


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(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>
<p>फोन नंबर / PHONE No.: 079-2754 4599 फैक्स/ FAX : 079-2754 4463 E-mail:- oahmedabad2@gmail.com</p>		

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

फा .सं/ F.NO. STC/15-21/OA/2021 DIN : 20220764WT0000008336

आदेश की तारीख / Date of Order : 13.07.2022

जारी करने की तारीख / Date of Issue : 14.07.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

**मूल आदेश संख्या /**

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 13 & 14/2022-23**

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

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

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

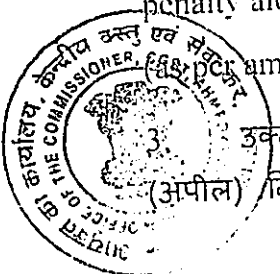
Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax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

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(Amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

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



**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-134/2022-23**

M/s. Mateshwari Travels, 11,12, Sonal Mahal, Modh Chapaner Society, Usmanpura, Ahmedabad -380013, were issued two SCNs (1) F. No. STC/15-21/OA/2021 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad and (2) F.No. STC /15-133/OA/2020 dated 22.10.2020 by the Additional Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad

**BRIEF FACTS OF THE CASE PERTAINING TO THE TWO SCNs ISSUED TO M/S. MATESHWARI TRAVELS, ARE AS FOLLOWS:**

SCN No. STC/15-21/OA/2021 dated 23.04.2021

M/s. Mateshwari Travels, 11,12, Sonal Mahal, Modh Chapaner Society, Usmanpura, Ahmedabad -380013 (hereinafter referred to as the 'Assessee' for the sake of brevity) were engaged in providing taxable services, and were holding Service Tax Registration No. AAMFM3074AST001.

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. Mateshwari Travels, 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-VII 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 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	Taxable Value as per ST-3 Returns (in Rs.)	Gross Receipts from services (Value from ITR/26AS) (in Rs.)	Difference Between Value of Services from ITR/26AS and Taxable value of Service provided (as per ST-3) (in Rs.)	Resultant Service tax short paid (in Rs.)
1	2015-16	0	22,88,69,504	22,86,69,504	3,31,86,078
2	2016-17	0	19,64,89,780	19,64,89,780	2,94,73,467
			42,53,59,284	42,53,59,284	6,26,59,545

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. 6,26,59,545/- (including Cess) on the differential value of Rs. 42,53,59,284/-.

4. Accordingly, the service tax liability of M/s. Mateshwari Travels was worked out solely on the basis of income mentioned in ITR/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 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 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. 6,26,59,545/- (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. 6,26,59,545/- (including Cess) worked out on value of Rs. 42,53,59,284/- 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) 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) 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. 6,26,59,545/-. 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. 6,26,59,545/- 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. 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. 6,26,59,545/- (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. 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.

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

16. The assessee was given opportunity to appear for pre-SCN consultation on 23.04.2021, but the same was not attended by them.

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

- (i) Differential amount of Service Tax of Rs. 6,26,59,545/- (Rupees Six Crore Twenty Six Lakh Fifty Nine Thousand Five Hundred Forty Five Only) 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, 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.



SCN No. STC/15-133/OA/2020 dated 22.10.2020

18. Analysis of Data (ITR/26AS) in respect of M/s. Mateshwari Travels, was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and details of the said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

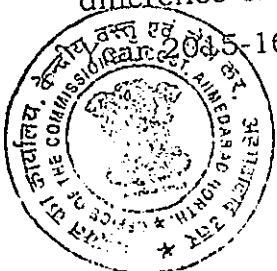
19. As per the records available with the Divisional Office of Division-VII and on going through the Third Party Data provided by CBDT of the said assessee for the F.Y. 2015-16, the total sales of service (Value from ITR/ Form 26) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return of F.Y. 2015-16. 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 as compared to the Service related taxable value declared in Income Tax Return (ITR) / Form 26AS. The difference in value as observed for F.Y. 2015-16, was as under:

Sr. No.	FY	Total Sale of services as per ITR	Gross value of service provided (STR)	Total value for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	Higher Value (value difference ITR&STR) or (value difference TDS & STR)	Resultant Service Tax short paid (including Cess)
1	2015-16	10,21,46,369	0	11,44,34,752	11,44,34,752	1,65,93,039

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. 1,65,93,039/- (including Cess) on the differential value of Rs. 11,44,34,752/-.

20. A Letter dated 07.10.2020 was issued to the assessee to explain the difference and to submit documents in support thereof viz. Balance Sheet, Profit and Loss Account, Income Tax Return, Form 26AS, etc. for FY 2015-16, However, the assessee neither submitted the details nor submitted any explanation for the same. Therefore, the service tax liability of the assessee was worked out solely on the basis of income mentioned in ITR /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.

21. 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. 1,65,93,039/- (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 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. 1,65,93,039/- (including Cess) worked out on value of Rs. 11,44,34,752/- 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.

22. 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; (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; (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.

23. 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. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt

of services by them, and thereby not paid/short paid/not deposited tax thereof to the extent of Rs. 1,65,93,039/-. 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.

24. 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. 1,65,93,039/- 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.

25. 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. 1,65,93,039/- (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.

26. No data was shared by the CBDT, for the period FY 2017-18 (upto June-2017) and the assessee 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.

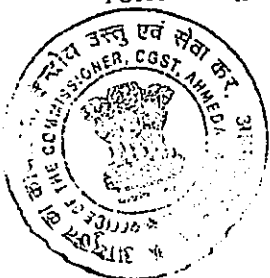
Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified that:

*'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.'*

27. The "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) had not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. The assessee had also failed to provide the required information even after the issuance of letters and summons from the Department and the assessable value for the FY 2017-18 (upto June-2017) was not ascertainable at the time of issuance of this Show Cause Notice. If any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action was to be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the FY 2017-18 (upto June-2017) covered under subject Show Cause Notice, was to be recovered from the assessee.

28. 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.

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



30. Therefore, Show Cause Notice dated 22.10.2020 was issued to the assessee asking them as to why:

- (i) Differential amount of Service Tax of Rs. 1,65,93,039/- (Rupees One Crore Sixty Five Lakh Ninety Three Thousand Thirty Nine 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 2016-17 & 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(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:**

31. The assessee vide their letter dated 10.05.2021 submitted their written submission, wherein they interalia have stated that:

- They were in the business of running commercial buses on hire to Ahmedabad Municipal Transport Service, an entity under Ahmedabad Municipal Corporation for commuting of passengers within the city limits of the municipal corporation.
- Their services were classified under Entry No. 22(a) of exempted list of services.
- All their buses given on hire, were having capacity of more than twelve passengers.
- They had surrendered their service tax registration in the month of November 2013; hence, service tax returns were not filed by them.



**PERSONAL HEARING:**

32. Personal Hearing was granted to the assessee on 23.05.2022, which was attended by Shri Punit Prajapati, CA and Shri Keyur Kamdar, CA as authorized by the assessee. During the course of hearing, they made reference to their earlier written submission dated 10.05.2021 and they also submitted a detailed written reply on 23.05.2022 (dated 17.05.2022). The crux of the arguments put forth by them in their defence is that services provided by them are exempt from Service tax as they are giving vehicles/buses for public transportation to AMTS/RRL.

The summary of the written submission is as given below:

- That they were in the business of giving buses on hire to Ahmedabad Municipal Transport Service and Rajkot Rajpath Limited, both being public authorities.
- That they were registered with service tax department vide Service Registration No. AAMFM3074AST001. As their services were made exempt from service tax, they had surrendered the service tax registration vide their letter dated 22.10.2013.
- That there is an error in SCN (dated 23.04.2021) in mentioning the value of services, which has been alleged to be as Form 26AS. They have provided services to two recipients of service, namely AMTS and RRL. As can be seen from the SCN, the gross receipts from providing services during FY 2015-16 and 2016-17 have been taken as Rs. 22,88,69,504/- and Rs. 19,64,89,780/- respectively, which are exactly the double of amount appearing in Form 26AS. They have provided the details of the same as under:

Sr.	Particulars	2015-16	2016-17	Total
A	AHMEDABAD MUNICIPAL TRANSPORT SERVICE (AHMA00475G)	6,96,15,300	4,97,73,962	
B	RAJKOT RAJPATH LIMITED (RKTR03570A)	44819452	48470928	
C	Total value reported by service recipients in Form 26AS	114434752	98244890	
D	DOUBLE AS PER SCN [ C * 2 ]	228869504	196489780	
E	Rate of Service tax	14.5%	15.0%	
F	Service Tax [ (D)*(E) ] - as demanded in SCN.	3,31,86,078	2,94,73,467	6,26,59,545

- That it is also verifiable from Financial Statement that their gross receipts are not that too high as claimed in the SCN. Thus, the entire service tax of Rs. 6.26 crore demanded is clearly inflated figures, and this can not be more than half of this amount.



- That they have provided services to M/s. Ahmedabad Municipal Transport Service (AMTS) and Rajkot Rajpath Ltd (RRL), both are government entities and state transport corporation. The services of giving buses on hire to state transport undertaking by them is covered under the Entry No. 22(a) of the Notification No. 25/2012-ST dated 20.06.2012. Therefore, the services provided by them is exempt from service tax. Hence, no service tax is payable by them.
- They have also been issued SCN dated 22.10.2020 from File No. STC/15-133/OA/2020 by the Additional Commissioner, Ahmedabad North for demanding Service tax of Rs. 1,65,93,039/- on value of service of Rs. 11,44,34,752/-. Thus, issuing the SCN dated 23.04.2021 covering the said period is completely illegal and unjustifiable.
- That they have been issued SCN without being offered Pre-SCN consultation opportunity as mandated under Circular No. 1053/2/2017-CX dated 10.03.2017 and as clarified under Circular No. 1076/02/2020-CX dated 19.11.2020. Thus, SCN issued in violation of instructions is invalid and is liable to be quashed. They have relied upon the following judgements of Hon'ble High Court of Delhi and Madras.
  - Amadcus India Pvt Ltd. Vs. Pr. Commr. [2019(25) GSTL 486 (Del)]
  - Tube Investment of India vs, Union of India [2018 (16) GSTL 376 (Mad)]
  - Hitachi Power Europe GMBH vs. CBIC [2019 (27) GSTL 12(Mad)]
  - Freight Systems (India) Pvt Ltd., vs. Commr [2019(368) ELT 506(Mad.)]
- That they had surrendered their service tax registration in the year 2013 and they vide their letter dated 04.09.2015 had clearly intimated the department that they have surrendered the registration as they were exempt from service tax under E.No. 22(a) of Notification No. 25/2012-ST. Thus, the department was aware about the claiming of exemption by them since 2015 and no action was taken by the department since then. Therefore, there is nothing like suppression on their part. Hence, invocation of extended period of five years for demanding service tax is baseless and not justifiable.
- They have submitted the following documents in support of their defence.
  - Copies of Form 26AS for FY 2015-16 and 2016-17
  - Copies of Audited Financial Statements along with Income Tax Audit Reports for FY 2015-16 and 2016-17
  - Copy of work order dated 05.10.2013 awarded by AMTS (extension) alongwith copy of work order 29.05.2008.
  - Copy of contract dated 10.09.2012 awarded by RRL

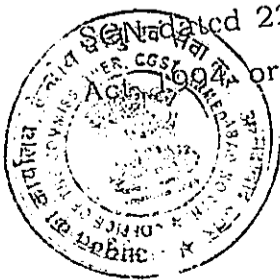


- o Extension of Contract by RRL vide letter dated 22.06.2020.
- o 24 Sample Invoices issued to AMTS by the assessee for the FY 2015-16 and 2016-17.
- o Sample copy of Carriage Permit (Bus No. GJ01BV 8589), Bid Document (Tender dated 16.04.2008) to provide Buses issued by AMC/AMTS, Sample RC Book (Bus No. GJ-01 BV 8759 and 8760) and Copy Insurance Policy (Bus No. GJ-01 BV 8759 and 8760).

**DISCUSSION AND FINDINGS:**

33. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence replies submitted on 10.05.2021 and 17.05.2022, the documents submitted by them vide their letter dated 17.05.2022 and oral submission made during the course of hearing by authorized representative of the assessee.

34. I observe that two SCNs have been issued to the assessee. On going through the said SCNs, 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 for FY 2015-16 and 2016-17. The difference in taxable value was worked out after comparing the income declared in Form 26AS/ITR vis-à-vis taxable value disclosed in ST-3 Returns. As per SCN dated 23.04.2021, the difference of Rs. 42,53,59,284/- 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 the service tax of Rs. 6,26,59,545/- on such differential value, for providing the taxable service. Similarly, in the SCN dated 22.10.2020, the difference of Rs. 11,44,34,752/- in value was observed for FY 2015-16, therefore, it was alleged vide SCN dated 22.10.2020, that the assessee had short paid the service tax of Rs. 1,65,93,039/- on such differential value, for providing the taxable service. Therefore, the subject SCNs were issued to the assessee. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay (1) service tax of Rs. 6,26,59,545/- on the differential taxable value of Rs. 42,53,59,284/- for the Financial Year 2015-16 and 2016-17 and (2) Service tax of Rs. 1,65,93,039/- on the differential taxable value of Rs. 11,44,34,752/- as demanded under SCN dated 23.04.2021 and 22.10.2020 respectively, under proviso to section 73(1) of Finance Act, 1994 or not.



35. Both the SCNs seek the demand of service tax on incomes as derived from the data shared by the Income tax department, on which tax has not been paid by the assessee. Further, I find that the period and issue covered under both the SCNs is the same and the two SCNs can not be decided separately in the interest and uniformity of the decision, as both the SCNs are inter connected. I find that the assessee has also pointed out the same in their defence reply dated 17.05.2022 (submitted on 23.05.2022). Therefore, I am taking up the matter simultaneously for fair and just decision in the matter. The tables below show the service tax demanded from the assessee in the two SCNs:

Service tax demanded under SCN dated 23.04.2021

Sr. No.	Financial Year	Taxable Value as per ST-3 Returns (in Rs.)	Gross Receipts from services (Value from ITR/26AS) (in Rs.)	Difference Between Value of Services from ITR/26AS and Taxable value of Service provided (as per ST-3) (in Rs.)	Resultant Service tax short paid (in Rs.)
1	2015-16	0	22,88,69,504	22,86,69,504	3,31,86,078
2	2016-17	0	19,64,89,780	19,64,89,780	2,94,73,467
			42,53,59,284	42,53,59,284	6,26,59,545

Service tax demanded under SCN dated 22.10.2020

Sr. No.	FY	Total Sale of services as per ITR	Gross value of service provided (STR)	Total value for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	Higher Value (value difference ITR&STR) or (value difference TDS & STR)	Resultant Service Tax short paid (including Cess)
1	2015 16	10,21,46,369	0	11,44,34,752	11,44,34,752	1,65,93,039

36. I find that the assessee in their defence reply dated 17.05.2022 has contested that they had provided services by way of hiring buses to M/s. Ahmedabad Municipal Transport Service (AMTS) and Rajkot Rajpath Ltd (RRL), both are government entities and state transport corporation. They have further rendered the argument that the services by way of giving buses on hire to state transport undertaking is exempt services, the same being covered under the Entry No. 22(a) of the Notification No. 25/2012-ST dated 20.06.2012. Therefore, they are not required to pay service tax as demanded under the subject SCNs.

37. I also find that the assessee has also contested that the figures of Gross receipts from services, mentioned in SCN dated 23.04.2021 are exactly double of the amount paid/credited to the assessee as appearing in Form 26AS for FY 2015-16 and 2016-17. In order to verify the arguments tendered by the assessee, examination of Form 26AS vis-à-vis is felt necessary. Therefore, on going through the Form 26AS and the said SCN dated 23.04.2021, I find that the assessee's contention is found to be correct as detailed given under.



FY 2015-16	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	Section of IT Act, under which TDS deducted
	1	Ahmedabad Municipal Transport service	69615300	194C
	2	Rajkot Rajpath Limited	44819452	194C
A		Total	114434752	
B		Double of (A)	228869504	
C		As per SCN dated 23.04.2021, Gross receipt from services	228869504	
D		Difference (B-A)	0	

FY 2016-17	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	Section of IT Act, under which TDS deducted
	1	Ahmedabad Municipal Transport service.	49773962	194C
	2	Rajkot Rajpath Limited	48470928	194C
A		Total	98244890	
B		Double of (A)	196489780	
C		As per SCN dated 23.04.2021, Gross receipt from services	196489780	
D		Difference (B-A)	0	

38. I find that the SCN dated 23.04.2021 mentions the sharing of data from ITR/26AS, however, it does not mention specifically, which data i.e. ITR data or 26AS data, has been considered for computing the tax liability upon the assessee, whereas I find that the SCN dated 22.10.2020 clearly mentions that the computation of service tax liability is based on data of Form 26AS. On going through the data of 26AS for FY 2015-16 & 2016-17, I find that the Gross amount/ receipt from the provision of Services, as shown in the SCN dated 23.04.2021, is not correct and the same is exactly double of the amount paid/credited to the assessee as per Form 26AS. However, I observe that the gross amount/receipt from provision of service for FY 2015-16, as per the SCN dated 22.10.2020, is tallying exactly with the data of Form 26AS for FY 2015-16. I also find that the gross amount /receipt from provision of service for FY 2015-16 as per the SCN dated 22.10.2020, is half of the gross amount/receipts from provision of services shown in the SCN dated 23.04.2021. Therefore, I find that the SCN dated 22.10.2020 supports the contention of the assessee that the gross amount/receipt from services as shown in the SCN dated 23.04.2021 is





not correct and the same is double of the actual receipts by them. Hence, I would proceed with data of Form 26AS (amount paid or credited to the assessee by the recipient of service) for deciding the matter in both the SCNs.

39. I find from Form 26AS data that the assessee was paid/credited the amount of Rs. 11,44,34,752/- and Rs. 9,82,44,890/-, as disclosed by the tax deductor under section 194C of the Income Tax Act during FY 2015-16 and 2016-17 respectively. I find that Section 194C of the Income Tax Act deals with the tax deduction at source (TDS) that is to be compulsorily deducted from any payments that have been made to any person who is a resident contractor or a subcontractor. Therefore, any amount paid/credited on which TDS has been deducted under Section 194C, is a contract income. I find that the assessee has admittedly stated in their written submission dated 10.05.2021 & 17.05.2022 as well as during the course of hearing held on 23.05.2022 that they had provided the service by way of giving motor vehicles on hire to state transport undertakings, to carry more than twelve passengers. Accordingly, I find that there is no dispute as far as the question of provision of services by the assessee is concerned.

40. I find that the assessee has claimed the exemption from service tax on provision of service by them, under Entry No. 22(a) of Notification No. 25/2012-ST dated 20.06.2012. The said entry number and other relevant definitions/meanings are re-produced as follows for ready reference.

**Entry No. 22(a) of Notification No. 25/2012-ST dated 20.06.2012.**

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

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

The term "State Transport Undertaking" has been defined at Para 2(zg) of the Notification No. 25/2012-ST as under:

*"(zg) "state transport undertaking" has the meaning assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988)"*

Further, the clause (42) of Section 2 of the Motor Vehicles Act, 1988 defines



"(42) "State transport undertaking" means any undertaking providing road transport service, where such undertaking is carried on by,—

- (i) the Central Government or a State Government;
- (ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 (64 of 1950);
- (iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments;
- [(iv) Zilla Parishad or any other similar local authority.]

Explanation. - For the purposes of this clause, "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;"

On going through Entry No. 22(a) of Notification No. 25/2012-ST dated 20.06.2012, I find that the service would be exempt if the following criteria are satisfied.

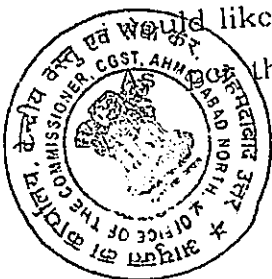
- There is a hiring of motor vehicles.
- The motor vehicle hired is meant to carry more than twelve passengers
- The recipient of such service must be state transport undertaking.

41. In support of the arguments put forth by the assessee, they have submitted the Copy of work order dated 29.05.2008 by AMTS, copy of Extension of contract dated 05.10.2013 awarded by AMTS, 24 sample invoices issued to AMTS for FY 2015-16 and 2016-17, copy of contract dated 10.09.2012 awarded by RRL and Extension of Contract by RRL vide letter dated 22.06.2020. In order to ascertain the exact nature of service provided by the assessee and applicability of exemption or otherwise, the examination of these documents has been carried out. On going through the work order dated 29.05.2008, it is apparent that the assessee was conveyed and awarded work for providing 30 CNG Operated Euro III New Regular buses for city transport, by Ahmedabad Municipal Corporation/ Ahmedabad Municipal Transport Service. It is also apparent from the tender documents dated 16.04.2008 that the said contract was for the period of minimum five years. Further, it is also discerned from the copy of letter dated 05.10.2013 issued by Dy. Commissioner/Transport Manager, AMTS that the said contract was extended for further two years or till the arrival of new 300



EURO -IV Diesel buses. Sample Invoices issued to AMTS during FY 2015-16 and 2016-17 clearly indicate that the same have been issued for providing buses to AMTS by the assessee and the buses have been provided in reference to extension granted vide letter dated 05.10.2013 (assessee has written the date to be 04.10.2013). As regards Services provided to Rajkot Municipal Corporation/ Rajkot Rajpath Limited, it is seen from the letter dated 10.09.2012 issued by the City Engineer, Rajkot Municipal Corporation, that the assessee was conveyed the acceptance of offer of the assessee for providing 44 diesel buses. The said contract was for 07 years as apparent from the Extension Letter dated 22.06.2020, which was issued by the General Manager, Rajkot Rajpath Limited. Therefore, it is evident that the work orders issued by AMTS and RRL cover the period of subject SCNs i.e. FY 2015-16 and 2016-17. Further, based on documentary evidences, it is also established that the income earned by the assessee from AMTS and RRL was for providing buses for public transportation. It is also forthcoming from these letters/correspondence and websites of corporation that Ahmedabad Municipal Transport Service and Rajkot Rajpath Limited are undertakings managed by Ahmedabad Municipal Corporation and Rajkot Municipal Corporation respectively, which are providing public transport services to passengers.

42. From the above legal provisions and documentary evidences, it is evident that the assessee had provided the regular buses on hiring to AMTS/RRL and considerations/income were flowing from these two recipients of services only. AMTS and RRL are providing public/passenger transportation services and the same are also State Transport Undertaking as both are fully managed and owned by Municipal Corporations. It is also discerned from Sample copy of Carriage Permit (Bus No. GJ01BV 8589), Bid Document to provide Buses issued by AMC/AMTS, Sample RC Book (Bus No. GJ-01 BV 8759 and 8760) and Copy Insurance Policy (Bus No. GJ-01 BV 8759 and 8760) that sample copy of Carriage permit mentions the seating capacity of bus to be 47+1 passengers, Bid document (addendum to Bid) mentions the buses of capacity of 56/62 persons, similarly sample insurance policy and RC books mention the bus capacity 47/60 i.e. more than 12 persons. I find that "Bus" has not been defined in Motor Vehicles Act, 1988 or in Finance Act. However, I find that in general parlance, the "Bus" is meant to be a public transport vehicle for passengers' movement. In absence of any specific definition of "Bus" in Motor Vehicle Act, I would like to take support from the meaning provided under different sources. The meaning provided in Cambridge Dictionary, "Bus" means a large



motor vehicle with seats for many people. As per Wikipedia (<https://en.wikipedia.org/wiki/Bus>), "Bus" (contracted from omnibus, with variants multibus, motorbus, autobus, etc.) is a public transport road vehicle designed to carry significantly more passengers than the average cars or vans. Buses can have a capacity as high as 300 passengers, although the average bus usually carries between 30 and 100. Therefore, from the above discussion and more specifically, in absence of any contradictory documents /evidences on records, I find that the Buses hired by the assessee, are covered under the definition of motor vehicle as provided under Motor Vehicle Act, 1988 and are meant for carrying more than 12 passengers. Hence, all criteria /ingredients of services defined under E.No. 22(a) of Notification No. 25/2012-ST, as discussed in para 44, are satisfied. Therefore, the services provided by the assessee by way of hiring of the said buses to AMTS/RRL (state undertakings) for carrying passengers appear to be squarely covered under E. No. 22(a) of Notification No. 25/2012-ST dated 20.06.2012. Accordingly, the exemption from service tax on the services provided by the assessee during FY 2015-16 and 2016-17, is available to them. Thus, I am of the considered view that the assessee is not liable to pay service tax on providing services during FY 2015-16 and 2016-17.

43. As regards the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. Since, the assessee has not provided any details/information/ documents for the F.Y.2017-18 (upto June,2017) and the department has also not adduced any information/evidence and reason for the non disclosure has not been made known to the department, I refrain myself from entering in to the said period to determine liability as otherwise of assessee for service tax.

44. From the above factual, legal position and documents submitted by the noticee, I find the difference in the value of service as alleged in the subject SCNs is on account of the exemption claimed by the noticee. I find that apart from the differences noticed in the figures reported in ST-3 returns and in ITR/Form 26AS, the department has not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non



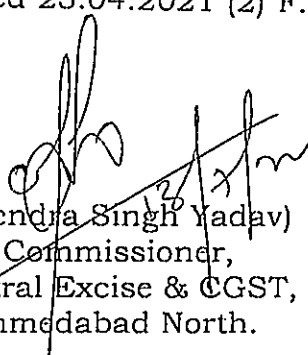
payment of service tax. Having considered these factual and documentary evidences available on records, I find that there is no short payment of service tax by the noticee. Thus, the subject SCNs are liable to be dropped on merits being incorrect and legally not sustainable.

45. In view of the aforementioned detailed discussion and in view of the facts and circumstances pertaining to the subject case, the demand is not tenable in law. Accordingly, I do not consider it necessary to delve on the merits of invoking extended period of limitation which has been discussed in the SCNs at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise for imposing penalty.

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

**ORDER**

I drop the proceedings initiated against M/s. Mateshwari Travels, 11,12, Sonal Mahal, Modh Chapaner Society, Usmanpura, Ahmedabad -380013, vide Show Cause Notice (1) F. No. STC/15-21/OA/2021 dated 23.04.2021 (2) F.No. STC /15-133/OA/2020 dated 22.10.2020.

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

By Regd. Post AD./Hand Delivery  
F.No. STC/15-21/OA/2021

Date: .07.2022.

To  
M/s. Mateshwari Travels,  
11,12, Sonal Mahal,  
Modh Chapaner Society,  
Usmanpura,  
Ahmedabad -380013,

Copy to:

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

