitimate service tax dues the consequences shall automatically follow. Hon'ble Supreme Court has settled this issue in the case of U.O.I Vs. Dharmendra Textile Processors reported in 2008(231)ELT3(SC) and has further clarified the same in the case of U.O.I. Vs. RSWM reported in 2009(238)ELT3(SC). Hon'ble Supreme Court has said that the presence of *malafide* intention is not relevant for imposing penalty and *mens rea* is not an essential ingredient for penalty for tax delinquency which is a civil obligation. Further, Hon'ble High of Karnataka at Bangalore in the case of Motor World (2012(27)STR225(Kar.)) has held that;

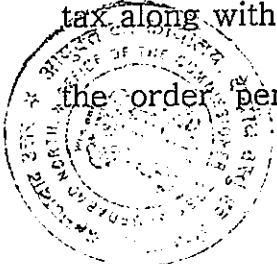
"Section 78 applies to a case where a person has registered himself under the Act and failed to file the prescribed return and in such return filed, he has suppressed or concealed the value of taxable service or has furnished inaccurate value of such taxable service....."

.....Therefore, the argument that once acts of suppression, concealment and furnishing inaccurate particulars are established, the penalty follows as a matter of course or in other words is automatic, is without any substance as it runs counter to the express provision contained in Sections 78 and 80 of the Act. When once it is held that there is no reasonable cause, then the authority is empowered to impose penalty as prescribed under Section 78, for such failure. Here the penalty prescribed is penalty which shall not be less than but which shall not exceed twice the amount or service tax sought to be evaded by reason of suppression or concealment or the value of taxable service or the furnishing of inaccurate value of such taxable service.

21. When once the ingredients of Section 78 are established and there is no reasonable cause for failure. Section 80 is not attracted. Then the authority has to impose a minimum penalty of the amount or service tax sought to be evaded and the maximum is double the said amount. Here, there is no discretion, which is vested with the authority. The discretion is only confined to impose a penalty above the minimum and less than the maximum provided for under the Act....."

26.2 Thus penalty under Section 78, is attracted whenever any Service Tax has not been levied or not paid or has been short levied or short paid or erroneously refunded by the reasons of fraud, suppression of facts, willful mis-statement or contravention of any provisions of Finance Act, 1994 or of the rules made there under with intent to evade the payment of service tax and this penalty shall not be less than the duty evaded. Thus the assessee have rendered themselves liable to penalty under section 78 of the Finance Act, 1994 as they had not paid service tax inspite of the facts that they were providing the taxable service. However, as per the second proviso to section 78, where such service tax along with interest is paid within 30 days from the date of communication of

the order penalty would be further reduce to 25% of the service tax so



determined. The benefit of reduced penalty shall be available only if such penalty is also paid within 30 days referred to as above.

27. Regarding penalty under Section 77, I find that the assessee has also contravened the provision of Section 67 of the Finance Act, 1994 in as much as they failed to determine the correct value of taxable services by not mentioning the same in ST3 returns; violated the provisions of Section 68 of the act read with Rule 6 of the Service Tax Rules, 1994 by not paying the Service Tax during the F.Y. 2014-15, 2015-16 and 2016-17. Further, the assessee has not assessed the tax due on the services provided by them, as discussed above, and failed to file correct ST3 returns in time thereby violating the proviso of Section 70 of the act read with Rule 7 of the Service Tax Rules, 1994. In view of the above, they are liable for imposition of appropriate penalty under Section 77 of the Finance Act, 1994.

28. Further, in view of the discussion made in the forgoing paras, I hold that the assessee has failed to pay the service tax on the income received for GTA service by suppressing the facts from the department by contravening the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and Section 67(1) of the Finance Act, 1994 read with Rule 5(1) of the Service Tax Rules, 1994. The Service Tax totally amounting to Rs. 1,33,998/- is recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 and they have also rendered themselves liable to pay interest under section 75 of the Finance Act, 1994. They have further rendered themselves liable for penalty under the provisions of Section 78 of the Finance Act, 1994.

Therefore, from the factual matrix and the question of law as discussed in the forgoing paras, I pass the following order: -



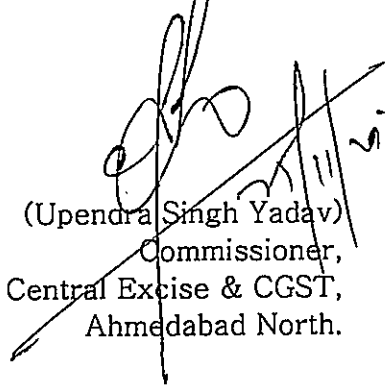
ORDER

(i) I confirm and demand of service tax of Rs. 1,33,998/- (Rupees One Lakh Thirty Three Thousand Nine Hundred Ninety Eight Only), as discussed in Para 22, under the proviso of Section 73(1) of the Finance Act, 1994.

(iii) I order to recover interest at the applicable rate from M/s. Rachna Infrastructure Limited, under the provisions of Section 75 of the Finance Act, 1994 on the demand at (ii) above.

(iv) I impose penalty of Rs.10,000/- (Rupees Ten Thousand Only) upon them under section 77 of the Finance Act,1994 for failure to show correct taxable value in their ST3 returns.

(v) I impose penalty of Rs. 133,998/- (One Lakh Thirty Three Thousand Nine Hundred Ninety Eight Only) under section 78(1) of the Finance Act, 1994. If the service tax amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the Service Tax amount, provided if such penalty is also paid within such period of 30 days.

  
(Upendra Singh Yadav)  
Commissioner,  
Central Excise & CGST,  
Ahmedabad North.

By Regd. Post AD./Hand Delivery  
F. No. STC/15-49/OA/2020

Date:

To  
M/s. Shri Gurukrupa Trading Co.,  
Ramdevnagar, 109 21, Rambaug Road, Opp Municipal Garden,  
Ramnagar, Sabarmati, Ahmedabad, Gujarat

Copy for information to:

- 1 The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
- 2 The Assistant Commissioner, CGST & C. Ex., Division-VI, Ahmedabad North.
- 3 The Superintendent, Range-II, Division-VI, Ahmedabad North.
- 4 The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- 5 Guard File

