


<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 &amp; Services Tax &amp; Central Excise, Ahmedabad North, Custom House(1<sup>st</sup> Floor) Navrangpura, Ahmedabad-380009</p>
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निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO.STC/15-80/OA/2021-22

DIN : 20220564WT0000121571

आदेश की तारीख /

Date of Order : 26.05.2022

जारी करने की तारीख /

Date of Issue : 26.05.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव /

UPENDRA SINGH YADAV

आयुक्त /

COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-04/2022-23

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- 04/2022-23**

M/s. Arpita Roadlines, Prem Bhoomi, Estate, Sarkhej Bavla Road, Sarkhej, Ahmedabad- 382210, were issued SCN No. STC/15-80/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. ARPITA ROADLINES, ARE AS FOLLOWS:**

M/s. Arpita Roadlines, Prem Bhoomi, Estate, Sarkhej Bavla Road, Sarkhej, Ahmedabad- 382210 (hereinafter referred to as the 'Assessee' for the sake of brevity) were engaged in providing taxable services, and were holding Service Tax Registration No. AAKFA4246JST001.

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" in respect of M/s. Arpita Roadlines, 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-IV 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/ Form 26) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return of 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 their Form 26AS ("Total Amount paid /Credited Under 194C, 194H, 194I, 194J") for 2015-16 and 2016-17. The difference in value as observed for F.Y. 2015-16 and 2016-17 was found to be as under:

Year	Value of "Total Amount paid/Credited under 194C, 194H, 194I, 194J	Value of service provided as per Service Tax Returns	Difference	Basic Service tax	Amount of service tax
2015-16	19,85,50,412	26,82,723	19,58,67,689	14.5%	2,84,00,814
2016-17	18,62,84,129	25,71,659	18,37,12,470	15%	2,75,56,870
	38,48,34,541	52,54,382	37,95,80,159		5,59,57,684



Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. 5,59,57,684/- (including Cess) on the differential value of Rs. 38,48,34,541/-.

4. A letter dated 15.04.2021 was issued to M/s. Arpita Roadlines to explain the difference and to submit documents in support thereof viz. Balance Sheet, Profit and Loss Account, Income Tax Return, Form 26AS, etc. However, M/s. Arpita Roadlines neither submitted the details as requested nor submitted explanation for the vast difference noticed between Service Tax Return and Income Tax Return. Accordingly, the service tax liability of M/s. Arpita Roadlines was worked out on the basis of income mentioned in Form 26AS, 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 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.

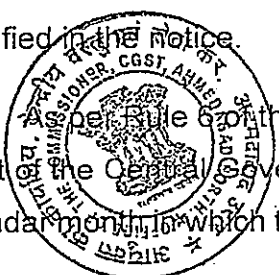
6. As per the provisions of Section 70 (Furnishing of Returns) of the Finance Act, 1994:

"(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 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.

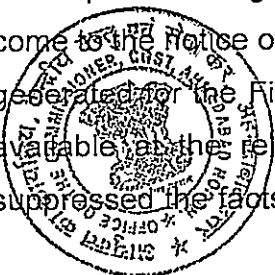


Rule 7 of the Service Tax Rules, 1994 stipulates that the assessee shall submit their Service Tax returns in the form ST-3 within the prescribed time.

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. 5,59,57,684/- (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 "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. 5,59,57,684/- (including Cess) worked out on value of Rs. 38,48,34,541/- 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; (vii)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. 5,59,57,684/-. 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. 5,59,57,684/- 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.

13. No data was shared by the CBDT, for the period FY 2017-18 (upto June-2017) and M/s. Arpita Roadlines had also 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 issue 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.'*

14. Total Amount Paid/Credited Under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts From Services (From ITR) for the FY 2017-18 (upto June-2017)

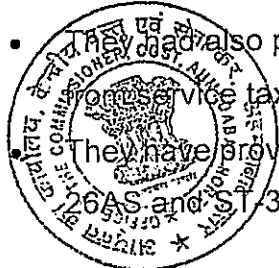


- (i) Differential amount of Service Tax of Rs. 5,59,57,684/- (Rupees Five Crore Fifty Nine Lakh Fifty Seven Thousand Six Hundred Eighty Four Only) short/ not paid, should not be confirmed and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (ii) Service tax liability for the FY 2017-18 (upto June 2017) to be ascertained, 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 Section 75 of the Finance Act, 1994;
- (iv) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994.
- (v) Penalty should not be imposed upon them under the provision of Section 77(1) of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Finance Act, 1994.
- (vi) Penalty should not be imposed upon them under the provision of Section 77(2) of the Finance Act, 1994, for failure to assess their correct Service Tax Liability and for failure to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

#### DEFENCE REPLY:

20. The assessee vide their letter dated 13.05.2021 (received on 25.05.2021) submitted their written submission, wherein they interalia have stated that:

- They are a partnership firm providing Carting services, Cargo Handling Services. They have paid service tax on Cargo Handling Service.
- For Carting Service/ Goods Transport Services, they were not liable to pay service tax as it was covered under Reverse Charge Mechanism and liability to pay service tax was on recipient of service as per Notification No. 30/2012-ST dated 20.06.2012.
- They have enclosed a copy of agreement dated 01.04.2016 entered with M/s. Gujarat Siddhi Cement Limited.
- They also provided service of Hiring of Vehicles to GTA, which was also exempt from service tax vide entry No. 22 of Notification No. 25/2012-ST dated 20.06.2012. They have provided the details of taxable income declared/ booked in their financials/ 26AS and ST-3 Returns, as detailed below.



Financial Year	As per ST-3	As per Audited Financials		Income reflected in 26AS	Diff. between ST-3 and 26AS Income
	Taxable Income	Taxable Income under Service Tax Law	Exempt or Taxable under Reverse Charge Basis		
2015-16	26,82,723	26,82,723	22,82,42,568	19,85,50,412	19,58,67,689
2016-17	25,71,659	25,71,659	20,37,92,070	18,62,84,129	18,37,12,470

They have stated that the difference of Rs. 19,58,67,689/- in income for FY 2015-16 and Rs. 18,37,12,470/- for FY 2016-17 was not considered in ST-3 Returns filed by them for 2015-16 and 2016-17 as the same service was covered under Notification No. 25/2012-ST and 30/2012-ST.

- They have stated that they have not violated any provisions of law and were not liable to pay service tax on such difference. Accordingly, they requested to drop the proceedings.
- They have submitted the following documents:
  - Agreement for Transportation of Cement And Clinker from GSCL Factory, Sidheegram to Various destination made on 01.04.2015 and 01.04.2016 between the assessee and M/s. Gujarat Sidhee Cement Ltd.
  - From 3CB alongwith Balance Sheet and P&L accounts for FY 2015-16 and 2016-17.
  - ITR V and Computation of Income for 2015-16 and 2016-17
  - Freight and Cargo Handling Income Legers
  - ST-3 Returns FY 2015-16 , FY 2016-17 & FY 2017 -18 (upto June 17)
  - 26AS for FY 2015-16, FY 2016-17 & FY 2017-18
  - Sample Invoices

The assessee vide their Mail dated 13.05.2022, had also provided the list /name of the recipient of services as per their financial records vis-à-vis the name of recipient of service as per Form 26AS.

#### PERSONAL HEARING:

21. Personal Hearing was granted to the assessee on 28.04.2022, which was attended by Mrs. Vaibhavi Patel, CA as authorized by the assessee. During the course of hearing, Mrs. Vaibhavi Patel made reference to their earlier written submission dated 13.03.2021 (received on 25.05.2021) and stated that the assessee were providing service of GTA and Cargo Handling Service. She requested to decide the matter on merits and drop the SCN.



**DISCUSSION AND FINDINGS:**

22. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply submitted on 13.05.2021, the documents submitted by the assessee and oral submission made during the course of hearing by authorized representative of the assessee.

23. On going through the SCN, I find that basically the essence of the case is that data of "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" (as per TDS Statement-Form 26AS) were shared by the CBDT for FY 2015-16 and 2016-17. The difference in taxable value was worked out after comparing the income declared in Form 26AS ("Total Amount Paid/Credited under 194C, 194H, 194I, 194J") vis-à-vis taxable value disclosed in ST-3 Returns. The difference of Rs. 38,48,34,541/- in value was observed for FY 2015-16 and 2016-17, therefore, it was alleged that the assessee had short paid the service tax of Rs. 5,59,57,684/- on such differential value, for providing the taxable service. 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 of Rs. 5,59,57,684/- on the differential taxable value of Rs. 38,48,34,541/- for the Financial Year 2015-16 and 2016-17 under proviso to section 73(1) of Finance Act, 1994 or not.

24. I find that that the assessee in their defence reply dated 13.05.2021, has stated that they are a partnership firm and are engaged in providing Carting services/GTA Service, Hiring of vehicles to GTA for Transportation and Cargo Handling Services. They have paid service tax only on Cargo Handling Service. I find that they have further stated that they were not liable to pay service tax on GTA service rendered by them, as the recipients of service were liable to pay service tax under Reverse Charge Mechanism as provided under Notification No. 30/2012-ST dated 20.06.2012; They have further argued that service of hiring of vehicle to GTA for transportation was also exempt in terms of Sr. No. 22 of Notification No. 25/2012-ST dated 20.06.2012. They have explained the reason for difference in taxable value as has been pointed out in the SCN that they have only shown the taxable value of cargo handling service provided by them in ST-3 Return filed during FY 2015-16 to 2016-17 and the value of exempt services rendered by them was not shown in the said ST-3 Returns. They have stated that because of this reason, there was difference between the taxable

value declared in ST-3 Returns vis-a-vis Form 26AS for FY 2015-16 and 2016-17.

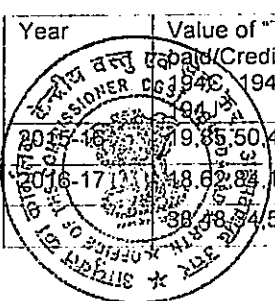
25. In support of their defence, the assessee has submitted the following documents alongwith their written submission.

- Agreements for Transportation of Cement And Clinker from GSCL Factory, Sidhcegram to Various destination made on 01.04.2015 and 01.04.2016 between the assessee and M/s. Gujarat Sidhee Cement Ltd.
- From 3CB alongwith Balance Sheet and P&L accounts for FY 2015-16 and 2016-17.
- ITR V and Computation of Income for 2015-16 and 2016-17
- Freight and Cargo Handling Income Legers
- ST-3 Returns FY 2015-16 , FY 2016-17 & FY 2017 -18 (upto June 17)
- 26AS for FY 2015-16, FY 2016-17 & FY 2017-18
- Sample Invoices (104 sample invoice for 2015-16, 85 sample invoices for 2016-17 and 28 sample invoices for 2017-18).

26. I find that there is no dispute as to receipt of the consideration from provision of service. The assessee has admitted that they have provided (1) GTA/ Carting service (2) hiring of vehicles to GTA for transportation of goods and (3) Cargo Handling service. The assessee has stated that they have paid service tax only on Cargo Handling service provided by them, and they have not paid the service tax on the freight income received for providing the services as the services being exempt under Notification 30/2012-ST (under RCM) and 25/2012-ST vide Entry No. 22.

27. I find that the SCN has sought /demanded service tax on the differential value of taxable service for FY 2015-16 and 2016-17, which was worked out in the subject SCN by comparing the figures of Form 26AS and ST-3 data as under. The figures mentioned in the SCN are found tallying with corresponding ST-3 Returns and Form 26AS ("Total Amount paid/Credited under 194C, 194H, 194I, 194J")

Year	Value of "Total Amount paid/Credited under 194C, 194H, 194I, 194J"	Value of service provided as per Service Tax Returns	Difference	Basic Service tax	Amount of service tax
2015-16	19,85,50,412	26,82,723	19,58,67,689	14.5%	2,84,00,814
2016-17	48,62,84,129	25,71,659	18,37,12,470	15%	2,75,56,870
	38,38,84,541	52,54,382	37,95,80,159		5,59,57,684



28. The department has relied on the amount paid /Credited under 194C, 194H, 194I, 194J (as per Form 26AS) for demanding service tax from the assessee, therefore, the details of amount paid/credited by the tax deductor to the assessee, as per Form 26AS are given below for ready reference:

Details of FORM 26AS for FY 2015-16			
Sr. No.	Name of TDS Deductor	Amount paid/credited	Section under which TDS deducted
1	AMRUTLAL KUVARJIBHAI THAKKAR	2363695	194C
2	CHETAN HARILAL ACHARYA	468016	194C
3	HASMUKHLAL KESHAVLAL THAKKAR	80925	194C
4	HARSHADKUMAR KESHAVLAL THAKKAR	34000	194C
5	KISHOR RAMESHWAR CHOUDHARY	90450	194C
6	SHANTUBEN HIRALAL SOLANKI	9530210	194C
7	MANOJKUMARAGARWALLA (HUF)	13340	194C
8	ABHISHEK INDUSTRIAL SERVICES PRIVATE LIMITED	152811	194C
9	ASHAPURA CARRIERS	635899	194C
10	BHIMSHIBHAI ARJANBHAI VADHER	758949	194C
11	DEV SALT PVT LTD	990542	194C
12	GUJARAT SIDHEECEMENT LIMITED	182015224	194C
13	JENIL PRADIPBHAI KOTAK	797100	194C
14	SARVODAY TRANSPORT CO.	484841	194C
15	SURESH MANILAL THACKER	134410	194C
		198550412	

Details of FORM 26AS for FY 2016-17			
Sr. No.	Name of TDS Deductor	Amount paid/credited	Section under which TDS deducted
1	ASHOKBHAI RAMBHAI PRAJAPATI	2678300	194C
2	AMRUTLAL KUVARJIBHAI THAKKAR	4834325	194C
3	DHRUV VINODBHAI TOGADIA	4563610	194C
4	SHIVKUMAR MOTILAL KHEMKA	2125401	194C
5	SHANTUBEN HIRALAL SOLANKI	5533054	194C
6	ASHAPURA CARRIERS	19998	194C
7	DEV SALT PVT LTD	414444	194C
8	GUJARAT SIDHEE CEMENT LIMITED	163748947	194C
9	JENIL PRADIPBHAI KOTAK	837900	194C
10	JIKARBHAI BHAGWANBHAI VAGH	1006480	194C
11	KETAN TRIBHOVANDAS LODHIYA	181122	194C
12	OSWAL LOGISTICS	229389	194C
13	SURESH MANILAL THACKER	67830	194C
14	SOHAM ROADWAYS	43329	194C
		186284129	

29. Also, it is noted that the subject SCN has clearly spelt out that the demand for FY 2016-17 (upto June 2017), which was not ascertainable at the time of issuance of SCN, but if consequently, any other amount was to be disclosed by income tax department/or any other source/agency, the action was to be initiated for recovery of service liability alongwith the present SCN. The principles and manner of computing the amounts due from M/s. Arpit Roadlines

was clearly laid down in the SCN, as envisaged under Board's Master Circular 1053/02/2017-CX dated 10.03.2017. The assessee itself has provided Form 26AS for 2017-18, accordingly, the difference in taxable value when compared to the income reflected in Form 26AS for FY 2017-18 (upto June 2017) vis-à-vis taxable value disclosed in ST-3 Returns for FY 2017-18 (upto June 2017), is to be considered for computing the tax liability under the subject SCN. The details of Form 26AS i.e. amount paid /Credit under 194C, 194H, 194I, 194J during 2017-18 and on the basis of Form 26AS, the said amount received during April 17 to June 2017 has also been worked out, which is as under:

Details of FORM 26AS for FY 2017-18				
Sr. No.	Name of TDS Deductor	Amount paid/credited during year 2017-18	Section under which TDS deducted	Amount paid/credited upto June 2017
1	ASHOKBHAI RAMBHAI PRAJAPATI	185412	194C	0
2	CHANDAN SALT WORKS PRIVATE LIMITED	7396011	194C	0
3	GAYATRI JITENDRASINH GOHIL	1381070	194C	1381070
4	MALHOTRA SALT AND CHEMICALS PRIVATE LIMITED	7091107	194C	0
5	PRAVINSINH NATHUBHA GOHIL	3773294	194C	0
6	SHIVKUMAR MOTILAL KHEMKA	5926894	194C	5056690
7	EITA INDIA LIMITED	88091	194C	88091
8	SHANTUBEN HIRALAL SOLANKI	8949566	194C	1836008
9	ASHAPURA CARRIERS	93258	194C	40854
10	ARJUNBHAI SAVAJBHAI VAGH	71402	194C	0
11	DEV SALT PVT LTD	43915	194C	43915
12	GUJARAT SIDHEE CEMENT LIMITED	179390848	194C	44896038
13	KETAN TRIBHOVANDAS LODHIYA	625880	194C	289030
14	OSWAL LOGISTICS	90430	194C	90430
15	PRATAPBHAI HAMIRBHAI SOLANKI	13920	194C	0
16	RAJMOTI ROADMOVERS	11166	194C	11166
17	SHREE GURUDEV TRANSPORT	213329	194C	0
18	SARVODAY TRANSPORT CO.	355022	194C	0
19	SURESH MANILAL THACKER	627118	194C	221710
	Total	216327733		53955002

30. I find that the subsequent inclusion of such difference in value of income for computing tax liability, more specifically for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of SCN which has been communicated to the assessee is valid. In this regard, I rely on the decision of the Hon'ble Madhya Pradesh High Court in the case of Gwalior Rayon Mfg. (Wvg.) Co. vs Union Of India (UOI) reported at [1982 (10) ELT 844 (MP)], wherein the High court had observed that "necessary particulars to enable the petitioner to show cause have not been stated in the notice. This cannot be a ground for quashing of the notice at this stage. It is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause, assuming the same to be relevant." The relevant para of the said decision is reproduced as under:



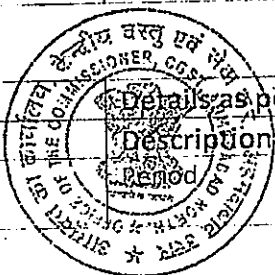
24. It was then contended that necessary particulars to enable the petitioner to show cause have not been stated in the notice. This cannot be a ground for quashing the notice at this stage. It is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause, assuming the same to be deficient. It may however, be mentioned that the petitioner has understood the notice to indicate that the allegation of short levy is based on the value of sulphuric acid manufactured by another assessee at Kota, the nearest place, and the proposed value has also been mentioned in the notice stating that it is sub-clause (i) and not sub-clause (ii) of Rule 6(b) that applies to the petitioner's case. According to the respondents, these are the only facts on which the notice to show cause against revision of the assessable value has been given. Whether a case of short levy on the basis stated in the show cause notice is made out is yet to be determined in the enquiry.

31. Further, the assessee has stated that they have paid service tax only on Cargo Handling service rendered by them, accordingly, they have disclosed the value of the said service only in ST-3 Returns filed by the assessee during FY 2015-16 to 2017-18 (upto June 2017). Therefore, in order to examine the submission of the assessee, the income booked in ledgers and taxable value disclosed in ST-3 Returns filed by them for FY 2015-16 to 2017-18 should be looked at. On perusing the ST-3 Returns filed by the assessee during FY 2015-16 to 2017-18 (upto June 2017), the following details are forthcoming:

Details as per ST-3 Returns for FY 2015-16				
Description of service Provided: Cargo Handling Service				
	Period	Apr 2015- Sep 2015	Oct 2015- March 2016	Total
	Gross amount in relation to service provided or to provided (including exempt and export of service)	1320600	1362123	2682723
Less	Amount charged for Exempted service	0	0	0
Less	Amount claimed as Abatement	0	0	0
	Net Taxable Value	1320600	1362123	2682723
	Total Service Tax Paid (in Rs.)	175721	201440	377161

Details as per ST-3 Returns for FY 2016-17				
Description of service Provided: Cargo Handling Service				
	Period	Apr 2016- Sep 2016	Oct 2016- March 2017	Total
	Gross amount in relation to service provided or to provided (including exempt and export of service)	399690	2171969	2571659
Less	Amount charged for Exempted service	0	0	0
Less	Amount claimed as Abatement	0	0	0
	Net Taxable Value	399690	2171969	2571659
	Total Service Tax Paid (in Rs.)	59953	325796	385749

Details as per ST-3 Returns for FY 2017-18 (upto June 17)				
Description of service Provided: Cargo Handling Service				
	Period	Apr 2017- June 17		Total



	Gross amount in relation to service provided or to provided (including exempt and export of service)	735780		735780
Less	Amount charged for Exempted service	0		0
Less	Amount claimed as Abatement	0		0
	Net Taxable Value	735780		735780
	Total Service Tax Paid (in Rs.)	110367		110367

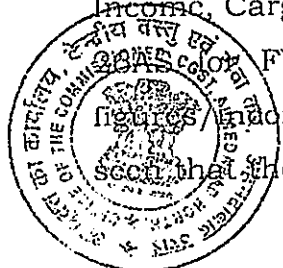
It is also seen that the assessee has not availed the benefit of the cenvat credit under Cenvat credit Rules, 2004 during the period FY 2015-16 to 2017-18 (upto June 2017)

32. On perusing Income Ledger viz. "Cargo Handling Service Charge" for FY 2015-16 to 2017-18 (upto June 2017), I find that the assessee has earned/received income from M/s. Gujarat Sidhee Cement Ltd. under this head for rendering Cargo handling service. In order to examine the submission made by the assessee as discussed in para 31 above, the comparison of taxable value declared in ST-3 returns filed by the assessee vis-à-vis Income booked under Cargo Handling Service during FY 2015-16, FY 2016-17 and FY 2017-18 (upto June 2017) is carried out as under:

FY	Ledger Head	Income booked in the ledger /As per P&L	As per ST-3	Difference
2015-16	Cargo Handling service	2689623	2682723	6900
2016-17	Cargo Handling service	2571029	2571659	-630
2017-18 (upto June 17)	Cargo Handling service	735780	735780	0
	Total	5996432	5990162	6270

33. From the above comparison, it is discerned that there exists difference in FY 2015-16 only. I therefore, find that the assessee has short disclosed the amount of taxable value of service to the extent Rs. 6,900/-, charged for providing of service of cargo handling service. Though the amount of difference is miniscule, the assessee is required to pay service tax of Rs. 1,001/- @ 14.5% on Taxable value of service amounting to Rs. 6,900/-. Further, it is also discerned that the assessee has not disclosed gross value of services rendered by them, other than the cargo handling service in the ST-3 Returns filed by them.

34. The assessee have submitted P&L Accounts, Income Ledgers viz. Freight Income, Cargo Handling Service Charge and Toll Tax (Freight Income) and Form 26AS for FY 2015-16 to 2017-18 (upto June 2017). On comparing the figures/income booked in P&L Accounts/ Ledgers vis-a-vis Form 26AS, it is seen that the income booked in P&L/ Ledgers is much higher than the amount

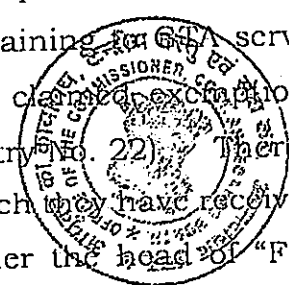


paid/credited to assessee by the tax deductor as per Form 26AS during FY 2015-16 to 2017-18 (upto June 2017).

FY	Ledger Head (of Revenue from operation)	Income booked in the ledger /As per P&L	Amount paid /credited As per 26AS	Difference
		A	B	C = (A-B)
2015-16	Freight Income	228242568		
	Cargo Handling service	2689623		
	Total	230932191	198550412	32381779
2016-17	Freight Income	203605120		
	Cargo Handling service	2571029		
	Toll Tax	186950		
	Total	206363099	186284129	20078970
2017-18 (upto June 17)	Freight Income	65598530		
	Cargo Handling service (net income)	308700		
	Toll Tax	16446		
	Diesel Commission (Indirect Income)	170584		
	Total	66094260	53955002	12139258

Therefore, it is apparent that the entire income under the head of P&L has been split into three to four ledger/income heads.

35. I find that the assessee has stated that besides the Cargo Handling service they had provided the GTA service and Hiring of Vehicles to GTA for transportation of goods. They have stated that they were not liable to pay service tax on GTA service, as the recipients of GTA service were liable to pay service tax under RCM as provided under Notification No. 30/2012-ST dated 20.06.2012. They have further argued that the service of hiring of vehicles by them to GTA for transportation was also exempt service in terms of entry no. 22 of the Notification No. 25/2012-ST. In support of their submission, they have produced the ledgers and sample invoices alongwith their written submission dated 13.05.2021. It is evident from the forgoing para that the assessee has paid service tax only on the income booked under the head of "Cargo Handling Service" in their financial records. As per the ledgers submitted as detailed in para 34, the assessee have booked their major income under the head of "Freight Income" on which they have not paid service tax and has claimed the same to be exempt income. The assessee has admittedly stated that the said income is pertaining to GTA service and hiring of vehicle to GTA for Transportation and has claimed exemption under Notification No. 30/2012-ST and 25/2012-ST (Entry No. 22). Therefore, in order to ascertain the exact nature of service for which they have received the consideration /income and which has been booked under the head of "Freight Income" in their ledgers/ financial records, the



examination of sample invoices vis-a-vis Freight Income needs to be carried out. On perusing the "freight ledger" and sample invoices, the following details are forthcoming:

Sr.No.	FY 2015-16 Name of the Service Recipient as per "Freight Income" ledger	Amount of sale of service		Sample invoice produced (yes/No)
		Debit	Credit	
1	Abhishek Industrial Services Pvt.Ltd		152811	No
2	Ashapura Carriers		877717	Yes
3	Bhoomi Trading Co.		758950	Yes
4	Bilty Reimbursement of Exp.	214564	0	No
5	Cash		19550	No
6	Chamunda Roadlines		80925	No
7	Dev Salt Pvt.Ltd.		990879	Yes
8	Dhruv Logistics		4456912	Yes
9	Dhruv Transport Corporation		12043323	Yes
10	Gujarat Sidhee Cement Ltd.		179933540	Yes
11	Honest Transport Co.		2088273	Yes
12	Jainam Transport Service (Freight Income)		134925	No
13	Kanaiya		249312	Yes
14	Kanaiya Logistics		1207065	Yes
15	Krishna Roadlines (Rajula)		2291387	Yes
16	Kushal Transort		94748	No
17	Maruti Trading Co.		2363695	Yes
18	Oswal Logistics		692532	Yes
19	Parth Logistics		309630	Yes
20	R K Traylor Service		90450	No
21	Raj Sagar Roadways		115886	No
22	Raj Shakti Transport Co.		1264013	Yes
23	Raj Transport Co.		142175	For 2016-17 produced
24	Rajmoti Road Movers (Freight)		190744	No
25	Riddhi Associates		152228	Yes
26	Sagar Roadlines		34000	No
27	Sagar Transport Co.		187550	No
28	Sarvoday Transport Co.		590184	Yes
29	Satyam Transport Co.		5814	No
30	Shree Raj Shakti Transport		797100	No
31	Shree Rajshakti Transport Co. Bhuj		23328	No
32	Shree Shiv Shakti Salt Sup.		76975	Yes
33	Siddhi Roadways		463262	Yes
34	Vachcharaj Agencies		688100	Yes
35	Vachchharaj Transport & Co.		14695966	Yes
36	Vijay Transport Co.		193183	No
	<b>Total</b>	<b>214564</b>	<b>228457132</b>	
	<b>Net</b>		<b>225440728</b>	

Sr.No.	FY 2016-17 Name of the Service Recipient as per "Freight Income" ledger	Amount of sale of service		Sample invoice produced (yes/No)
		Debit	Credit	
	Ashapura Trading Co.		18065	Yes
	Ashapura Carriers		19998	Yes
	Ashtavinayak Transport		4724445	Yes
	Bilty Reimbursement of Exp.	178258	0	No
	Chandani Salt Works Pvt.Ltd.		267767	Yes
	Dev Salt Pvt.Ltd.		414444	Yes
7	Dhruv Logistics		8197285	Yes



8	Dhruv Transport Corporation		3258231	Yes
9	East India Transport Agency		118706	Yes
10	Gujarat Sidhee Cement Ltd.	137440	161111648	Yes
11	Honest Transport Co.		308388	Yes
12	Jay Mataji Traders		271308	Yes
13	Kanaiya Logistics		115453	Yes
14	Krishna Roadlines (Rajula)		4664026	Yes
15	Lilanand Salt Traders		2127073	Yes
16	Manibhadra Associate		67045	For 2017-18 provided
17	Maruti Trading Co.		4826130	Yes
18	New Arjun Transport		1331526	For 2017-18 provided
19	Oswal Logistics		252041	Yes
20	Param Transport		5889	No
21	Parth Logistics		94252	No
22	Raj Shakti Transport Co.		160167	Yes
23	Raj Transport Co.		196266	Yes
24	Rajdeep Salt		43048	Yes
25	Rajmoti Road Movers (Freight)		10990	No
26	Ramban Transport Service		13590	No
27	Riddhi Associates		374344	Yes
28	Sagar Transport Co.		7425	No
29	Sarvoday Transport Co.		143805	Yes
30	Satyam Transport Co.		1902168	No
31	Shivam Transport		25377	No
32	Shree Gurukrupa Trading Co.		1339410	No
33	Shree Raj Shakti Transport		837514	No
34	Shree Shiv Shakti Salt Sup.		492792	Yes
35	Siddhi Roadways		106747	Yes
36	Universal Salt Suppliers		208228	Yes
37	Vachcharaj Agencies		266540	Yes
38	Vachchharaj Transport & Co.		5542337	Yes
39	Yadav Suppliers		56350	No
	Total	315698	203920818	
	Net		203605120	

Sr.No.	2017-18 (upto June 17) Name of the Service Recipient as per "Freight Income" ledger	Amount of sale of service		Sample invoice produced (yes/No)
		Debit	Credit	
1	Arvind Trading Co.		21359	Yes
2	Ashapura Carriers		91300	For FY 15-16, 16-17 provided
3	Ashtavinayak Transport		2431650	Yes
4	Bajrang Transport		629177	Yes
5	Dev Salt Pvt.Ltd.		43915	For FY 15-16, 16-17 provided
6	Dhruv Transport Corporation		73597	For FY 15-16, 16-17 provided
7	East India Transport Agency		86120	Yes
8	Gujarat Sidhee Cement Ltd.		44143812	Yes
9	Jay Mataji Traders		240768	Yes
10	Krishna Roadlines (Rajula)		11340232	Yes
	Lilanand Salt Traders		5481771	For 2016-17 provided
	Manibhadra Associate		26634	Yes
	New Arjun Transport		71402	Yes
	Oswal Logistics		90615	Yes
	Raj Shakti Transport Co.		24602	Yes
	Riddhi Associates		194436	For FY 15-16, 16-17 provided
17	Satyam Transport Co.		89468	No

18	Shree Gurukrupa Trading Co.		72600	No
19	Universal Salt Suppliers		189303	Yes
20	Vachchharaj Transport & Co.		255769	Yes
	Total	0	65598530	

**35.1** Therefore, it is apparent that the assessee has provided sample invoices in respect of all major service recipients from whom the assessee has received the majority of the total consideration for providing service to the said recipients of service. Further, on examining the sample invoices, it is noticed that invoices have been issued for charging of freight for transportation of Lignite, Salt, fly ash, gypsum etc. The said Invoices also contain the details of freight charges raised, rate of freight, truck number, details of places to which the goods had been transported, LR date and reference number. It is also seen that majority of the invoices mention that the service tax shall be paid by the recipient of the service. Sample invoices cover almost all major recipient of services and income/consideration flowing from them covers all most major part of total income. More specifically, it covers the entire difference as has been pointed out in the SCN.

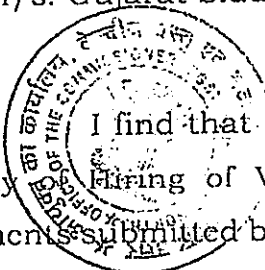
**35.2** The assessee, besides the sample copy of invoice, has also produced the copy of agreement dated 01.04.2015 (for FY 2015-16) and dated 01.04.2016 (for FY 2016-17) entered with M/s. Gujarat Sidhee Cement Ltd, situated at Sidheegram, Taluka Sutrapada, District Gir Somnath for providing service of transportation of Cement and Cement Clinker. The relevant part of the contract is reproduced as under.

*"Whereas the Second Party has an established transportation business, has offered its services on behalf of Dealers/ Customers of the company for transportation Services of the Company's products viz Cement and Cement Clinker to various destinations in Gujarat from the Company's Factory situated at Sidheegram."*

Therefore, it is established that the service provided to M/s. Gujarat Sidhee Cement Ltd was Transportation of goods by Road. It is seen from the ledgers that the assessee has received 80% or more of income/consideration from M/s. Gujarat Siddhi Cement Ltd.

**35.3**

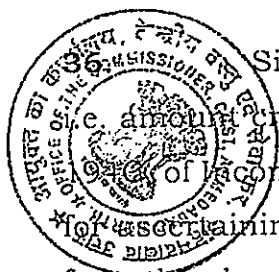
I find that the assessee has also claimed to have provided services by way of Hiring of Vehicles to GTA for transportation of goods, but the documents submitted by them, do not indicate the provision of service of hiring



of vehicles to GTA by them. I also find that their defence reply dated 13.05.2021 does not mention anything about as to whom they had provided the said service.

**35.4** Similarly, I find that the defence reply dated 13.05.2021 of the noticee neither mentions anything as to whom they have provided GTA service nor mentions the quantification/taxable value of the said service. As per Section 65B(26), "Goods Transport Agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called. Therefore, the service can be said to be GTA service, if it involves transportation of goods by road and issuance of consignment notes by the provider of service. As discussed in para 35.1 above, I find from the sample invoices that the same have been issued for charging of freight for transportation of goods by road and the said invoices also contain the details of concerned LR dates and Reference number. Hence, it is evident that the services provided by the noticee has involved the transportation of goods and issuance of LRs/Consignment notes by the noticee. Therefore, I find from the documentary evidences and legal provisions that the services provided by the noticee qualify to be GTA services. It is also pertinent to mention here that the department has not adduced any evidence other than the differences noticed between ST-3 Returns and data of Form 26AS, to substantiate the allegation of short/non payment of service tax by the assessee. Therefore, the documents submitted by the assessee in their support are only evidences before me for deciding the case. The said documents produced before me lead me to conclude that the assessee has provided the GTA services as defined under Section 65B(26) of the Finance Act, 1994 and the transaction recorded/booked by the assessee in the "Freight Ledger" are pertaining to consideration received for providing GTA service by them.

**35.5** I find from the ledgers that the toll tax income has been received from M/s. Gujarat Siddhi Cement Ltd only. The assessee has not provided any details of it. Similarly, the assessee has also not provided any details of Diesel Commission (indirect income).



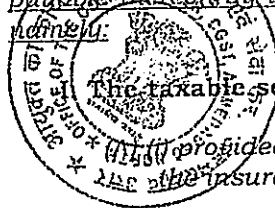
Since the SCN has been issued on the basis of Data of Form 26AS Credited/ paid to the assessee by the TDS deductor under Section 19C of Income Tax Act 1961, I would proceed with the same data of 26AS only for ascertaining the service tax liability upon the assessee. It is also apparent from the above details of Form 26AS given in forgoing paras that the majority of

TDS deductors are individuals and their trade name / firm's name are not ascertainable from Form 26AS. It is pertinent to mention here that the transaction figuring in the Form 26AS could be consolidated for more than one invoices, it could be for advance or part payment of total sum payable to the assessee for rendering of services by the assessee. Further, in any business invoices are raised on customers (here in the instant case recipient of services) as and when the services are rendered by the provider of service and the income receivable under the said invoice is booked in income ledger. Therefore, the invoice wise amount receivable are posted in the income ledgers. Hence, it is not possible to correlate the transaction/ receipt of income as reflected in Form 26AS vis-à-vis invoices or corresponding income ledger entries, as invoices have been issued in the name of trade name/legal name of the recipients. However, the assessee vide their e-mail dated 10.05.2022 has submitted the list of recipients of service as per their books of account, corresponding to Credit / payment entries figuring in Form 26AS for FY 2015-16 to FY 2017-18. Further, it is to be mentioned here that the amount paid / credited as per Form 26AS to the assessee is not different but it was for the provisions of service of Cargo Handling Service /GTA services/other service by the assessee, that is to say that the said amount is the part of the incomes booked under different head of ledgers for providing aforesaid services.

37. Now, in order to examine the liability to pay service tax by the assessee or otherwise on GTA service rendered by them, I would like to look at the concerned legal provisions contained in Notification No. 30/2012-ST dated 20.06.2012. Further, in respect of service tax liability on service of hiring of vehicles to GTA for transportation of goods rendered by the assessee, I would also like to see the legal provisions contained in Notification No, 25/2012-ST dated 20.06.2012 for examining the claim by the assessee of their service being exempt. The relevant excerpts of the said notifications are reproduced as under for ease of reference:

**37.1 Notification No. 30/2012-ST dated 20.06.2012:**

GSR.....(F).-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.



The taxable services, -

(1) 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: -

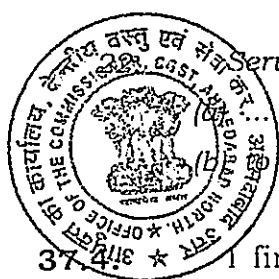
Sl. No.	Description of service	Percentage of service	Percentage of service tax payable by any person liable for paying service Tax other than the service provider
2.	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil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

**37.2** Therefore, it is observed from the Notification No. 30/2012-ST that if the person who pays the freight for the service rendered by the goods transport agency and the said person is covered under the list of persons provided under Sr. No. (a) to (f), then the said person is liable to pay 100% service tax under reverse charge mechanism being the recipient of service. In other case, the service provider will be liable to pay service tax for rendering GTA service.

**37.3** Further, as per Entry No. 22 of the Notification No. 25/2012-ST dated 20.06.2012, the service of providing a means of transportation to GTA is exempt service. The relevant extract of the said Entry No. is also re-produced as under:

**Entry No. 22 of the Notification No. 25/2012-ST dated 20.06.2012,**



Services by way of giving on hire -

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

37.3 I find that the assessee has not provided any details of providing service of hiring of vehicles to GTA for transportation, no such service appears

to have been provided by them. However, the sample invoices as produced by them have clearly indicated that GTA service has been provided by the assessee, besides the provision of cargo handling service.

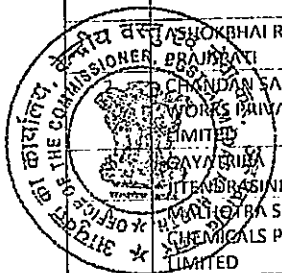
**37.5** Therefore, in view of the legal position as discussed above with respect to GTA service, as per the provisions of Notification No. 30/2012-ST dated 20.06.2012 issued under Section 68(2) of the Finance Act, 1994, if the person pays the freight for the service rendered by the goods transport agency and the said person is covered under the list of specified persons provided under Sr. No. (a) to (f), then the said person is liable to pay 100% service tax under reverse charge mechanism being the recipient of service of GTA, In other case, the service provider i.e. assessee will be liable to pay service tax for rendering GTA service. I find that the constitution of recipients/ business status of the recipients is the determinative factor for ascertaining the taxability of service tax on GTA service. I find that the assessee has neither provided any specific details of constitution of recipient of GTA service nor sample invoices contains such details. Under such circumstances, the constitution of the recipients has been determined on the basis of the nomenclature of the TDS deductor as appearing in Form 26AS statement, and accordingly the person liable to pay service tax has been determined as under:

Sr. No.	FY 2015-16 Name of TDS Deductor as per Form 26AS,	Corresponding Name appearing books of account as per the mail of the assessee	Recipient's business status/ constituti on	Amount credited/paid as per Form 26AS	According to constitutio n person covered under Sr. No. (a) to (f)	Person liable to pay service tax (Recipient /provider)	Value of taxable service As per form 26AS, if assessee is liable to pay tax.
1	AMRUTLAL KUVARJIBHAI THAKKAR	Maruti Trading	Individual	2363695	Not covered	Provider	2363695
2	CHETAN HARILAL ACHARYA	Information not provided	Individual	468016	Not covered	Provider	468016
3	HASMUKHLAL KESHAVLAL THAKKAR	Chamunda Roadlines	Individual	80925	Not covered	Provider	80925
4	HARSHADKUMAR KESHAVLAL THAKKAR	Sagar Roadlines	Individual	34000	Not covered	Provider	34000
5	KISHOR RAMESHWAR CHOUDHARY	R K Tractor Service	Individual	90450	Not covered	Provider	90450
6	SHANTUBEN HIRALAL SOLANKI	Vachharaj Transport & Co.	Individual	9530210	Not covered	Provider	9530210
7	MANOJKUMARAGARW ALLA (HUF)		Individual	13340	Not covered	Provider	13340
8	ABHISHEK INDUSTRIAL SERVICES PRIVATE LIMITED	ABHISHEK INDUSTRIAL SERVICES PRIVATE LIMITED	Company	152811	(e)	Recipient	0
9	ASHAPURA CARRIERS	ASHAPURA CARRIERS	Exact status not ascertainab le, but not proprietors hip firm or individual	635899	appears (f)	Recipient	0
		Information not provided/available	Individual	758949	Not covered	Provider	758949
11	DEV SALT PVT LTD	DEV SALT PVT LTD	Company	990542	(e)	Recipient	0

12	GUJARAT SIDHEECEMENT LIMITED	GUJARAT SIDHEECEMENT LIMITED	Company	182015224	(e)	Recipient	0
13	JENIL PRADIPBHAI KOTAK	Shree Rajshakti Transport Co. Bhuj	Individual	797100	Not covered	Provider	797100
14	SARVODAY TRANSPORT CO.	SARVODAY TRANSPORT CO.	Company	484841	(e)	Recipient	0
15	SURESH MANILAL THACKER	Riddhi Associates	Individual	134410	Not covered	Provider	0
				198550412			14136685

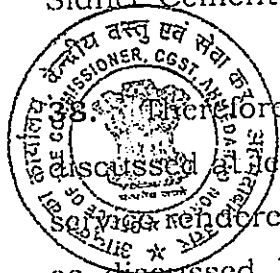
Sr. No.	FY 2016-17 Name of TDS Deductor as per Form 26AS,	Corresponding Name appearing books of account as per the mail of the assessee	Recipient's business status/ constitution	Amount credited/paid as per Form 26AS	According to constitution person covered under Sr. No. (a) to (f)	Person liable to pay service tax (Recipient /provider)	Value of taxable service As per form 26AS, if assessee is liable to pay tax.
1	ASHOKBHAI RAMBHAI PRAJAPATI	Shree Gurukrupa Trading Co.	Individual	2678300	Not Covered	Provider	2678300
2	AMRUTLAL KUVARJIBHAI THAKKAR	Maruti Trading	Individual	4834325	Not Covered	Provider	4834325
3	DHRUV VINODBHAI TOGADIA	Dhruv Transport Corporation	Individual	4563610	Not Covered	Provider	4563610
4	SHIVKUMAR MOTILAL KHEMKA	Lilanand Salt Traders	Individual	2125401	Not Covered	Provider	2125401
5	SHANTUBEN HIRALAL SOLANKI	Vachharaj Transport & Co.	Individual	5533054	Not Covered	Provider	5533054
6	ASHAPURA CARRIERS	ASHAPURA CARRIERS	Exact status not ascertainable, but not proprietorship firm or individual	19998	appears (f)	Recipient	0
7	DEV SALT PVT LTD	DEV SALT PVT LTD	Company	414444	(e)	Recipient	0
8	GUJARAT SIDHEE CEMENT LIMITED	GUJARAT SIDHEE CEMENT LIMITED	Company	163748947	(e)	Recipient	0
9	JENIL PRADIPBHAI KOTAK	Shree Rajshakti Transport Co. Bhuj	Individual	837900	Not Covered	Provider	837900
10	JIKARBHAI BHAGWANBHAI VAGH	New Arjun Transport	Individual	1006480	Not Covered	Provider	1006480
11	KETAN TRIBHOVANDAS LODHIYA	Jay Mataji Traders	Individual	181122	Not Covered	Provider	181122
12	OSWAL LOGISTICS	OSWAL LOGISTICS	Exact status not ascertainable, but not proprietorship firm or individual	229389	appears (f)	Recipient	0
13	SURESH MANILAL THACKER	Riddhi Associates	Individual	67830	Not Covered	Provider	67830
14	SOHAM ROADWAYS	Information not provided/available	Individual	43329	Not Covered	Provider	43329
			Total	186284129			21871351

Sr. No.	FY 2017-18 Name of TDS Deductor as per Form 26AS,	Corresponding Name appearing books of account as per the mail of the assessee	Recipient's business status/ constitution	Amount paid/credited upto June 2017	According to constitution person covered under Sr. No. (a) to (f)	Person liable to pay service tax (Recipient /provider)	Value of taxable service As per form 26AS, if assessee is liable to pay tax.
	ASHOKBHAI RAMBHAI PRAJAPATI	Shree Gurukrupa Trading Co.	Individual	0	Not Covered	Provider	0
	CHANDAN SALT WORKS PRIVATE LIMITED	CHANDAN SALT WORKS PRIVATE LIMITED	Company	0	(e)	Recipient	0
	ASHTVINAYAK TRANSPORT	Ashtvinayak Transport	Individual	1381070	Not Covered	Provider	1381070
	MALHOTRA SALT AND CHEMICALS PRIVATE LIMITED	MALHOTRA SALT AND CHEMICALS PRIVATE LIMITED	Company	0	(e)	Recipient	0
5	PRAVINSINH NATHUBHA GOHIL	Bajarang Transport	Individual	0	Not Covered	Provider	0



6	SHIVKUMAR MOTILAL KHEMKA	Lilanand Salt Traders	Individual	5056690	Not Covered	Provider	0
7	EITA INDIA LIMITED	East India Transport Agency	Company	88091	(e)	Recipient	0
8	SHANTUBEN HIRALAL SOLANKI	Vachharaj Transport & Co.	Individual	1836008	Not Covered	Provider	0
9	ASHAPURA CARRIERS	ASHAPURA CARRIERS	Exact status not ascertainable, but not proprietorship firm or individual	40854	appears (f)	Recipient	0
10	ARJUNBHAI SAVAJBHAI VAGH	New Arjun Transport	Individual	0	Not Covered	Provider	0
11	DEV SALT PVT LTD	DEV SALT PVT LTD	Company	43915	(e)	Recipient	0
12	GUJARAT SIDHEE CEMENT LIMITED	GUJARAT SIDHEE CEMENT LIMITED	Company	44896038	(e)	Recipient	0
13	KETAN TRIBHOVANDAS LODHIYA	Jay Mataji Traders	Individual	289030	Not Covered	Provider	0
14	OSWAL LOGISTICS	Oswal Logistics	Exact status not ascertainable, but not proprietorship firm or individual	90430	appears (f)	Recipient	0
15	PRATAPBHAI HAMIRBHAI SOLANKI	No information provided	individual	0	Not Covered	Provider	0
16	RAJMOTI ROADMOVERS	No information provided	individual	11166	Not Covered	Provider	11166
17	SHREE GURUDEV TRANSPORT	No information provided	individual	0	Not Covered	Provider	0
18	SARVODAY TRANSPORT CO.	SARVODAY TRANSPORT CO.	Company	0	(e)	Recipient	0
19	SURESH MANILAL THACKER	Riddhi Associates	Individual	221710	Not Covered	Provider	221710
				53955002			1613946

37.6 For determining the person who is liable to pay service tax on GTA service provided to M/s. Ashapura Carriers and M/s. Oswal Logistics, by the assessee, I find that the exact constitution of business of recipients of service i.e M/s. Ashapura Carriers and M/s. Oswal Logistics are not ascertainable, however, since their trade names are appearing in 26AS statement, it could be said that they are not individuals or proprietorship firm, accordingly, the assessee is not liable to pay tax for providing GTA service to M/s. Ashapura carriers and M/s. Oswal Logistics. It is also pertinent to mention here that that the assessee has paid the service tax on Cargo Handling service provided to M/s. Gujarat Sidhee Cement Ltd, out of the total amount paid/ credited by M/s. Gujarat Sidhee Cement Ltd as per the data of Form 26AS for FY 2015-16 to 2017-18 (Upto June 2017), therefore, the rest of the income flowing from M/s. Gujarat Sidhee Cement Ltd, pertains to GTA service on which the recipient of service i.e. M/s. Gujarat Sidhee Cement Ltd was liable to pay service tax under RCM.



Therefore, from the above legal position, documents submitted and as discussed at length, I find that the assessee is liable to pay service tax on GTA services rendered to the persons who are not liable to pay service tax under RCM as discussed hereinabove, in terms of Notification No. 30/2012-ST dated



20.06.2012; further, no exemption is available to the assessee for such service rendered to the said persons. Hence, the arguments put forth by the assessee that the service tax is not payable by them on the freight income received by them during FY 2015-16 to 2017-18 (upto June 2017), is not acceptable to this extent. I find that in respect of *Services of goods transport agency in relation to transportation of goods*, the service tax is payable on 30% of the taxable value of GTA service under Notification No. 26/2012-ST dated 20.06.2012, provided Cenvat Credit on inputs, Capital Goods and Input services, used for providing the taxable service has not been taken by the provider of service under the provisions of the Cenvat Credit Rules 2004. Relevant extract of the said notification is reproduced as under:

**"Notification No. 26/2012- ST dt. 20.06.2012 (Before amendment vide Noti. No. 08/2015-ST dt. 01.03.2015):**

G.S.R..... (E). - In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act), and in supersession of notification number 13/2012- 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. 211 (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 taxable service of the description specified in column (2) of the Table below, from so much of the service tax leviable thereon under section 66B of the said Act, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (3) of the said Table, of the amount charged by such service provider for providing the said taxable service, unless specified otherwise, subject to the relevant conditions specified in the corresponding entry in column (4) of the said Table, namely:-

TABLE

Sl. No	Description of taxable service	Percentage	Conditions
(1)	(2)	(3)	(4)
1.	.....		
7.	Services of goods transport agency in relation to transportation of goods	30	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004."

**38.1** It is evident from the service tax returns ST-3 filed by the assessee during FY 2015-16 to 2017-18 (upto June 17), they have not availed the cenvat credit under provisions Cenvat Credit Rule 2004. Hence, the benefit of abatement in gross value of taxable is available to the assessee for discharging their service tax liability on GTA service. Having considered this aspect, the service tax payable by the assessee has been worked out and summarized as under:



Value of GTA service (in Rs.)	Abatement @70%	Net taxable value	Rate	Service tax payable( in Rs.)
14136685	9895679	4241006	14.5	614946
21871351	15309946	6561405	15	984211
1613946	1129762	484184	15	72628
Total	37621982	11286595		1671785

Therefore, I hold that the assessee is liable to pay service tax of Rs. 16,71,785/- on GTA service provided by them during 2015-16 to 2017-18 (upto June 2017). Out of total service tax of Rs. 16,71,785/- payable on GTA service by the assessee, Service Tax of Rs. 72,628/- is payable for 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the impugned SCN, and the same has now been ascertained. I also find that the SCN had sought demand of Service tax of Rs. 5,59,57,684/- for FY 2015-16 and 2016-17, but from the table given above, it is seen that the assessee is liable to pay service tax of Rs. 15,99,157/- out of total demand of Rs. 5,59,57,684/- for FY 2015-16 and 2016-17. Therefore, I hold that the rest of the demand of service tax of Rs. 5,43,58,527/- needs to be dropped. As discussed in forgoing para, the assessee has also short paid Service tax of Rs. 1,001/- on Cargo Handling Service provided by them during FY 2015-16. Thus, the assessee is liable to pay total service tax of Rs.16,72,786/- (Rs.16,71,785/-+ Rs.1001/-) and the same is therefore, required to be recovered from the assessee.

39. 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 Rs.16,72,785/- for the period from FY 2015-16 to 2017-18 (upto June 2017). Therefore, I find that the assessee has contravened the provisions of Section 68 and 66B 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. Rs.16,72,785/- 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 correct ST-3 Returns for the period from April 2015 to June 2017.

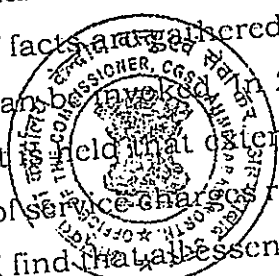
40. I also find that Section 75 of Finance Act, 1994 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate. I thus hold that the assessee is also liable to pay the interest on the demand of service Tax of Rs. Rs.16,72,786/-.



that the as per Sr. No. B.1.1 of Part - B1 of ST-3 Return, the details Gross Amount (excluding amounts received in advance, amounts taxable on Receipt basis for which bills/invoices/challans or any other documents may not have been issued) for which bills/invoices/challans or any other documents are

issued relating to service provided or to be provided (**including export of service and exempted service**)” was to be furnished and the details of abatement/ exemption claimed was to be furnished at subsequent serial number. Serial No. B.1.9 of Part -B1 of ST-3 returns was meant for claiming for exemption (other than export of service) from the gross receipt. This has not happened in the instant case and the huge amount on which exemption claimed to have been availed by the assessee, was not declared in the ST-3 Returns.

42. From the facts and discussion aforementioned, I find that assessee has failed to assess and discharge their service tax liability for the period from FY 2015-16 to FY 2017-18 (upto June 2017). They have failed to disclose their actual taxable income by not declaring a huge part of taxable value of service provided by them, in their service tax returns filed by them and not paying 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 correct 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 only 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. *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 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.16,72,786/- along with applicable interest under Section 75 of the Finance Act, 1994. The demand is thus justified on merits. 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.

43. As regards, the proposal for imposition of penalty under Section 77(1)(c) and 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 correct 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(1)(c) and 77(2) of the Finance Act, 1994.

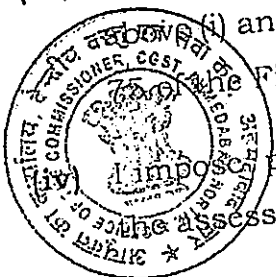
In view of the above discussion and findings, I pass the following order:

**ORDER**

(i) I hereby confirm the demand of service tax of Rs. 16,00,158/- ( Rs. 15,99,157/- on GTA service + Rs. 1001/- on Cargo Handling Service) out of the total demand of service tax of Rs. 5,59,57,684/- short/ 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. 5,43,57,526/- accordingly.

(ii) I hereby confirm the demand of Service tax of Rs. 72,628/- for the FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the SCN, now ascertained. Accordingly, I order to recover the same from the assessee under proviso to Sub-section (1) of Section 73 of Finance Act,1994.

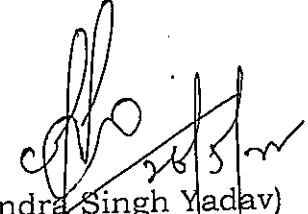
(iii) I order to charge the Interest at the appropriate rate on the demand as per sub-section (1) and (ii) and to recover the same from the assessee under Section



73 of Finance Act,1994;  
penalty of Rs.16,72,786/- (Rs. 16,00,158/- + Rs. 72,628/-) on the assessee under the provision of Section 78 of the Finance Act, 1994.

(v) I impose penalty of Rs. 10,000/- on the assessee under the provision of Section 77(1)(c) of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Finance Act, 1994.

(vi) 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 assess their correct Service Tax Liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

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

By Regd. Post AD./Hand Delivery  
F.No. STC/15-80/OA/2021-22

Date: .05.2022.

To  
M/s. Arpita Roadlines,  
Prem Bhoomi, Estate,  
Sarkhej Bavla Road,  
Sarkhej, Ahmedabad- 382210

Copy to:

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