


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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-50/OA/2020 & STC/15-11/OA/2021

DIN-20211264WT0000555ECE

आदेश की तारीख / Date of Order : 25.11.2021
जारी करने की तारीख / Date of Issue : 07.12.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या / AHM-EXCUS-002-COMMR-36 & 37 /2021-22

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-36 & 37/2021-22

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 or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)



M/s. R. G. Gupta Logistics Pvt. Ltd., were issued two SCNs dated 28.09.2020 & 23.04.2021 by the department for demand of Service Tax.

BRIEF FACTS OF THE CASE PERTAINING TO THE TWO SCNs ISSUED TO M/S. R. C. GUPTA LOGISTICS PVT. LTD., ARE AS FOLLOWS:-

M/s. R. C. Gupta Logistics Pvt. Ltd., situated at Ghanshyam Avenue, 28, Ghanshyam Avenue, Navjivan, Ahmedabad, Gujarat-380 014, (hereinafter referred to as the 'Assessee' for the sake of brevity) engaged in providing taxable services are holding Service Tax Registration No. AADCR5807LST001.

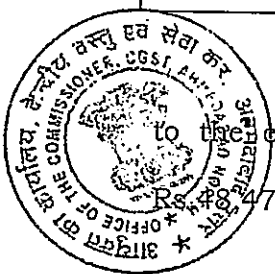
2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" was undertaken by the Central of Direct Taxes (CBDT) for the F.Y. 2014-15, 2015-16 and 2016-17, and details of said analysis were 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 and on going through the Third party Data provided by CBDT the said assessee for the F.Y. 2014-15, 2015-16 and 2016-17, the total sales of service (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, 2015-16 and 2016-17. 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, 2015-16 and 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2014-15, 2015-16 and 2016-17. The difference in value as observed for FY 2014-15, 2015-16 and 2016-17 were found to be as under:

TABLE

F.Y.	Value as per B/s,P&L, Form 26AS of ITR	Value Declared in ST3 returns	Value difference in ITR and STR	Resultant Service Tax short paid (including cess)
2014-15	270014692/-	459226/-	269555466/-	33317056/-
2015-16	224382370/-	9235080/-	215147290/-	31196357/-
2016-17	0	9908041/-	0	0
TOTAL			484702756/-	64513413/-

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs.6,45,13,413/- (including Cess) on the differential value of Rs.47,02,756/-.



4. The assessee were requested to provide explanation for such difference vide letter dated 03.05.2018, 13.07.2020 for difference in value shown in ST-3 Returns vis-à-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, 2015-16, 2016-17 and 2017-18 (upto June, 2017). But, the assessee neither produced any documentary evidences nor submitted any reply in the matter.

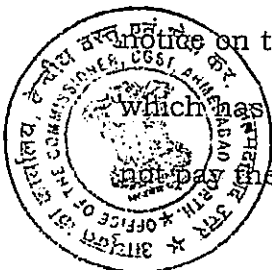
As per the provisions of Section 70 of the Finance Act ,1994,

(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 5th 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 their 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. 6,45,13,413/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 2014-15, 2015-16 & 2016-17 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. 6,45,13,413/- (including Cess) worked out on taxable value of Rs. 484702756/-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.

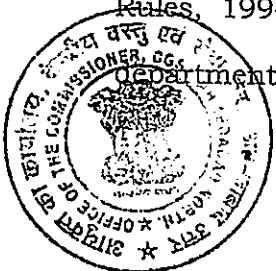
8. Therefore, it appeared that the said assessee had (i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 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 in as much as they have not paid service tax as worked out in the Table for Financial Year 2014-15 to 2017-18 (upto June-2017); (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; (vi) 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; (vii) 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.

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 2014-15, 2015-16 & 2016-17. 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 above and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 6,45,13,413/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about 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.

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. 6,45,13,413/- 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



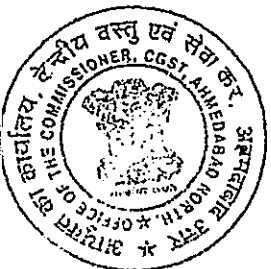
Service Tax. The said assessee had not discharged their Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.

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 paras and therefore, the said amount of Service Tax amounting to Rs. 6,45,13,413/- (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.

13.1 Pre-SCN consultation letter/mail was issued on 26.09.2020 for SCN issued vide F.No.STC/15-50/OA/2020 and Pre-SCN consultation letter F.No. STC/15-TDP/OA/2021 dated 22.04.202 for SCN was issued vide F.No.STC/15-11/OA/2021 dated 23.04.2021 to assessee. The assessee did not appear for personal hearing in response to both Pre-SCN consultation letters.



14. Therefore, two SCNs were issued to M/s. R.C. Gupta Logistics Pvt. Ltd., Ghasham avenue, 28 Ghandhyam avenue, Navjivan, Ahmedabad. The details of the two SCNs are as under:-

- (i) Show Cause Notice No. STC/15-50/OA/2020 dated 28.09.2020 issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North.
- (ii) Show Cause Notice No. STC/15-11/OA/2021 dated 23.04.2021 issued by the Commissioner, Central GST & Central Excise, Ahmedabad North.

Vide the above SCNs the noticee M/s. R. C. Gupta Logistics Private Limited, Ghanshyam, 28 Ghanshyam Avenue, Navjivan, Ahmedabad were asked as to why:-

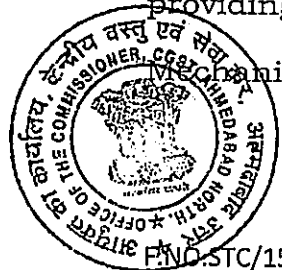
- (i) The Service Tax to the extent of Rs. 33317056/- (Rupees Three Crore Thirty Three lakhs Seventeen Thousand Fifty Six Only) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;
The demand of Service Tax to the extent of Rs.3,11,96,357/- (Rs. Three Crore Eleven Lakhs Ninety Six Thousand Three Hundred Fifty Seven Only) short paid/not paid by them in F.Y.2015-16 and 2016-17, 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 demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994 for both the above mentioned service tax demanded;
- (iii) Penalty under the provisions of Section 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.
- (iv) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

15. DEFENCE REPLY:

The assessee had not submitted any defense reply in response to both SCNs issued to them.

16. PERSONAL HEARING:

Personal hearing on the matter was fixed on 25.10.2021 for SCN F.No.STC/15-50/OA/2020. Shri Arun Maheshwari , CA appeared for personal hearing on behalf of the assessee. They have submitted a written submission dated 25.10.2021, wherein they have contended that they are providing transportation services which are covered by Reverse Charge Mechanism (RCM), they also submitted the Audit report of department,



the sample invoice and sundry other documents buttressing and supporting their say that they have zero service tax liability on account of services provided by them. For SCN F.NO.STC/15-11/OA/2021 PH was fixed on 15.11.2021, Shri Arun Maheshwari, C.A. again appeared for personal hearing on behalf of the assessee. They have submitted the documents pertaining to subject case in the defence of their case and have requested to decide the issue on merit.

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 two SCNs, and the documents submitted by the assessee.

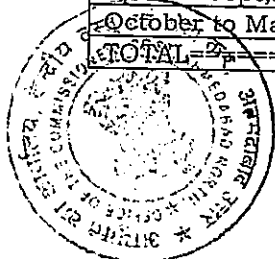
17.2 On going through the SCNs, I find that basically the essence of the case is that data of Sales /Gross receipt from services were shared by the CBDT with CBIC for FY 2014-15,2015-16 & 2016-17, which was then compared with the gross value declared in ST-3 Returns filed for F.Y. 2014-15,2015-16 & 2016-17 by the assessee. The difference in value of services to the extent of Rs. 484702756/- was noticed and therefore, the subject two SCNs were 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. 484702756/- under proviso to section 73(1) of Finance Act, 1944 or not.

I find that the assessee had filed ST3 returns for the F.Y.2014-15,2015-16,2016-17 & 2017-18, the details of the same are as under;

Period	Gross Amount in ST3
April to Sept,2014-15	56190/-
October to March,2014-15	403036/-
TOTAL=====→>>	459226/-

Period	Gross Amount in ST3
April to Sept,2015-16	136156884/-
October to March,2015-16	140229803/-
TOTAL=====→>>	276386687/-

Period	Gross Amount in ST3
April to Sept,2016-17	130680087/-
October to March,2016-17	141479836/-
TOTAL=====→>>	272159923/-



I also find that in Show Cause Notice Taxable Value as per ST3 returns is less than the actual Gross Amount filed in ST3 returns for the F.Y.2015-16 & 2016-17.

17.3 Further, I find that the assessee during personal hearing have claimed that they are providing transportation services and the same is covered under Reverse Charge Mechanism (RCM). They have submitted the copy of mail sent on the mail id of Range-I Division-VII ie.raggediv@yahoo.in and Adjudication Section ie.oaahmedabad2@gmail.com dated 26.09.2020, stating therein that they were providing services to the persons registered under 7 categories specified by Service Tax who were liable to pay Service Tax under Reverse Charge Mechanism and Service Provider was not liable to pay Service Tax under forward charge mechanism. I find that assessee was paying service tax under the category of GTA, as the service receiver 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. They have provided the copies of challans for payment of Service Tax, ST3 returns, copy of income ledgers for F.Y.2014-15, 2015-16 & 2016-17.

17.4 The assessee has also submitted the Independent Auditors' Reports for F.Y. 2014-15, 2015-16, 2016-17 and 2017-18 issued Sh. Jayesh K. Shah,C.A., Partner of M/s. Shah Kantilal & Co., M.No.047976, Firm Reg. NO.112260W, Ahmedabad . I find that the Independent Auditor is appointed by the Company under Section 139 of the Company Act, and auditor has to make a report, in accordance with Section 143 of Company Act, to the members of the company on the accounts examined by him and on every financial statements which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters

which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under section 143 (11) and to the best of his information and knowledge, the said accounts, 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.

17.5. The assessee has submitted the Audit Report for the F.Y.2014-15, 2015-16, 2016-17 and 2017-18 issued by Shah Kantilal & Co., Chartered Accountants, 806, Mauryansh Elanza, Near Parekhs Hospital, Satellite, Ahmedabd-380 015 under Section 44AB of the Income Tax Act, 1961 in respect of M/s. Shri R. G. Gupta Logistics Pvt. Ltd. Sr.No.4 of Part-A of the Form No.3CD shows that the assessee are liable to pay indirect tax like excise duty, service tax, sales tax, customs duty etc., and holding service tax registration No. AADCCR5807LST001. In Annexure-A of the statement shown as under;

Sr.No.	sector	Sub-sector	Code
1	Service Sector	TRANSPORTER	0712

From the above it is established that the assessee were providing services as transporter.

Section 44AB of Income Tax, Act, 1961 is reproduced below;

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

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

44AB. ⁶Every 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 ⁷[***]:

⁸[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:

⁹[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.]

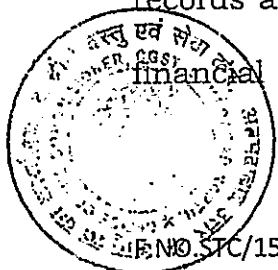
this clause shall have effect as if for the words "one crore rupees", the words "¹⁰[ten] crore rupees" had been substituted; or]

- (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 (Shah Kantilal & Co.), in para 4 of the said form it has been established that the assessee are liable to pay Service Tax and they are holding Service Tax registration, para 11 of the said audit report states that Cash Book, Bank Book, Income Register, Journal Register, Ledger have been examined, to the best of their information and knowledge, that 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 has submitted the copies of Independent Auditor's Report under Section 143 of the Companies Act for F.Y.2014-15,2015-16,2016-17 and 2016-17 (upto June-2017) alongwith Profit & Loss Accounts and Annexures.

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.

17. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments that they are providing taxable services i.e. transport of goods by road/goods transport agency service, the same are exempted vide Exemption Notification No.30/2012-ST dated 20.06.2012 and they have paid the Service Tax on taxable services which are not covered under RCM. I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

Further, I find that both the SCNs have been issued on the data provided by the CBDT, and the said data shows only the value difference in ITR & STR/TDS & STR (whichever is higher). Hence, for F.Y. 2016-17 and 2017-18 (up to June,2017), I also rely upon on the audit report FAR No. CE/ST-101/2021-22 dated 24.08.2021 issued from F.No.VI/1(b)-03/C-X/AP-68/2020-21 by the Assistant Commissioner, Circle-X,CGST, Audit, Ahmedabad. I find that assessee has been audited on 16.07.2021 by the audit party of Circle-X, CGST, Audit, Ahmedabad for the period from April, 2016 to June,2017 and they have issued the above mentioned audit report. The Revenue Para 01 of the said audit report is as under:

During the course of audit, on going through the financial records for the audit period under reference, it is noticed that the taxpayer has short paid service tax liability on the basis of reconciliation of the income as per books of accounts and ST3 returns. Hence, service tax of Rs.2976/- is liable to be recovered from them under the provision of Finance act,1994 alongwith interest and penalty.

After deliberating on the issue, the tax payer agreed with the observation voluntarily paid service tax amounting to Rs.2976/- alongwith interest of Rs.2249/- and penalty of Rs.446/- vide challan transaction acknowledgment no. CG2072820210101571393032625693 dated 28.07.2021.

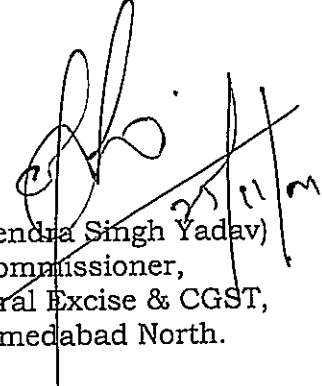


From the above audit report I find that audit team while covering all the points pertaining to Service Tax for the period April,2016 to June,2017 has only shown the recovery of only Rs.2796/- on account of short payment of service tax/interest on account of reconciliation of ST3 with Financial Accounts.

18. In view of the facts and circumstances pertaining to the case as aforementioned, the demand is found to be not tenable in law, accordingly I do not consider it necessary to delve on the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not inclined to entering into discussions on the question of imposing penalty and interest. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

I drop the proceedings initiated against M/s R. C. Gupta Logistics Pvt. Ltd., Ghanshyam Avenue, Navjivan, Ahmedabad, Gujarat-380014, vide Show Cause Notice F. No. STC/15-50/OA/2020 dated 28.09.2020 and STC/15-11/OA/2021 dated 23.04.2021.


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

By Regd. Post AD./Hand Delivery
 F.No. STC/15-50/OA/2020
 STC/15-11/OA/2021

Date: 25/11/2021

To
 M/s R. C. Gupta Logistics Pvt. Ltd.,
 Ghanshyam Avenue,
 Navjivan, Ahmedabad,
 Gujarat-380014

Copy for information to:

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

F.NO.STC/15-50/OA/2020 & STC/15-11/OA/2021

