


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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-155/OA/2021-22

DIN- 20221264WT0000419694

आदेश की तारीख / Date of Order : 22.12.2022

जारी करने की तारीख / Date of Issue : 22.12.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-31/2022-23

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 Girdharnagar Bridge, Girdharnagar, 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

हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए।) अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अंग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल, उसकी भी उतनी ही, की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से कम प्रतियाँ संलग्न की जाएंगी म एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970, की अनुसूची, 1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice No. STC/15-155/OA/2021-22 dated 23.04.2021 issued to M/s. Dineshchandra Yadav, HUF, Shop No. C/07, 2nd Floor, Punjab House; Opp. Ujala Circle, Bavla Char Rasta, AHMEDABAD, Gujarat-382213

ORDER-IN-ORIGINAL NO. AHM-EXCUS - 31/2022-23

M/s. Dineshchandra Yadav, HUF, Shop No. C/07, 2nd Floor, Punjab House, Opp. Ujala Circle, Bavla Char Rasta, AHMEDABAD, Gujarat- 382213 were issued Show Cause Notice No. STC/15-155/OA/2021-22 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

Brief facts of the case pertaining to Show Cause Notice No. STC/15-155/OA/2021-22 dated 23.04.2021 are as follows:

1. 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" by M/s. Dineshchandra Yadav, HUF, Shop No. C/07, 2nd Floor, Punjab House, Opp. Ujala Circle, Bavla Char Rasta, AHMEDABAD, Gujarat-382213 (hereinafter referred to as "Assessee" for sake of brevity) was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 to 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC). On the basis of the data shared by the CBDT, it appeared that they were engaged in providing taxable services and the Assessee was holding Service Tax Registration No. AAHHD4185JSD001.

2. As per the records shared by the CBDT, it appeared that for the F.Y. 2015-16 to 2016-17, the Sales/Gross Receipt from Services (Value from ITR) are not tallied with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16 to 2016-17. It also appeared that the said Assessee had declared less/not declared any taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 to 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16 to 2016-17. The details of difference as per CBDT data for the F.Y. 2015-16 to 2016-17 was as under:

Sr. No.	Financial Year	VALUE DIFFERENCE in ITR & STR / TDS & STR (Whichever is higher) (in Rs.)	Service Tax (in Rs.)
1	2015-16	4,96,63,569/-	69,29,034/-
2	2016-17	11,28,38,671/-	1,68,31,510/-
	TOTAL	16,25,02,240/-	2,37,60,544/-

Therefore, it appeared the said Assessee had less discharged their Service Tax liability and thus were liable to pay Service Tax including Cess [@ 12.36% for F.Y. 2015-16 & from 01-04-2015 to 31-05-2015] ; [@ 14% from 01-06-2015 to 14-11-2015] ; [@ 14.50% from 15-11-2015 to 31-05-2016] and [@15% from 01-06-2016 to 31-03-2017] amounting to Rs. 2,37,60,544/- on the differential value amounting to Rs. 16,25,02,240/- along with applicable interest and penalty for the F.Y. 2015-16 to 2016-17.

3. As per the provisions of **Section 72** of the Finance Act, 1994, if any person, liable to pay Service Tax having made a return, fails to assess the tax, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the Assessee on the basis of such assessment.

4. As per the provisions of **Section 73(1)** of the Finance Act where any Service Tax has not been levied or paid or has been short levied or short paid by the 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 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 amount specified in the notice.

5. As per **Rule 6** of the Service Tax Rules, 1994, the Service Tax shall be paid to the credit of the Central Government by 5th day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. **Rule 7** of the Service Tax Rules, 1994 stipulates that Assessee shall submit their Service Tax returns in the form of ST-3 within the prescribed time.

6. From the foregoing paras, it appeared that the said Assessee had failed to pay/short paid/deposit Service Tax to the extent of Rs. 2,37,60,544 /- on the difference of taxable value during the period 2015-16 to 2016-17 by declaring less value in their ST-3 Returns vis-a-vis their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services received/provided by them with an intent to evade payment of Service Tax. Thus, it appeared that the said Assessee had failed to discharge the Service Tax

liability of **Rs. 2,37,60,544/-** (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) worked out on value of **Rs. 16,25,02,240/-** and therefore, Service Tax were 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.

7. In view of the above, it appeared that the said Assessee had contravened the provisions of:

- (a) **Section 66** of the Finance Act, 1994 in as much as they had failed to collect and pay the Service Tax as detailed above, to the credit of Central Government.
- (b) **Section 68** of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they had not paid the Service Tax as mentioned above to the credit of the Government of India within the stipulated time limit;
- (c) **Section 70** of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, as amended, in as much as they had failed to properly assess their Service Tax liability under Rule 2(1)(d) of Service Tax Rules, 1994 and failed to declare correct value of taxable services as well as exempted services to the department in the prescribed return in Form ST-3.

8. It was also found 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 Service for the differential value of **Rs. 16,25,02,240/-** that had come to the notice of the Department only after going through the data shared by CBDT for the Financial Year 2015-16 to 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc., based on mutual trust and confidence are in place. From the evidences, it appeared that the said Assessee had knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid/short paid/not deposited Service Tax thereof to the extent of **Rs. 2,37,60,544/-**. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by them. It appeared that all these material information had been concealed from the department deliberately, consciously and purposefully to evade payment of Service Tax.

9. Whereas, 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 (as 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 the Service Tax of **2,37,60,544/-** 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 alongwith interest under Section 75 ibid not paid by them under Section 68 of the Finance Act 1994 read with Rule 6 of Service Tax Rules, 1994 in as much as the said Assessee had suppressed the facts from the department and 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, 1994.

10. All the above acts of contravention on the part of the said Assessee which resulted into non-payment of Service Tax appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of Service Tax as discussed in the foregoing paras and therefore, the said amount of Service Tax amounting to **Rs. 2,37,60,544 /-** (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) 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.

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

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

13. Therefore, the Assessee (M/s. Dineshchandra Yadav, HUF) were issued a show cause notice dated 23.04.2021 asking them as to why;

- i. Differential amount of **Service Tax** amounting to Rs. **2,37,60,544/- (Rupees Two Crore Thirty Seven Lakh Sixty Thousand Five Hundred Forty Four only)** (inclusive of Edu. Cess and S&H Edu. Cess) short paid/not paid by them, should not be confirmed/demanded under proviso to Section 73(1) of the Finance Act, 1994.
- ii. **Interest** at the appropriate rates should not be recovered from them as prescribed under **Section 75** of the Finance Act, 1994 from the due date on which the Service Tax was liable to be paid till the date on which the said Service Tax is paid.
- iii. **Penalty** should not be imposed upon them under **Section 76** of the Finance Act, 1994 for their failure to make payment of Service Tax payable by them within prescribed time-limit.
- iv. **Penalty** should not be imposed upon them under **Section 77** of the Finance Act, 1994 for their failure to assess the correct tax liability.
- v. **Penalty** should not be imposed upon them under **Section 78** of the Finance Act, 1994 as amended for suppressing and not disclosing the value of the said taxable service provided by them before the department with an intent to evade payment of Service Tax.

DEFENCE REPLY:

14. The Assessee vide their letter dated 16.11.2022 submitted their reply to the Show Cause Notice dated 23.04.2021, wherein they have inter alia stated as under –

- (i) That there is no difference in the value of service as declared in Service Tax Return and per direct tax records i.e. 26AS and Income Tax Act.

- (ii) That only GTA services are provided by them and all the services are provided to Private Limited Companies/Partnership Firms etc. which are exempt and not taxable. Detailed ledger showing transactions are provided for verification.
- (iii) The comparative value of services as declared in Service Tax Return and in income tax returns is as under -

2015-16

Service Tax Return (Year 2015-16)	Amount (Rs.)
April to September 2015	16496839
October 2015 to March 2016	46475094
Total as per Service Tax Return	62971933
Shown in 26AS	49663569 (less than P&L A/c.)
Shown in P&L A/c. in Income Tax Return	62971933

2016-17

Service Tax Return (Year 2016-17)	Amount (Rs.)
April to September 2015	17391415
October 2015 to March 2016	83922752
Total as per Service Tax Return	101314167
Shown in 26AS	112838671 (less than P&L A/c.)
Shown in P&L A/c. in Income Tax Return	114094690

- (iv) The above calculation shows a difference of Rs. 1,27,80,523/- (Rs. 11,40,94,690/- minus Rs. 10,13,14,167/-) in P&L A/c. and ST-3 Returns during F.Y. 2016-17, which is due to genuine clerical mistake (the income for June 2016 reflected as 14,20,059.01 in ST-3 instead of 1,42,00,579.01) and the same mistake was already explained and duly verified by the GST officer of Division IV. This case was already explained and duly verified by the GST officer of Division for year 2015-16 and all the relevant documents were submitted at that time before the concerned officer and verified by him and case was cleared at that time by Division IV. Copy of the letter submitted before Division IV is now again submitted herewith.

- (v) Looking to the above facts and documents produced, it is very much clear that there is no difference and hence it is requested to kindly drop the proceedings. .

15. The Assessec, vide their letter dated 16.11.2022 have submitted the following documents –

- a. Audit Report with P/L and B/S for the period 2015-16 and 2016-17
- b. Form 26AS for the F.Y. 2015-16 and 2016-17
- c. ST-3 Returns for the period April to September and October to March for both F.Y. 2015-16 and 2016-17
- d. Xerox copies of consignment notes

PERSONAL HEARING:

16. Personal hearings were granted to the Assessee on 09.05.2022, 26.05.2022, 22.06.2022, 28.07.2022, 12.09.2022, 19.10.2022. However the Assessee did not appear for personal hearing on any of the above mentioned dates. Finally the personal hearing was fixed on 17.11.2022 and the same was attended by Shri R.S. Durgar, Chartered Accountant, on behalf of the Assessee. During the course of personal hearing Shri R.S. Durgar reiterated the contents of their written submission dated 16.11.2021 and documents submitted vide letter dated 16.11.2022. He also submitted that the Assessee has provided services of GTA services to Private Limited companies; that the Assessee is not required to pay Service Tax as per law.

DISCUSSION AND FINDINGS:

17. I have carefully gone through the facts of the case and records available in the case file, the Show Cause Notice dated 23.04.2021, the defense reply dated 16.11.2022, the documents submitted vide letter dated 16.11.2022 and oral submissions made by the Assessee during the course of personal hearing on 16.11.2022. Accordingly, I find that the following issues are required to be decided by me as an adjudicating authority –

- i. Whether the Service Tax has been correctly demanded vide the Show Cause Notice dated 23.04.2021.
- ii. Whether the contention of the Assessee that the services provided by them are exempted is correct and sustainable.

18. I find that the genesis of the demand has risen from the analysis of the Form 26AS and ITR of the Assessee by the CBDT for the period 2015-16 and 2016-17 which was also shared by CBDT with the department. The show cause notice states that on the basis of the information shared by the CBDT, it was found that during the year 2015-16 and 2016-17, the Assessee had rendered taxable services and had received income on such services; that the Assessee had not reflected the income earned by them from rendering such services in the ST-3 returns and thereby they had not made the payment of Service Tax on such income. Therefore the SCN dated 23.04.2021 was issued to the Assessee demanding Service Tax of Rs. 2,37,60,544/- (Rs. 69,29,034/- + Rs. 1,68,31,510/-) on the value of total taxable service, provided by them amounting to Rs. 16,25,02,240/- (Rs. 4,96,63,569/- + Rs. 11,28,38,671/-) for F.Y. 2015-16 and 2016-17.

19. I find that the SCN states that the Assessee has not reflected any taxable income in their ST-3 returns. However, it has been submitted by the Assessee that they have filed all their ST-3 returns for the period 2015-16 and 2016-17 and they have also reflected their income earned from provision of GTA services in their ST-3 Returns. The Assessee has also provided the copies of all the 4 ST-3 returns for the period 2015-16 and 2016-17. The copies of the ST-3 returns are reproduced below for reference -

CENTRAL BOARD OF EXCISE AND CUSTOMS Ministry of Finance - Department of Revenue	
Form ST-3	
(Return under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994)	
Following issues have been found in your return :	
PART A GENERAL INFORMATION	
A1	ORIGINAL RETURN Yes
A2	REVISED RETURN No
A3	STC Number AAHHD4185JSD001
A4	Name of the Assessee JET LITE LOGISTICS (PROP. DINESHCHANDRA YADAV (HUF))
Address of Registered Unit PUNJAB HOUSE SHOP NO C/07 2ND FLOOR OPP UJALA CIRCLE BAVALA CHAR RASTA SARKHEJ SARKHEJ	
Commissionerate AHMEDABAD	
Division SERVICE TAX DIVISION-IV AHMEDABAD ST	
Range RANGE-II	
A4	Financial Year 2015-2016
A5	Return for the Period April-September
RETURN FILING DETAILS	
Due date for filing of this return 25/10/2015	
Actual date of filing 27/09/2016	
No of days beyond due date 336	
A6	
A6.1	Has the Assessee opted to operate as "Large Taxpayer" Unit [Y/N] (As defined under Rule 2(e) (as) of the Central Excise Rules, 2002 read with Rule 2 (1) (c)(cc) of the Service Tax Rules, 1994) No
A6.2	If reply to column A6.1 is 'Y', name of Large Taxpayer Unit opted for
A7	Promises Code Number SD04Q2A001
A8	Constitution of the Assessee Hindu Undivided Family
A9	
Taxable Service(s) for which Tax is being paid	
Description of Taxable Services Transport of goods by road/goods transport agency service	
Taxable Service for which Tax is being paid Transport of goods by road/goods transport agency service	
A10 Assessee is liable to pay Service Tax on this taxable service as	
A10.1 A Service Provider under Section 68(1)	
A10.2 A Service Receiver under Section 68(2)	
A10.3 A Service Provider under partial reverse charge under proviso to Section 68(2)	
A10.4 A Service Receiver under partial reverse charge under proviso to Section 68(2)	
A10.5 If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service 0	
A10.6 If covered by A10.4 above, then the percentage of Service Tax Payable as Recipient of Service 0	

A11 EXEMPTIONS									
A11.1	Has the assessee availed benefit of any exemption Notification ('Y'/N')							Y	
A11.2	If reply to A11.1 is 'Y', Please furnish Notification No. and Sl. No. in the Notification under which such exemption is availed								
Sl. No.	Notification Number						Sl. No.		
1	030/2012-S.T.						2		
A12 ABATEMENTS									
A12.1	Has any abatement from the value of services been claimed ('Y'/N')							Y	
A12.2	If reply to A12.1 is 'Y', Please furnish Notification No. and Sl. No. in the Notification under which such abatement is availed								
Sl. No.	Notification Number						Sl. No.		
1	026/2012-S.T.						7		
A13 PROVISIONAL ASSESSMENT									
A13.1	Whether provisionally assessed ('Y'/N')							N	
A13.2	If reply to A13.1 is 'Y', please furnish Provisional Assessment Order No. and Date								
Provisional Assessment Order No.						Date			
PART - B	VALUE OF TAXABLE SERVICE AND SERVICE TAX PAYABLE								
PART - B1	FOR SERVICE PROVIDER								
Sl. No.	Month	Apr	May	June	Jul	Aug	Sep	Total	
B1.1	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)	385920	1391793	1273498	4065264	7669236	1711128	16496839	
B1.2	Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	0	0	0	
B1.3	Amount taxable on receipt basis under third proviso to Rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	0	0	0	
B1.4	Amount taxable for services provided for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	0	0	0	
B1.5	Money equivalent of other considerations charged, if any, in a form other than money	0	0	0	0	0	0	0	
B1.6	Amount on which Service Tax is payable under partial reverse charge	0	0	0	0	0	0	0	
B1.7	Gross Taxable Amount B1.7 = (B1.1 + B1.2 + B1.3 + B1.4 + B1.5 + B1.6)	385920	1391793	1273498	4065264	7669236	1711128	16496839	
B1.8	Amount charged against export of service provided or to be provided	0	0	0	0	0	0	0	
B1.9	Amount charged for exempted service provided or to be provided (other than export of service given at B1.8 above)	385920	1391793	1273498	4065264	7669236	1711128	16496839	
B1.10	Amount charged as Pure Agent	0	0	0	0	0	0	0	
B1.11	Amount claimed as abatement	0	0	0	0	0	0	0	
B1.12	Any other amount claimed as deduction, please specify.	0	0	0	0	0	0	0	
B1.13	Total Amount Claimed as Deduction B1.13 = (B1.8 + B1.9 + B1.10 + B1.11 + B1.12)	385920	1391793	1273498	4065264	7669236	1711128	16496839	
B1.14	NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)	0	0	0	0	0	0	0	



CENTRAL BOARD OF EXCISE AND CUSTOMS
Ministry of Finance - Department of Revenue



Form ST-3

(Return under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994)

Following Issues have been found in your return :

PART A GENERAL INFORMATION		REVISED RETURN No	
A1 ORIGINAL RETURN Yes	A2 BTC Number AAHMD4100150001	A3 Name of the Assessee JET LITE LOGISTICS (PROPRIETARY) DINESH CHANDRA YADAV (IUP)	A4 Financial Year 2015-2016
Address of Registered Unit PUNJAB HOUSE SHOP NO C/07 2ND FLOOR OPP UJALA CIRCLE BAVALA CHAR KASTA SARKHEJ SARKHEJ		Division SERVICE TAX DIVISION-IV AHMEDABAD ST	Range RANGE-II
Commissionerate AHMEDABAD		A5 Return for the Period October-March	

RETURN FILING DETAILS	
Due date for filing of this return	29/04/2016
Actual date of filing	27/06/2016
No of days beyond due date	151

A6	Has the Assessee opted to operate as "Large Taxpayer" Unit [Y/N] (As defined under Rule 2(o) (en) of the Central Excise Rules, 2002 read with Rule 2 (1) (c)(cc) of the Service Tax Rules, 1994)		No
A6.2	If reply to column A6.1 is 'Y', name of Large Taxpayer Unit opted for		
A7	Promises Code Number	SD0402A001	
A8	Constitution of the Assessee Hindu Undivided Family		

A9	Taxable Service(s) for which Tax is being paid	Sub Clause
Description of Taxable Services	Transport of goods by road/goods transport agency service	(22p)
Taxable Service for which Tax is being paid Transport of goods by road/goods transport agency service		
A10	Assessee is liable to pay Service Tax on this taxable service as	
A10.1 A Service Provider under Section 68(1)	Yes	A10.2 A Service Receiver under Section 68(2) No
A10.3 A Service Provider under partial reverse charge under proviso to Section 68(2)	No	A10.4 A Service Receiver under partial reverse charge under proviso to Section 68(2) No
A10.5 If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service	0	A10.6 If covered by A10.4 above, then the percentage of Service Tax Payable as Recipient of Service 0

A11 EXEMPTIONS		
A11.1	Has the assessee availed benefit of any exemption Notification (Y/N)	Y
A11.2	If reply to A11.1 is 'Y', Please furnish Notification No. and Sl. No. in the Notification under which such exemption is availed	
Sl. No	Notification Number	Sl. No.
1	030/2012-S.T.	2

A12 ABATEMENTS		
A12.1	Has any abatement from the value of services been claimed (Y/N)	Y
A12.2	If reply to A12.1 is 'Y', Please furnish Notification No. and Sl. No. in the Notification under which such abatement is availed	
Sl. No	Notification Number	Sl. No.
1	020/2012-S.T.	7

A13 PROVISIONAL ASSESSMENT		
A13.1	Whether provisionally assessed (Y/N)	N
A13.2	If reply to A13.1 is 'Y', please furnish Provisional Assessment Order No. and Date	
	Provisional Assessment Order No.	Date

PART B VALUE OF TAXABLE SERVICE AND SERVICE TAX PAYABLE FOR SERVICE PROVIDER								
Sl. No	Month	Oct	Nov	Dec	Jan	Feb	Mar	Total
B1.1	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)	484720	186225	593400	56800	2049370	4310257	4647509
B1.2	Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	0	0	0
B1.3	Amount taxable on receipt basis under third proviso to Rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	0	0	0
B1.4	Amount taxable for services provided for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	0	0	0
B1.5	Money equivalent of other considerations charged, if any, in a form other than money	0	0	0	0	0	0	0
B1.6	Amount on which Service Tax is payable under partial reverse charge	0	0	0	0	0	0	0
B1.7	Gross Taxable Amount B1.7 = (B1.1 - B1.2 + B1.3 + B1.4 + B1.5 + B1.6)	484720	186225	593400	56800	2049370	4310257	4647509
B1.8	Amount charged against export of service provided or to be provided	0	0	0	0	0	0	0
B1.9	Amount charged for exempted service provided or to be provided (other than export of service given at B1.8 above)	484720	186225	593400	56800	2049370	4310257	4647509
B1.10	Amount charged as Pure Agent	0	0	0	0	0	0	0
B1.11	Amount claimed as abatement	0	0	0	0	0	0	0
B1.12	Any other amount claimed as deduction, please specify	0	0	0	0	0	0	0
B1.13	Total Amount Claimed as Deduction B1.13 = (B1.8 + B1.9 + B1.10 + B1.11 + B1.12)	484720	186225	593400	56800	2049370	4310257	4647509
B1.14	NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)	0	0	0	0	0	0	0

CENTRAL BOARD OF EXCISE AND CUSTOMS
Ministry of Finance - Department of Revenue

Form ST-3
(Return under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994)

PART A GENERAL INFORMATION	
A1 ORIGINAL RETURN Yes	A3 REVISED RETURN No
A2 STC Number AAHH04105JSD001	A4 Name of the Assessee JET LITE LOGISTICS (PROP. DINESHCHANDRA YADAV RUF)
Address of Registered Unit: PUNJAB HOUSE SHOP NO C07 2ND FLOOR OPP UJALA CIRCLE DAVALA CHAR KASTA SARKHEJ	
Commissionerate: AHMEDABAD SOUTH	Division: VEJALPUR NEW
Financial Year: 2016-2017	Range: RANGE IV
RETURN FILING DETAILS	
Due date for filing of this return	25/10/2016
Actual date of filing	08/11/2017
No of days beyond due date	340
A6 Have the Assessee opted to operate as "Large Taxpayer Unit (Y/N)" (As defined under Rule 7(a) (aa) of the Central Excise Rules, 2002 read with Rule 2 (1) (c)(cc) of the Service Tax Rules, 1994)	No
A6.2 If reply to column A6.1 is 'Y', name of Large Taxpayer Unit opted for	
A7 Promised Code Number	WS0001A001
A8 Constitution of the Assessee	Hindu Undivided Family
A9 Taxable Service(s) for which Tax is being paid	
Description of Taxable Services	Transport of goods by road/goods transport agency service
Sub Clause	(22B)
Taxable Service for which Tax is being paid: Transport of goods by road/goods transport agency service	
A10 Assessee is liable to pay Service Tax on this taxable service as	
A10.1 A Service Provider under Section 68(1)	Yes
A10.2 A Service Receiver under Section 68(2)	No
A10.3 A Service Provider under partial reverse charge under proviso to Section 68(2)	No
A10.4 A Service Receiver under partial reverse charge under proviso to Section 68(2)	No
A10.5 If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service	0
A10.6 If covered by A10.4 above, then the percentage of Service Tax Payable as Recipient of Service	0
A11 EXEMPTIONS	
A11.1 Has the Assessee availed benefit of any exemption Notification (Y/N)	Y
A11.2 If reply to A11.1 is 'Y', Please furnish Notification No. and Sl. No. in the Notification under which such exemption is availed	

Page 1 of 2

Si. No.	Notification Number	Si. No.		
1	030/2012-S.T.	2		
A12 ABATEMENTS				
A12.1	Has any abatement from the value of services been claimed (Y/N)	Y		
A12.2	If reply to A12.1 is 'Y', Please furnish Notification No. and Sl. No. in the Notification under which such abatement is availed			
Si. No.	Notification Number	Sl. No.		
1	026/2012-S.T.	7		
A13 PROVISIONAL ASSESSMENT				
A13.1	Whether provisionally assessed (Y/N)	N		
A13.2	If reply to A13.1 is 'Y', please furnish Provisional Assessment Order No. and Date			
Provisional Assessment Order No.		Date		
PART B VALUE OF TAXABLE SERVICE AND SERVICE TAX PAYABLE				
FOR SERVICE PROVIDER				
Si. No.	Quarter	Apr-Jun	Jul-Sep	Total
B1.1	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)	1942377	15440038	17391415
B1.2	Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued	0	0	0
B1.3	Amount taxable on receipt basis under third proviso to Rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued	0	0	0
B1.4	Amount taxable for services provided for which bills/invoices/challans or any other documents have not been issued	0	0	0
B1.5	Money equivalent of other considerations charged, if any, in a form other than money	0	0	0
B1.6	Amount on which Service Tax is payable under partial reverse charge	0	0	0
B1.7	Gross Taxable Amount B1.7 = (B1.1 + B1.2 + B1.3 + B1.4 + B1.5 + B1.6)	1942377	15440038	17391415
B1.8	Amount charged against export of service provided or to be provided	0	0	0
B1.9	Amount charged for exempted service provided or to be provided (other than export of service given at B1.8 above)	0	0	0
B1.10	Amount charged as Pure Agent	1942377	15440038	17391415
B1.11	Amount claimed as abatement	0	0	0
B1.12	Any other amount claimed as deduction, please specify	0	0	0
B1.13	Total Amount Claimed as Deduction B1.13 = (B1.8 + B1.9 + B1.10 + B1.11 + B1.12)	1942377	15440038	17391415
B1.14	NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)	0	0	0
B1.15	Service Tax Rate-wise break up of NET TAXABLE VALUE (B1.14): Advalorem Rate			



CENTRAL BOARD OF EXCISE AND CUSTOMS
Ministry of Finance - Department of Revenue



Form ST-3

(Return under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994)

PART A		GENERAL INFORMATION			
A1	ORIGINAL RETURN	Yes	REVISED RETURN	No	
A2	STC Number	AAHID418JS0001	A3	Name of the Assessee	JET LITE LOGISTICS (PROP. DINESHCHANDRA YADAV HUF)
Address of Registered Unit		PUNJAB HOUSE SHOP NO C/07 2ND FLOOR OPP UJALA CIRCLE BAVALA CHAR RASTA SARKHEJ SARKHEJ AHMEDABAD SOUTH NEW			
Commissionerate		Division	VEJALPUR NEW	Range	RANGE IV
A4	Financial Year	2016-2017	A5	Return for the Period	October-March

RETURN FILING DETAILS		
Due date for filing of this return	30/04/2017	
Actual date of filing	09/11/2017	
No of days beyond due date	193	
A6	Has the Assessee opted to operate as "Large Taxpayer Unit" (Y/N) (As defined under Rule 2(c) (ca) of the Central Excise Rules, 2002 read with Rule 2 (1) (c)(cc) of the Service Tax Rules, 1994)	No
A6.2	If reply to column A6.1 is 'Y', name of Large Taxpayer Unit opted for	
A7	Promises Code Number	WS0804A001
A8	Constitution of the Assessee	Hindu Undivided Family

A9	Taxable Service(s) for which Tax is being paid	Sun Clause (22F)			
Description of Taxable Services		Transport of goods by road/goods transport agency service			
Taxable Service for which Tax is being paid					
Assessee is liable to pay Service Tax on this taxable service as					
A10.1	A Service Provider under Section 68(1)	Yes	A10.2	A Service Receiver under Section 68(2)	No
A10.3	A Service Provider under partial reverse charge under proviso to Section 68(2)	No	A10.4	A Service Receiver under proviso to Section 68(2)	No
A10.5	If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service	0	A10.6	If covered by A10.4 above, then the percentage of Service Tax Payable as Recipient of Service	0

A11 EXEMPTIONS		
A11.1	Has the assessee availed benefit of any exemption Notification (Y/N)	Y
A11.2	If reply to A11.1 is 'Y', Please furnish Notification No. and Sl. No. in the Notification under which such exemption is availed	
Sl. No	Notification Number	Sl. No.
1	030/2012-S.T.	2

A12 ABATEMENTS		
A12.1	Has any abatement from the value of services been claimed (Y/N)	Y
A12.2	If reply to A12.1 is 'Y', Please furnish Notification No. and Sl. No. in the Notification under which such abatement is availed	
Sl. No	Notification Number	Sl. No.
1	026/2012-S.T.	7

A13 PROVISIONAL ASSESSMENT		
A13.1	Whether provisionally assessed (Y/N)	N
A13.2	If reply to A13.1 is 'Y', please furnish Provisional Assessment Order No. and Date	
	Provisional Assessment Order No.	Date

PART B				
VALUE OF TAXABLE SERVICE AND SERVICE TAX PAYABLE FOR SERVICE PROVIDER				
PART - B1	Quarter	Oct-Dec	Jan-Mar	Total
B1.1	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)	9501723	74421029	83922752
B1.2	Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued	0	0	0
B1.3	Amount taxable on receipt basis under third proviso to Rule 8(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued	0	0	0
B1.4	Amount taxable for services provided for which bills/invoices/challans or any other documents have not been issued	0	0	0
B1.5	Money equivalent of other considerations charged, if any, in a form other than money	0	0	0
B1.6	Amount on which Service Tax is payable under partial reverse charge	0	0	0
B1.7	Gross Taxable Amount B1.7 = (B1.1 - B1.2 + B1.3 + B1.4 + B1.5 - B1.6)	9501723	74421029	83922752
B1.8	Amount charged against export of service provided or to be provided	0	0	0
B1.9	Amount charged for exempted service provided or to be provided (other than export of service given at B1.8 above)	0	0	0
B1.10	Amount charged as Pure Agent	9501723	74421029	83922752
B1.11	Amount claimed as abatement	0	0	0
B1.12	Any other amount claimed as deduction, please specify	0	0	0
B1.13	Total Amount Claimed as Deduction B1.13 = (B1.8 + B1.9 + B1.10 + B1.11 + B1.12)	9501723	74421029	83922752
B1.14	NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)	0	0	0
B1.15	Service Tax Rate-wise break up of NET TAXABLE VALUE (B1.14), Advalorem Rate			

Further, the summary of incomes reflecting in Form 26AS, ST-3 Returns and their P&L Accounts is worked out as under –

Sl. No.	Year	Income as per Form26AS	Income as per ST-3 Returns	Income as per P&L A/c.
1	2015-16	4,96,63,569/-	6,29,71,933/-	6,29,71,933/-
2	2016-17	11,28,38,671/-	10,13,14,167/-	11,40,94,690/-
3	TOTAL	16,25,02,240/-	16,42,86,100/-	17,70,66,623/-

The Assessee has also explained difference of Rs. 1,27,80,523/- (Rs. 11,40,94,690/- minus Rs. 10,13,14,167/-) in P&L A/c. and ST-3 Returns during F.Y. 2016-17, which is due to genuine clerical mistake (the income for June 2016 reflected as 14,20,059.01 in ST-3 instead of 1,42,00,579.01) as narrated in their submissions in para 14(iv) above. Thus considering the above mistake in computation, the taxable value as per ST-3 and P&L for the year 2016-17 is Rs. 11,40,94,690/-. It is also found that for the period 2015-16 the figures reflected in the ST-3 and appearing in the P&L are same i.e. Rs. 6,29,71,993/-.

19.1 I also find that the SCN has been issued on the basis of the income reflected in the Form 26AS of the Assessee. Therefore for the sake of consistency in computation of tax, I would also rely on the Income reflected in the Form 26AS for the same period.

19.2 The SCN is based on the charge that there is a difference in the income appearing under the head 194C in the Form 26AS and the ST-3 of the Assessee; and that the Assessee had not reflected the said income in their ST-3. Therefore it is pertinent to compare the figures reflected by the Assessee in their Form 26AS and ST-3 returns for the F.Y. 2015-16 and 2016-17. Accordingly, the figures are reproduced in the table below -

Sl. No.	Year	Gross Total Taxable Value as per SCN (Rs.)	Taxable Value Reflected in the ST-3 Returns	Difference (Rs.) (3 - 4)
1	2	3	4	6
1	2015-16	4,96,63,569/-	6,29,71,933/-	(-)1,33,08,364/-
2	2016-17	11,28,38,671/-	11,40,94,690/-	(-)12,56,019/-
	TOTAL	16,25,02,240/-	17,70,66,623/-	(-)1,45,64,383/-

Thus, as per the records, it can be discerned that the income reflected by the Assessee in their ST-3 returns is more than the income reflected by them in their Form 26AS. Thus the primary allegation of the SCN that the Assessee had not reflected their income in the ST-3 returns is factually incorrect & totally unsustainable.

20. As per the figures mentioned in table in para 19.1 above, I find that the income reflected by the Assessee in their ST-3 returns (Rs. 17,70,66,623/-) is more than their income reflected in Form 26AS (Rs. 16,25,02,240/-). It appears that the show cause notice has been issued in haste, without taking into consideration the figures reflected by the Assessee in their ST-3 returns. Thus the basic premises on which the SCN has been issued i.e. non-reflection of income in the ST-3 returns by the Assessee, is absolutely and manifestly incorrect and therefore absolutely unsustainable.

21. However still, 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. The relevant excerpts of the said notification are reproduced as under for ease of reference:

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

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

I. The taxable services, -

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

.....

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

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not under any law including association of persons;

.....

.....

(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.

21.2 It can be seen 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 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.

21.3 I find that the income reflected in the Assessee's Form 26AS for the year 2015-16 and 2016-17 is as under -

Sl. No.	Name of the deductor as per Form 26AS	Total Income as per Form 26AS as per Section 194(C)	
		2015-16	2016-17
1	Indralok Fabrics Private Limited	12,03,430	0
2	Pepsico India Holding Private Limited	4,82,05,139	11,28,38,671
3	Girishkumar Patel	2,55,000	0
	Total Income as per Form 26AS	4,96,63,569	11,28,38,671

21.4 On the basis of the names of recipients' reflecting in the 26AS of the Assessee, I find that the Assessee has rendered services to 3 clients i.e. (1) M/s. Indralok Fabrics Private Limited (2) M/s. Pepsico India Holding Private Limited and (3) M/s. Girishkumar Patel. Accordingly, on the basis of the names reflecting in the 26AS, I find that M/s. Indralok Fabrics Private Limited and M/s. Pepsico India Holding Private Limited are not individuals or proprietorship firm, and therefore as per the Notification No. 30/2012-ST dated 20.06.2012, the Assessee, being the service provider, is not liable to pay Service Tax for providing GTA service to M/s. Indralok Fabrics Private Limited

and M/s. Pepsico India Holding Private Limited. As regards, the GTA services for the value of Rs. 2,55,000/- provided to M/s. Girishkumar Patel, I find that the exact constitution of business of recipient of service is not ascertainable, from the name appearing in 26AS statement. The Assessee has also not submitted any documents evidencing that the recipient i.e. M/s. Girishkumar Patel falls in the exempted category of recipients as per list of persons provided under Sr. No. (a) to (f) of Notification No. 30/2012-ST dated 20.06.2012 who are liable to pay tax under RCM. 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 2016-17, is not acceptable to this extent. Therefore, the Assessee being the service provider is liable to pay Service Tax on the amount of Rs. 2,55,000/- towards taxable services provided to M/s. Girishkumar Patel.

22. 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 that 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."

22.1 It is evident from the service tax returns ST-3 filed by the assessee during FY 2015-16 to 2016-17, they have not availed the cenvat credit under provisions of Cenvat Credit Rules, 2004. Hence, the benefit of abatement in gross value of taxable service 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 is summarized as under:

FY	Value of GTA Service (Rs.)	Abatement @70% (Rs.)	Net taxable value (Rs.)	Rate of S.T.	Service tax payable (Rs.)
2015-16	2,55,000/-	1,78,500/-	76,500/-	14.5%	11,093/-

22.2 Therefore, I hold that the assessee is liable to pay service tax of Rs. 11,093/- on GTA service provided by them during 2015-16 to 2016-17. I also find that the SCN had sought demand of Service tax of Rs. 2,37,60,544/- 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. 11,093/- only out of total demand of Rs. 2,37,60,544/- for FY 2015-16 and 2016-17. Therefore, I hold that the rest of the demand of service tax of Rs. 2,37,49,451/- (Rs. 2,37,60,544/- minus Rs. 11,093/-) needs to be dropped, the same being incorrect and unsustainable.

23. On the basis of above facts and circumstances, discussion and documents available on records, I hold that assessee is liable to pay the service tax amounting to Rs 11,093/- for the period from FY 2015-16 to 2016-17. 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. 11,093/- 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.

24. 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. 11,093/-.

25. 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 2016-17. They have failed to disclose their actual taxable income by not declaring a 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 government 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 is 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 are contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamount to wilful misstatement and suppression of facts with an intent to evade the payment of the duty/tax. It is evident that such fact of contravention and non payment of service tax, as discussed earlier, on the part of the assessee came to the notice of the department only when the inquiry was initiated by the department, consequent upon the data shared by the CBDT. In the case of *Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241*, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In *2009 (23) STT 275, in case of Lalit Enterprises v CST Chennai*, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under the proviso to Section 73(1) of the 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. 11,093/- alongwith 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.

26. As regards the issue of imposition of penalty under section 76 of the Finance Act, 1994, I observe that penalty under section 76 and 78 of the Finance Act, 1994, are mutually exclusive and once penalty under section 78 is imposed, no penalty under section 76 can be imposed in terms of proviso inserted in Section 78 of the Finance Act, 1994 w.e.f. 10.05.2008 in this regard. Hence I refrain from imposing any penalty under section 76 of the Finance Act, 1994.

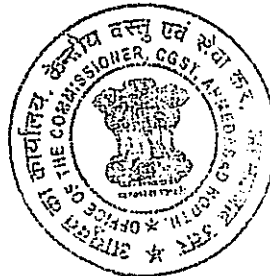
27. As regards, the proposal for imposition of penalty under Section 77 of the Finance Act, 1994, I find that the Assessee had failed to assess their service tax liability and had failed to file correct service tax returns as required under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules,

1994, as discussed at length hereinabove. Thus, they have rendered themselves liable to penal action under Section 77(2) of the Finance Act, 1994.

28. 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. 11,093/- (Rs. Eleven Thousand and Ninety Three only) out of the total demand of service tax of Rs. 2,37,60,544/- 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. 2,37,49,451/- accordingly.
- (ii) I order to charge the interest at the appropriate rate on the demand of service tax of Rs. 11,093/- and to recover the same from the assessee under Section 75 of the Finance Act, 1994;
- (iii) I impose penalty of Rs. 11,093/- on the assessee under the provisions of Section 78 of the Finance Act, 1994.
- (iv) I impose penalty of Rs. 10,000/- on the assessee under the provision of Section 77(2) of the Finance Act, 1994, for failure to 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.

F. No. STC/15-155/OA/2021-22

Date: __/12/2022

BY REGD. POST A.D./SPEED POST/Hand Delivery

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Copy for information to:

1. The Principal Chief Commissioner of CGST & Central Excise, Ahmedabad Zone.
2. The Assistant Commissioner, Division-VI, CGST & C.Ex., Ahmedabad North.
3. The Superintendent, Range-I, Division-VI, CGST & C.Ex., Ahmedabad North.
4. The Superintendent (Systems), Hq., CGST & C.Ex., Ahmedabad North.
5. Guard File.

