


System

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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO. STC/15-250/OA/2021-22

DIN : 20220864WT0000555B60

आदेश की तारीख /

Date of Order : 26.08.2022

जारी करने की तारीख /

Date of Issue : 26.08.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव /

UPENDRA SINGH YADAV

आयुक्त /

COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 16 /2022-23

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

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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)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 16 /2022-23

M/s. Shree Samaiji Travels and Transport, 2778/4, Difence Colony (Defence Colony mis-spelt as Difence Colony), Nr. Pushpanagar, Kubernagar, Saijpur, Naroda Road, Ahmedabad-382 340, were issued SCN No. STC/15-250/OA/2021-22 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S. SHREE SAMAIJI TRAVELS AND TRANSPORT, ARE AS FOLLOWS:

M/s. Shree Samaiji Travels and Transport, 2778/4, Difence Colony, Nr. Pushpanagar, Kubernagar, Saijpur, Naroda Road, Ahmedabad-382 340 (hereinafter referred to as the 'Assessee' for the sake of brevity) engaged in providing taxable services, were holding Service Tax Registration No. AAYFS3349NST001.

2. Analysis of "Sales/Gross Receipts from Services (Valuc from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" in respect of M/s. Shree Samaiji Travels and Transport, was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17, and 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-I and on going through the Third Party Data provided by CBDT of the said assessee for the F.Y. 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. 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 F.Y. 2015-16 and 2016-17 as compared to the Service related taxable value declared in ITR for the FY 2015-16 and 2016-17. The difference in value as observed for F.Y. 2015-16 and 2016-17, was as under:

Sr. No.	Financial Year	Basic Value as per ST-3 Returns (in Rs.)	Basic Value as per ITR/P&L Account (in Rs.)	Difference of value (in Rs.)	Resultant Service tax short paid (in Rs.)
1	2015-16	0	8,45,83,778	8,45,83,778	1,26,87,566.7
2	2016-17	0	4,91,08,694	4,91,08,694	73,66,304.1
			13,36,92,472	13,36,92,472	2,00,53,870.8



Therefore, it appeared that the said assessee had short paid /not paid service tax to the extent of Rs. 2,00,53,870.8/- (including Cess) on the differential value of Rs. 13,36,92,472/-.

4. A letter dated 12.04.2021, was issued to the assessee seeking clarification regarding the differential value with certified documentary evidences. However, the assessee did not submit any explanation for the same. Accordingly, the service tax liability of M/s. Shree Samaiji Travels and Transport was worked out solely on the basis of income mentioned in ITRs, which were shared by Income tax Department. The said income was considered as the Total Taxable value in order to ascertain the service tax liability of the assessee under Section 67 of the Finance Act, 1994.

5. As per Section 68 of the Finance Act, 1994, every person liable to pay service tax shall pay service tax at the rate specified in Section 66B in such manner and within such period which is prescribed under Rule 6 of the Service tax Rules 1994.

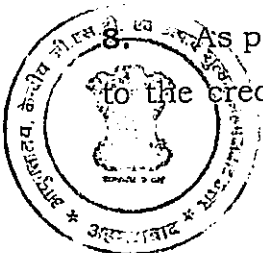
6. As per the provisions of Section 70 (Furnishing of Returns) of the Finance Act, 1994:

“(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.”

7. 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.

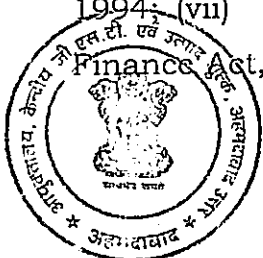
8. As per Rule 6 of the Service Tax Rules, 1994, the Service Tax shall be paid to the credit of the Central Government by 5th day of the month, immediately



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 the assessee shall submit their Service Tax returns in the form ST-3 within the prescribed time.

9. 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. 2,00,53,870.8/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 2015-16 and 2016-17 vis-à-vis "Sales /Gross Receipts from Services (ITR)" OR "Total Amount paid /Credited Under 194C, 194H, 194I, 194J" (as per 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. 2,00,53,870.8/- (including Cess) worked out on value of Rs. 13,36,92,472/- and therefore, the said 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.

10. 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 had not paid service tax as worked out in the Table for Financial Year 2015-16 and 2016-17; (iv) contravened the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 which appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (v) made themselves 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) contravened the provision of Rule 7 read with Section 70 of the Finance Act, 1994 in as much as they failed to file ST-3 Returns by due date;



(viii) also contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

11. 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 2015-16 and 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, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 2,00,53,870.8/-. 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 which were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

12. 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. 2,00,53,870.8/- 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 its Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.

13. 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 Service Tax amounting to Rs. 2,00,53,870.8/- (inclusive of Cess) not paid was required to be demanded and recoverable 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.

14. No data was shared by the CBDT, for the period FY 2017-18 (upto June-2017) and the assessee as well had failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of issuance of SCN it was not possible to quantify short payment of Service Tax, if any, for the period FY 2017-18 (upto June-2017).

Unquantified demand at the time of issuance of SCN.

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified that:

'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'

15. 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.

16. 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 asscssee had willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of Service Tax thus rendering them liable for penalty under Section 78 of the Finance Act, 1994.

17. Therefore, Show Cause Notice dated 23.04.2021 was issued to the assessee asking them as to why:

Service Tax of Rs. 2,00,53,870.8/- (Rupees Two Crore Fifty Three Nine Thousand Eight Hundred Seventy and 80 Paise Only) (Rs.



1,26,87,566.7/- for FY 2015-16 and Rs. 73,66,304.1/- for FY 2016-17) short/ not paid towards provision of those services, should not be confirmed and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.

- (ii) Interest at the appropriate rate should not be demanded and recovered from them under Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994.
- (iv) Penalty should not be imposed upon them under the provision of Section 77(2) of the Finance Act, 1994.

DEFENCE REPLY:

18. The assessee vide their letter dated 02.06.2022 submitted their written submission, wherein they interalia have stated that:

- They were in the business of providing service of transportation of goods by road (GTA).
- As per Notification, the liability to pay service tax in respect of GTA service provided by them was on service receiver, accordingly they were not liable to pay any service tax.
- SCN has mentioned Turnover of Rs. 845.83 lakh during FY 2015-16, however, during the FY 2015-16, their turnover was Rs. 361.42 Lakh. Similarly, their total turnover was Rs. 482.79 during FY 2016-17 instead of Rs. 491.08 Lakh as mentioned in the SCN.
- They had provided complete details for FY 2016-17 to the office of Dy. Commissioner, Div-I, Ahmedabad North on 17.09.2021.
- They had provided services to Limited Company and Transporters, there was no service tax liability on them.

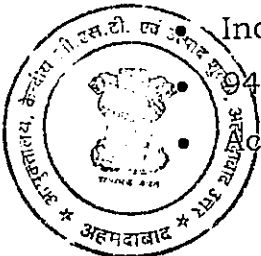
The assessee alongwith the written submission dated 02.06.2022, provided the following documents in support of their defence:

- Income Tax Returns filed for FY 2015-16 and 2016-17
- Form 26AS for FY 2015-16 and 2016-17
- Balance Sheet and P&L account for FY 2015-16 and 2016-17

Income Register for FY 2015-16 and 2016-17

94 Sample Invoices and 149 Sample Lorry Receipts (LRs)

Acknowledgement dated 17.09.2021 of submission made earlier.



The assessee vide their letter dated 10.06.2022, further submitted party wise income ledgers for FY 2015-16 and 2016-17.

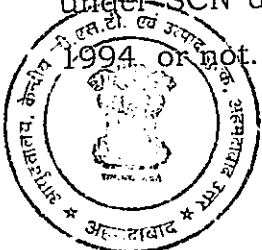
PERSONAL HEARING:

19. Personal Hearing was granted to the assessee on 18.05.2022 and 27.06.2022, however, no one attended the personal hearing on these dates. Thereafter, personal hearing was again granted on 01.08.2022 which was attended by Shri Rajendra Singh Rajput, Partner. During the course of hearing, he made reference to their written submission dated 02.06.2022. He submitted that they were providing service of GTA, accordingly they were not liable to pay service tax. Lastly, he requested to drop the proceedings in the interest of justice.

DISCUSSION AND FINDINGS:

20. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence replies and documents submitted on 02.06.2022 and 10.06.2022 and the oral submission made during the course of hearing by authorized representative of the assessee.

21. I observe that SCN dated 23.04.2021 has been issued to the assessee by the competent authority demanding Rs. 2,00,53,870.8 as service tax liability. On going through the said SCN, I find that basically the essence of the case is that data of "Sales /Gross Receipts from Services (ITR)" / "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" (as per TDS Statement-Form 26AS) were shared by the CBDT with CBIC for FY 2015-16 and 2016-17. The difference in taxable value was worked out after comparing the income declared in Form ITR vis-à-vis taxable value disclosed in ST-3 Returns. As per the said SCN dated 23.04.2021, the difference of Rs. 13,36,92,472/- in value was observed for FY 2015-16 and 2016-17, therefore, it was alleged vide SCN dated 23.04.2021, that the assessee had short paid/not paid the service tax of Rs. 2,00,53,870.8/- on such differential value, for providing the taxable service. Therefore, the subject SCN was issued to the assessee. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 2,00,53,870.8/- on the differential taxable value of Rs. 13,36,92,472/- for the Financial Year 2015-16 and 2016-17 as demanded under SCN dated 23.04.2021, under proviso to section 73(1) of Finance Act,



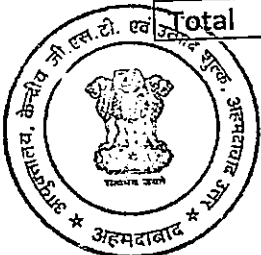
22. I find that the assessee in their defence reply dated 02.06.2022 has contested that they had provided services by way of transportation of goods by road (GTA service) and they were not liable to pay service tax under Notification No. 30/2012-ST dated 20.06.2012, on the GTA service provided by them under reverse charge mechanism (RCM). They have also contended that the service recipient being limited company and transporters, the recipients of service were liable to pay service tax under RCM on the GTA services rendered by them, as provided under Notification No. 30/2012-ST dated 20.06.2012.

23. I also find that the assessee has also contested that the figures of Total turnover of their business are 361.42 Lakh for FY 2015-16 and Rs. 482.79 Lakh for FY 2016-17, whereas the SCN has mentioned the turnover to be Rs. 845.83 Lakh for FY 2015-16 and Rs. 491.08 Lakh for FY 2016-17 respectively. In order to verify the arguments tendered by the assessee, examination of Form 26AS, P&L accounts submitted by the assessee and Figures Considered in the subject SCN, is felt necessary. The figures of turnover/ amount paid /credited for FY 2015-16 and 2016-17, as per P&L accounts, Form 26AS and value of taxable service considered in the SCN, are reproduced herein below for ready reference:

FY 2015-16 - Details of Form 26AS			
Sr. No.	As per Form 26AS, Name of TDS Deductor (by whom, the amount paid/credited to the assessee)	As per Form 26AS, amount paid/credited to the assessee (in Rs.)	Section of IT Act, under which TDS deducted
1	NILAY YOGESHBHAI SHAH	2,26,729	194C
2	FLINT GROUP INDIA PVT LTD	5,12,272	194C
3	INSILCO LIMITED	3,47,36,083	194C
	Total for FY 2015-16	3,54,75,084	

FY 2016-17 - Details of Form 26AS			
Sr. No.	As per Form 26AS, Name of TDS Deductor (by whom, the amount paid/credited to the assessee)	As per Form 26AS, amount paid/credited to the assessee (in Rs.)	Section of IT Act, under which TDS deducted
1	SHAH ALLOYS LIMITED	36,67,529	194C
2	S A L STEEL LTD	77,100	194C
3	FLINT GROUP INDIA PVT LTD	17,33,401	194C
4	INSILCO LIMITED	4,36,30,664	194C
	Total for FY 2016-17	4,91,08,694	

Turnover as per Profit and Loss Account (in Rs.)			
	FY 2015-16	FY 2016-17	Total
Direct Income	3,61,42,080	4,82,79,595	8,44,21,675
Interest Received other	89,346	1,06,747	1,96,093
Total	3,62,31,426	4,83,86,342	8,46,17,768



Figures / value of services considered in the subject SCN			
Sr. No.	Financial Year	Basic Value as per ST-3 Returns (in Rs.)	Basic Value as per ITR/P&L Account (in Rs.)
1	2015-16	0	8,45,83,778
2	2016-17	0	4,91,08,694
	Total	0	13,36,92,472

23.1 The details of above tables are summarized herein below for comparison of value of services rendered by the assessee, as appearing in different records.

Summarized Details of above details			
FY	Amount paid as per Form 26AS (in Rs.) on which TDS has been deducted under 194C of Income tax Act.	Total Turnover as per P&L Accounts (Direct income) (Rs.)	Value of services Rendered by the assessee as per SCN (in Rs.)
2015-16	3,54,75,084	3,61,42,080	8,45,83,778
2016-17	4,91,08,694	4,82,79,595	4,91,08,694
Total	8,45,83,778	8,44,21,675	13,36,92,472

23.2 On perusing the summarized details, it is quite clear that the value of service rendered by the assessee during FY 2015-16 as per the subject SCN, is found to be not tallying with the figures reflecting in Form 26AS and P&L accounts for FY 2015-16. However, the value of services for FY 2016-17 as per the impugned SCN is found to be tallying with figures reflecting in Form 26AS only. It is also seen that the value of service rendered by the assessee as per the impugned SCN for FY 2015-16 is exactly equal to the sum total of amount paid /credited to the assessee, as per Form 26AS during FY 2015-16 and 2016-17 (Rs. 3,54,75,084 + Rs. 4,91,08,694). I find that the subject SCN dated 23.04.2021 make a mention about sharing of data from ITR and the computation of service tax liability is based on such data for FY 2015-16 & 2016-17, but it is apparent from the above table that the same is found to be not tallying with P&L Accounts for FY 2015-16 and 2016-17. As evident from the documents submitted by the assessee, the value of service of Rs. 8,45,83,778/- rendered by the assessee for FY 2015-16 as mentioned in the subject SCN, appears to be not correct. Therefore, I am of the considered opinion that the assessee's contention regarding mentioning of wrong turnover of their business in SCN for FY 2015-16 and 2016-17 is evidently correct. As value of service for FY 2016-17 as mentioned in the SCN is matching with the figures appearing in Form 26AS for 2016-17, I would proceed with data of Form 26AS (amount paid or credited to the assessee by the recipient of service) for deciding the matter.



24. I find that there is no dispute as far as the receipt of the consideration from provision of service by the assessee is concerned. The assessee has admittedly stated in their defence reply dated 02.06.2022 that they had provided GTA services to Limited company and transporters. Accordingly, I find that there is no dispute as far as the question of provision of services by the assessee is concerned. I also find that the assessee has stated and claimed that they were not liable to pay service tax as the recipients of their services were limited company and transporters who were liable to pay service tax under reverse charge mechanism as provided under Notification No. 30/2012-ST on GTA Service provided by them to such limited company and transporters. Therefore, the issues before me for the consideration are whether (i) the service provided by the assessee is covered under GTA service or not (ii) whether the recipients of service are liable to pay service tax under RCM as provided under Notification No, 30/2012-ST on the service provided by the assessee or otherwise.

25. To appreciate the issue in the correct perspectives, relevant extracts from the legal provisions contained the Finance Act, 1994 / Notification issued thereunder/ Rules made there under are reproduced as follows:

A. Notification No. 30/2012-ST dated 20.06.2012:

GSR.....(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax , the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:

I. The taxable services, -

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

.....

(ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is, -

- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;



- (c) any co-operative society established by or under any law;
 (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
 (e) anybody corporate established, by or under any law; or
 (f) any partnership firm whether registered or not under any law including association of persons;
-

(II) The extent of service tax payable thereon by the person who provides the service and any other person liable for paying service tax for the taxable services specified in paragraph I shall be as specified in the following table, namely: -

Sl. No.	Description of service	Percentage of service	Percentage of service tax payable by any person liable for paying service Tax other than the service provider
2.	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%

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

It is observed from Notification No. 30/2012-ST that if the person liable to pay service tax is, covered under the list of persons provided under Sr. No. (a) to (f), then the person paying the freight for the service rendered by the goods transport agency, is liable to pay 100% service tax under reverse charge mechanism being the recipient of service. In other cases, the Service provider is liable to pay service tax.

B. Section 65B(26) provides the definition of **Goods Transport Agency**, which reads as follows:

"Goods Transport Agency" means "any person provides service in relation to transport of goods by road and issues consignment note, by whatever name called." (SIC)

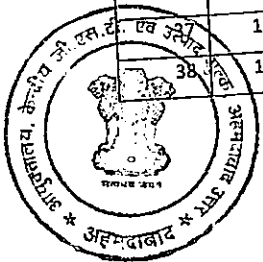
Accordingly, a person can be said to be Goods Transport Agency, if the person provides service in relation to transportation of goods by road and issues the consignment note.

26. I find that the assessee in support of their defence has produced 94 copies of sample invoices and 149 copies of sample Lorry Receipts (LRs - consignment notes) issued by them in respect of services provided by them

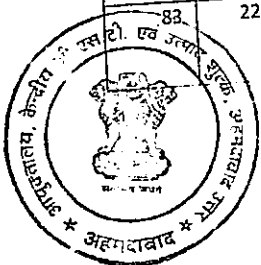


during FY 2015-16 and 2016-17. In order to ascertain the claim of the assessee that they were not liable to pay service tax on services rendered by them, the examination of the said documents needs to be done in light of the aforementioned legal position. On going through the sample invoices and LRs as follows, it is seen that they pertain to M/s. Flint Group India Pvt Ltd, M/s. Insilco Ltd and M/s. Shah Alloys Limited ("the said recipients of service").

Sr. No.	Bill No.	Bill Date	Name of the party	LR number for which Bill issued	Bill Amount	LR copies produced
FY 2015-16						
1	1	06/04/2015	Insilco Limited	676, 677	126945	Not produced
2	2	06/04/2015	Insilco Limited	852	67072	Not produced
3	3	07/04/2015	Insilco Limited	853, 854	142245	Not produced
4	5	11/04/2015	Insilco Limited	51, 52	128227	51, 52
5	4	11/04/2015	Insilco Limited	678, 01, 02, 03, 04	347377	02, 03, 04
6	6	17/04/2015	Insilco Limited	53,54	126405	53, 54
7	23	01/06/2015	Insilco Limited	85, 86	135565	85,86
8	24	03/06/2015	Insilco Limited	14, 15	150788	14, 15
9	26	06/06/2015	Insilco Limited	16, 17	133950	16, 17
10	25	06/06/2015	Insilco Limited	87, 88, 89, 90, 91,92,93,94,95	623271	94, 95
11	28	09/06/2015	Insilco Limited	18	70157	18
12	27	09/06/2015	Insilco Limited	97, 98, 99, 100, 201, 202	409640	202, 201
13	29	15/06/2015	Insilco Limited	206, 207	154470	Not produced
14	121	03/08/2015	Insilco Limited	289	39110	289
15	120	03/08/2015	Insilco Limited	96	66452	96
16	119	03/08/2015	Insilco Limited	303, 304, 305	200925	305
17	122	05/08/2015	Insilco Limited	279,291, 300	199049	Not produced
18	125	08/08/2015	Insilco Limited	292, 293, 294,295, 296, 298, 299, 387	274869	298, 299
19	124	08/08/2015	Insilco Limited	306, 307, 308, 309	277400	307, 308
20	123	08/08/2015	Insilco Limited	278, 280, 386	156916	280, 386
21	145	03/09/2015	Insilco Limited	333	69350	Not produced
22	146	03/09/2015	Insilco Limited	367	67115	Not produced
23	148	07/09/2015	Insilco Limited	368	68709	368
24	147	07/09/2015	Insilco Limited	334, 335,336	215175	335, 336
25	149	10/09/2015	Insilco Limited	337	66785	337
26	151	14/09/2015	Insilco Limited	338, 339	140529	338, 339
27	152	17/09/2015	Insilco Limited	340, 341	139555	340, 341
28	153	19/09/2015	Insilco Limited	370, 388, 389, 390, 391, 392	414604	390, 391, 392
29	153	13/10/2015	Flint Group India Pvt Ltd	118	32020	118
30	158	13/10/2015	Flint Group India Pvt Ltd	108	32140	108
31	160	15/10/2015	Flint Group India Pvt Ltd	401	32060	401
32	161	16/10/2015	Flint Group India Pvt Ltd	408	37700	Not produced
33	170	02/11/2015	Insilco Limited	454, 455	151050	Not produced
34	172	05/11/2015	Insilco Limited	394, 419	137085	Not produced
35	173	09/11/2015	Insilco Limited	456, 457	134710	456, 458
36	184	02/12/2015	Insilco Limited	181, 482	138938	Not produced
	185	05/12/2015	Insilco Limited	483, 484	147271	483, 484
	186	08/12/2015	Insilco Limited	485, 486	135494	485, 486



39	187	10/12/2015	Insilco Limited	487	135875	487
40	189	14/12/2015	Insilco Limited	431, 432	114000	432, 431
41	188	14/12/2015	Insilco Limited	489	68897	489
42	202	04/01/2016	Insilco Limited	502, 503, 504	183564	503, 504
43	203	06/01/2016	Insilco Limited	442, 450	135541	442, 450
44	204	09/01/2016	Insilco Limited	505, 506	135518	506, 505
45	205		Insilco Limited	551, 552, 553 (Date of Bill not mentioned, but appears pertaining to Jan 2016)	276932	553, 552
46	221	29/01/2016	Flint Group India Pvt Ltd	157	12000	157
47	220	03/02/2016	Insilco Limited	564, 565	136373	565, 564
48	222	06/02/2016	Insilco Limited	522, 523	135613	523, 522
49	223	08/02/2016	Insilco Limited	566, 567	134568	567, 566
50	225	10/02/2016	Insilco Limited	524, 525, 526, 527, 528, 529	421943	527, 528
51	224	10/02/2016	Insilco Limited	568, 569, 570	203585	570, 569
52	243	28/02/2016	Flint Group India Pvt Ltd	416	31460	416
53	240	02/03/2016	Insilco Limited	548, 549, 550, 621	274025	Not produced
54	241	02/03/2016	Insilco Limited	583, 584, 601, 602, 603, 604, 605	471818	Not produced
55	241	04/03/2016	Insilco Limited	622, 623	137085	622, 623
56	245	05/03/2016	Flint Group India Pvt Ltd	418	33840	418
57	244	05/03/2016	Flint Group India Pvt Ltd	417	33640	417
58	242	07/03/2016	Insilco Limited	606, 607	136753	607, 606
FY 2016-17						
59	21	17/04/2016	Flint Group India Pvt Ltd	33	31460	33
60	23	26/04/2016	Flint Group India Pvt Ltd	34	32180	34
61	52	03/05/2016	Flint Group India Pvt Ltd	35	32300	35
62	37	19/06/2016	Flint Group India Pvt Ltd	85	31660	85
63	36	19/06/2016	Flint Group India Pvt Ltd	84	31660	84
64	42	24/07/2016	Flint Group India Pvt Ltd	283	38000	283
65	43	27/07/2016	Flint Group India Pvt Ltd	223, 224, 225	198349	224, 223, 225
66	149	05/09/2016	Flint Group India Pvt Ltd	701	28000	701
67	123	14/09/2016	Insilco Limited	405, 406, 408, 409, 410, 411	423890	406, 408, 409, 410, 411
68	122	14/09/2016	Insilco Limited	300, 151, 152, 153	297873	300, 151, 152, 153
69	148	14/09/2016	Shah Alloy Ltd	172, 246	38638	172, 246
70	152	02/10/2016	Shah Alloy Ltd	182, 183, 187, 189, 189, 190, 191, 193	199963	182, 183
71	124	03/10/2016	Insilco Limited	414, 415	142215	414, 415
72	125	06/10/2016	Insilco Limited	416, 417	139833	416, 417
73	159	27/10/2016	Shah Alloy Ltd	200, 757, 759, 761	141588	200, 759
74	164	31/10/2016	Shah Alloy Ltd	768, 762, 763, 760	110263	Not produced
75	140	11/11/2016	Insilco Limited	823, 824, 826, 827, 828, 829, 830	513546	827, 828, 829, 830
76	139	11/11/2016	Insilco Limited	155, 156	143236	155, 156
77	165	11/11/2016	Flint Group India Pvt Ltd	702	35200	Not produced
78	169	12/12/2016	Flint Group India Pvt Ltd	716	30362	716
79	170	13/12/2016	Flint Group India Pvt Ltd	705	28000	Not produced
80	171	14/12/2016	Flint Group India Pvt Ltd	717	30381	717
81	212	15/12/2016	Insilco Limited	871, 872, 873, 874	284715	871, 872
82	213	20/12/2016	Insilco Limited	875, 877, 878, 879	299939	875, 877, 878
83	221	17/01/2016	Insilco Limited	164, 165 (Bill pertains to Jan 2017, year appears to be wrongly mentioned)	142761	164



84	222	21/01/2016	Insilco Limited	166, 167, 168 (Bill pertains to Jan 2017, year appears to be wrongly mentioned)	214320	166, 167, 168
85	228	21/01/2017	Insilco Limited	905, 908, 909, 910, 911, 912, 914	508203	914, 912, 911, 910
86	224	24/01/2017	Insilco Limited	906, 907, 913, 915, 916, 918, 919, 920, 921	646309	921, 920, 918, 916
87	179	26/01/2017	Flint Group India Pvt Ltd	708	28000	708
88	180	10/02/2017	Shah Alloy Ltd	779, 780, 781, 782, 783, 784	179673	779, 780
89	246	21/02/2017	Insilco Limited	1445, 996	141978	1445, 996
90	247	23/02/2017	Insilco Limited	979, 980, 981, 982, 983	356678	979, 980, 981, 982, 983
91	248	27/02/2017	Insilco Limited	984, 985, 987, 988, 989, 990, 991	not legible	988, 989, 990, 991
92	260	21/03/2017	Insilco Limited	1891, 963	143403	1891, 963
93	253	21/03/2017	Insilco Limited	1892, 971	142524	1892
94	261	23/03/2017	Insilco Limited	964, 965	154375	964, 965

It is apparent from the said invoices that the assessee has raised "Transport Bill" to M/s. Flint Group India Pvt Ltd, M/s. Insilco Ltd and M/s. Shah Alloys Limited. Further, it is seen from the said sample invoices that they contain the details of Amount Charged for Transportation (Freight), LRs details, Places where goods were to be transported, weight of the goods and Rate of Transportation. It is also evident from the sample LRs that the assessee have issued the corresponding LRs to the said recipients of service. It is also apparent from the said LRs that they contain the details of Consignee and Consignor of goods, details of goods transported, weight of goods, Truck Number and details of places where goods were to be transported. Therefore, it is established that the assessee has provided the services in relation to transport of goods by road and has also issued consignment notes. Hence, in view of the legal position as discussed above, the service provided by the assessee to M/s. Flint Group India Pvt Ltd, M/s. Insilco Ltd and M/s. Shah Alloys Limited, is found to be squarely covered under GTA Service in terms of Section 65B(26) of the Finance Act, 1994. Further, I find that the said recipients of GTA service being Limited company are also paying the freight and they are covered under the list of specified persons provided under Sr. No. (a) to (f) of Para I (taxable services) of Notification No.30/2012- ST; therefore, they are liable to pay 100% service tax on GTA service received from the assessee by them, in terms of SR. No. 2 of the table provided under Para II of the said Notification No. 30/2012-ST dated 20.06.2012. Therefore, in view of the legal position and documents produced by the assessee, I find that the assessee is not liable to pay service tax on the provision of service to M/s. Flint Group India Pvt Ltd, M/s. Insilco Ltd and M/s. Shah Alloys Limited. I find that the assessee has not provided any invoices/ LRs issued to M/s. Nilay Yogeshbhai and M/s. SAL Steel Limited in support of their plea of providing GTA to them and they being not liable to pay service tax on it. Therefore, in



absence of documents in respect of these two recipients of service, I am unable to ascertain whether the service provided to these entities was GTA service or otherwise. Accordingly, I am constrained to hold that the assessee is liable to pay service tax on taxable service rendered to M/s. Nilay Yogeshbhai Shah and M/s. SAL Steel Ltd.

FY 2015-16

Sr. No.	NAME OF THE TDS DEDUCTOR AS PER FORM 26AS	AMT. CREDITED /PAID ON WHICH TDS DEDUCTED U/S 194C (In Rs.)	Documents submitted	Amount, if liable to pay service tax/ exemption not available (in Rs.)
1	NILAY YOGESHBHAI SHAH	226729	No documents submitted	226729
2	FLINT GROUP INDIA PVT LTD	512272	Sample invoices and relevant consignment notes issued by the assessee There is a transportation of goods by road by the assessee and LR has been issued by them , therefore, the service provided by the assessee is covered under the service of GTA. Recipient of service is liable to pay service tax under RCM, on GTA service rendered by the assessee	0
3	INSILCO LIMITED	34736083	Sample invoices and relevant consignment notes issued by the assessee There is a transportation of goods by road by the assessee and LR has been issued by them , therefore, the service provided by the assessee is covered under the service of GTA. Recipient of service is liable to pay service tax under RCM, on GTA service rendered by the assessee	0
	Total	35475084		226729

FY 2016-17

	NAME OF THE TDS DEDUCTOR	AMT. CREDITED /PAID ON WHICH TDS DEDUCTED U/S 194C (in Rs.)	Documents submitted	Amount, if liable to pay service tax/ exemption not available (in Rs.)
1	SHAH ALLOYS LIMITED	3667529	Sample invoices and relevant consignment notes issued by the assessee There is a transportation of goods by road by the assessee and LR has been issued by them , therefore, the service provided by the assessee is covered under the service of GTA. Recipient of service is liable to pay service tax under RCM, on GTA service rendered by the assessee	0
	SAL STEEL LTD	77100	Only ledger account submitted	77100



3	FLINT GROUP INDIA PVT LTD	1733401	Sample invoices and relevant consignment notes issued by the assessee There is a transportation of goods by road by the assessee and LR has been issued by them , therefore, the service provided by the assessee is covered under the service of GTA. Recipient of service is liable to pay service tax under RCM, on GTA service rendered by the assessee	0
4	INSILCO LIMITED	43630664	Sample invoices and relevant consignment notes issued by the assessee There is a transportation of goods by road by the assessee and LR has been issued by them , therefore, the service provided by the assessee is covered under the service of GTA. Recipient of service is liable to pay service tax under RCM, on GTA service rendered by the assessee	0
	Total	49108694		77100

Having considered these factual matrix, the service tax payable by the assessee has been worked out and the same is summarized as under:

Sr. No.	FY	NAME OF THE RECIPIENT OF SERVICE	Value of service	Rate	Service tax payable(in Rs.)
1	2015-16 (July 2015)	NILAY YOGESHBHAI SHAH	2,26,729	14%	31,742
2	2016-17 (Sep 2016)	SAL STEEL LTD	77,100	15%	11,565
		Total			43,307

27. Therefore, in view of the legal position and documentary evidence available on records, I hold that the assessee is liable to pay service tax of Rs. 43,307/- on taxable service provided by them during 2015-16 to 2016-17, out of total demand of Service tax of Rs. 2,00,53,870.8/- for FY 2015-16 and 2016-17. Therefore, I hold that the rest of the demand of service tax amounting to Rs. 2,00,10,563.8/- needs to be dropped the same being not sustainable and legally not tenable. Thus, the assessee is liable to pay total service tax of Rs. 43,307/- only and the same is therefore, required to be recovered from the assessee under the proviso to Section 73(1) of the Finance Act, 1994.

28. Based on above facts and circumstances, discussion and documents available on records, I hold that assessee is liable to pay the service tax amounting to Rs 43,307/- for the period from FY 2015-16 to 2016-17.

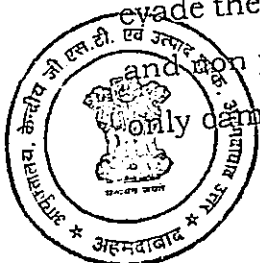
Therefore, I find that the assessee has contravened the provisions of Section 68 and 69B of the Finance Act, 1994 read with Rules 2 and 6 of the Service Tax



Rules 1994, in as much as they have failed to pay service tax to the tune of Rs. 43,307/- though they were liable to pay the same; they have also contravened the provision of Section 70 of Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994 in as much as they have failed to assess their correct service tax liability and have failed to file ST-3 Returns for the period from April 2015 to March 2017.

29. I also find that Section 75 of Finance Act, 1994 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate for the period by which crediting of tax or part thereof is delayed. I thus hold that the assessee is also liable to pay the interest on the demand of service Tax of Rs. 43,307/-.

30. From the facts and discussion aforementioned, I find that the assessee has failed to assess and discharge their service tax liability for the period from FY 2015-16 to FY 2016-17. They have failed to disclose their actual taxable income by not declaring the taxable value of service provided by them, in their service tax returns, which were required to be filed with the department. They have also failed to pay legitimate service tax due to the govt. account, though they were having income which was liable to service tax. These acts of non payment of service tax, non filing of service tax returns, suppressing the material facts from the department were done with an intent to evade the payment of service tax. The government has from the very beginning placed full trust on the assessee, accordingly measures like self assessment etc. based on mutual trust and confidence have been put in place. Further, the assessee are not required to maintain any statutory or separate records under the Excise /service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for purpose of service tax law. Moreover, returns are also filed online without any supporting documents. All these operate on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provisions is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is evident that such fact of contravention and non payment of service tax, as discussed earlier, on the part of the assessee came to the notice of the department when the inquiry was initiated by the



department, consequent upon the data shared by the CBDT. In the case of *Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241*, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In *2009 (23) STT 275, in case of Lalit Enterprises v CST Chennai*, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under the proviso to Section 73(1) of Finance Act, 1994. Hence, by invoking the extended period of five years, I hold that the assessee is liable to pay Service Tax of Rs. 43,307/- along with applicable interest under Section 75 of the Finance Act, 1994. And for the same reasons, the assessee has rendered themselves liable for penal action under the provisions of Section 78 of the Finance Act, 1994.

31. As regards, the proposal for imposition of penalty under Section 77(2) of the Finance Act, 1994, I find that the assessee had not provided /produced the documents called for by the division office and had also failed to assess their service tax liability and had failed to file service tax returns as required under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994, as discussed at length hereinabove, thus, they have rendered themselves liable to penal action under Section 77(2) of the Finance Act, 1994.

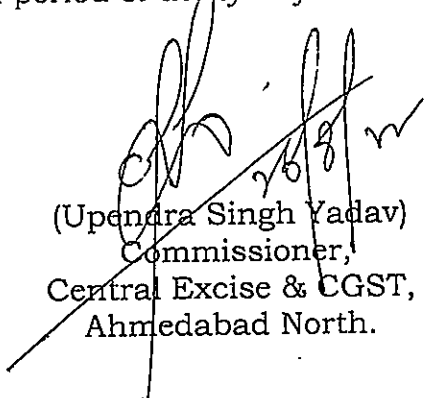
In view of the above discussion and findings, I pass the following order:

- (i) I hereby confirm the demand of service tax of Rs. 43,307/- (Rs. Forty Three Thousand Three hundred Seven only) out of the total demand of service tax of Rs. 2,00,53,870.8/-, not paid by the assessee for FY 2015-16 and 2016-17 and order to recover the same from the assessee under proviso to Sub-section (1) of Section 73 of Finance Act, 1994. I further drop the rest of the demand of Service Tax of Rs. 2,00,10,563.8/- accordingly.
- (ii) I order to charge the Interest at the appropriate rate on the demand of Service tax of Rs. 43,307/- and to recover the same from the assessee under Section 75 of the Finance Act, 1994;
- (iii) I impose penalty of Rs.43,307/- on the assessee under the provision of Section 78 of the Finance Act, 1994.



- (iv) I impose penalty of Rs. 10,000/- on the assessee under the provision of Section 77(2) of the Finance Act, 1994, for failure to provide documents/details for further verification and also for failure to file ST-3 Returns and assessee their tax liabilities.

However, in view of clause (ii) of the second proviso to Section 78 (1), if the amount of Service Tax confirmed and interest thereon is paid within period of thirty days from the date of receipt of this Order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.


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

By Regd. Post AD./Hand Delivery
F.No. STC/15-250/OA/2021-22

Date: .08.2022.

To
M/s. Shree Samaiji Travels and Transport,
2778/4, Difence Colony,
Nr. Pushpanagar,
Kubernagar, Saijpur, Naroda Road,
Ahmedabad-382 340

Copy to:

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

