


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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. **STC/15-83/OA/2021**

DIN- 20230364WT000000ECAE

आदेश की तारीख	/	Date of Order : 03.03.2023
जारी करने की तारीख	/	Date of Issue : 06.03.2023
द्वारा पारित/Passed by -		
	उपेन्द्र सिंह यादव	/ UPENDRA SINGH YADAV
	आयुक्त	/ COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-45/2022-23

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 अग्रेषित 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 एक प्रतियाँ संलग्न की जाएँ 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 1.00 रूपया 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.

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/15-83/OA/2021 dated 23.04.2021 issued to M/s. Gurukrupa Transport, Ambicanagar, 6, Narayan Apartments, Rambaug Road, Ramnagar, Ahmedabad (Gujarat) - 380005

ORDER-IN-ORIGINAL NO. AHM-EXCUS - 45/2022-23

M/s. Gurukrupa Transport, Ambicanagar, 6, Narayan Apartments, Rambaug Road, Ramnagar, Ahmedabad (Gujarat) - 380005 were issued Show Cause Notice No. STC/15-83/OA/2021 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/15-216/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. Gurukrupa Transport, Ambicanagar, 6, Narayan Apartments, Rambaug Road, Ramnagar, Ahmedabad (Gujarat) - 380005 (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 and 2016-17, and details of the 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 the Assessee were engaged in providing taxable services and holding Service Tax Registration No. AANFG2868DSD001.

2. Further, it also appeared that the Assessee had declared less taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 and 2016-17 as compared to the Service related taxable value they had declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

TABLE - A

Sr. No.	F.Y.	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 Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax short paid (in Rs.)
1	2015-16	0	89723100	89723100	13009850
2	2016-17	0	89903376	89903376	13485506
TOTAL					26495356

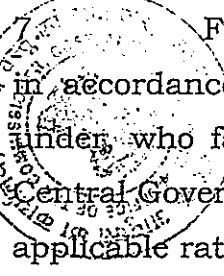
Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, it appeared that the said Assessee had not paid service tax as worked out in Table A above, for Financial Year 2015-16 and 2016-17.

4. Whereas, no data was forwarded by CBDT, for the period 2017-18 (April 2017 to June-2017) and the assessee had also failed to provide any information regarding rendering of taxable service for the period 2017-18 (April 2017 to June-2017). Therefore, at the time of issuance of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

5. With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies 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."

6. As per Section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appeared that the Assessee had not properly assessed the tax due on the services rendered by them, as discussed above, and also failed to file correct ST-3 Returns and thereby violated the provisions of Section 70(1) of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.



Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made thereunder, who fails to credit the tax or any part thereof, to the account of the Central Government within the prescribed period, is liable to pay interest at the applicable rate. Since the Assessee had failed to pay their Service Tax liabilities in the prescribed time limit, they were liable to pay the Service Tax along with interest. Thus, the said Service Tax was required to be recovered from the Assessee along with interest under Section 75 of the Finance Act, 1994.

8. Accordingly, it appeared that the Assessee had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994 in as much as they had failed to pay/ short paid/ deposit Service Tax to the extent of Rs. 2,64,95,356/-, by declaring less value in their ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period as prescribed in respect of taxable services received/provided by them; it also appeared that the Assessee had contravened the provisions of Section 70 of Finance Act 1994 in as much they had failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

9. Whereas, it had been noticed that at no point of time, the Assessee had disclosed or intimated to the Department regarding receipt/providing of Service 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. 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 A hereinabove and thereby had not paid / short paid/ not deposited Service Tax thereof to the extent of Rs. 2,64,95,356/. It also appeared that the above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994, with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appeared to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constituted an offence of the nature specified under Section 78 of the Finance Act, 1994, it appeared that the Assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

10. The said assessee was given opportunity to appear for pre show cause notice consultation on 22.04.2021, but they did not avail the same.

11. Therefore, the Assessee (M/s. Gurukrupa Transport) were issued a Show Cause Notice dated 23.04.2021 asking them as to why;

(1) The demand for Service tax to the extent of Rs. 2,64,95,356/- short paid /not paid by them in F.Y. 2015-16 and 2016-17, should

not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;

- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for their failure to assess their correct Service Tax liability and their 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:

12. The Assessee vide their letter dated 05.09.2022 submitted their reply to the Show Cause Notice dated 23.04.2021, wherein they have inter alia stated as under –

- a. That they are involved in Transportation Business (Transport of Goods by Road) and providing services of Transportation of Goods to various parties who are liable to pay Service Tax as per Notification No. 35/2004 under RCM

12.1 The Assessee vide their reply dated 05.09.2022 also submitted the following documents –

- a. Copy of Audited Profit & Loss Account & Balance Sheet for the year ending on 31.03.2016 and 31.03.2017
- b. Copy of ITR and Form 26AS downloaded from the Income Tax website for the year ended 31.03.2016 and 31.03.2017

12.2 The Assessee vide their letter dated 17.01.2023 further submitted as under –

- a. That the show cause notice was issued with reference to gross receipts in ITR/26AS and the amount of service tax short paid was mentioned for F.Y. 2015-16 as Rs. 13009850 & for F.Y. 2016-17 as Rs. 13485506

That they are a partnership firm and were carrying business of transportation of cement & flyash during the years under review i.e. F.Y. 2015-16 and 2016-17

- c. That the services provided by them fall under GTA services and service was provided to companies as listed below which



are covered under RCM pursuant to provisions of Notification No. 30/2012 (Entry No. I(A)(ii)).

- d. That they have provided services to the following customers during the years F.Y. 2015-16 and 2016-17
- i. JK Lakshmi Cement Ltd., Banas, Rajasthan
 - ii. Lafarge India Pvt. Ltd., Chittorgarh
 - iii. Trinetra Cement Ltd., Banswara
 - iv. Udaipur Cement Works, Dabok, Chittod
- e. That it is evident from the list that services were provided to companies only and 100% of the turnover is liable for RCM as referred above.

12.3 The Assessee vide their letter dated 17.01.2023 submitted further additional documents as under –

- a. Ledger of Incomes i.e. Transportation Ledgers for F.Y. 2015-16 and 2016-17
- b. Samples Invoices for F.Y. 2015-16 and 2016-17
- c. Contract Copy of Lafarge India Pvt. Ltd.

12.4 The Assessee vide their mail dated 09.02.2023 submitted that the entries showing in 26AS as “Nuvoco Vistas” is originally “Lafarge India” , which was subsequently taken over by “Nuvoco” (Nirma Group) & the name was changed later on. The assessee also submitted the following documents –

- a. Copy of contract with M/s. Trinetra Cement Limited.
- b. Additional sample invoices and consignment notes

PERSONAL HEARING:

13. Personal hearings were granted to the Assessee on 22.12.2021, 18.01.2022, 26.04.2021, 19.05.2022, 16.06.2022, 22.07.2022, 05.09.2022, 12.10.2022 and 15.11.2022. The Assessee did not appear for personal hearing on any of the above mentioned dates which were fixed for personal hearings.

13.1 In view of the non-appearance of the Assessee for the personal hearing and considering that they have already been given 9 opportunities which they have chosen not to avail, I am left with no option but to proceed to decide the issue on the basis of the facts available on record as the matter cannot be left hanging indefinitely.

13.2 In this connection, I find that Hon'ble Supreme Court, High Courts and Tribunals have, in several judgments/decision held, that *ex-parte* decision will not amount to violation of principles of Natural Justice, when sufficient opportunities for personal hearing have been given to the Assessee for defending the case.

In support of the same, I rely upon the following judgments/orders as under:-

a) Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. COLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), has observed that;

"Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.

(Emphasis Supplied)"

b) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, deciding on 13-9-1963, has observed that;

"Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the assessee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made thereunder which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]

(Emphasis supplied)"

(c) Hon'ble High Court of Delhi in the case of SAKETH INDIA LIMITED Vs. UNION OF INDIA reported in 2002 (143) E.L.T. 274 (Del.), has observed that:

"Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellants to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellants - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992.

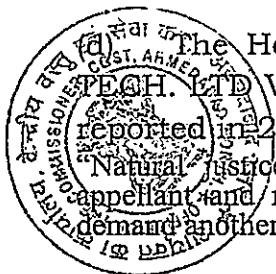
(Emphasis Supplied)"

(d) The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEMICALS LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II reported in 2004 (171) E.L.T. 412 (Tri. - Mumbai), has observed that;

"Natural Justice - Personal hearing fixed by lower authorities but not attended by appellants and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]

(Emphasis Supplied)"

(e) The Hon'ble Supreme court in the case of F.N. ROY Versus COLLECTOR OF CUSTOMS, CALCUTTA AND OTHERS reported in 1983 (13) E.L.T. 1296 (S.C.), has observed as under:



“Natural justice — Opportunity of personal hearing not availed of—Effect — Confiscation order cannot be held mala fide if passed without hearing.
 - If the petitioner was given an opportunity of being heard before the confiscation order but did not avail of, it was not open for him to contend subsequently that he was not given an opportunity of personal hearing before an order was passed. [para 28]
 (Emphasis Supplied)”

(f) The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.), has observed as under;

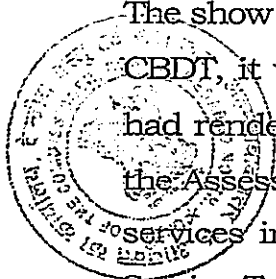
“7. recent decision of this Our attention was also drawn to a Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.”

DISCUSSION AND FINDINGS:

14. 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 defence reply dated 05.09.2022, 17.01.2023 and 09.02.2023 and the documents submitted vide letter dated 05.09.2022, 17.01.2023 and 09.02.2023 by the Assessee. 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 they are not liable to pay Service Tax on the services of Transportation of Goods in terms of Notification No. 30/2012 dated 20.06.2012 is correct or otherwise.

15. I find that the genesis of the demand has arisen 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 subsequently 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. The Assessee was given opportunity to appear for



pre show cause consultation on 22.04.2021, but they did not avail the same. Therefore the SCN dated 23.04.2021 was issued to the Assessee demanding Service Tax of **Rs. 2,64,95,356/-** (Rs. 1,30,09,850/- plus Rs. 1,34,85,506/-) on the value of total taxable service, provided by them amounting to Rs. **17,96,26,476/-** (Rs. 8,97,23,100/- + Rs. 8,99,03,376/-) for F.Y. 2015-16 and 2016-17.

15.1 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 -

TABLE - B

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	8,97,23,100	0	8,97,23,100
2	2016-17	8,99,03,376	0	8,99,03,376
	TOTAL	17,96,26,476	0	17,96,26,476

Thus, as per the records, it can be discerned that the Assessee in their ST-3 returns has not reflected any income.

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

TABLE - C

Sl. No.	Year	Income as per Form 26AS	Income as per ST-3 Returns	Income as per P&L A/c.
1	2015-16	8,97,23,100	0	10,67,49,849
2	2016-17	8,99,03,376	0	8,98,08,730
3	TOTAL	17,96,26,476	0	19,65,58,579

16.1 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.

Accordingly, I find that the 1st issue which is required to be determined is as to whether the Service Tax of **Rs. 2,64,95,356/-** (Rs. 1,30,09,850/- plus Rs. 1,34,85,506/-) has been correctly computed and thereby properly demanded for the Financial Year 2015-16 and 2016-17 from the Assessee vide the Show Cause Notice dated 23.04.2021.

17.1 In this regard, I find that the Assessee has not contested the computation of the value of taxable services in the SCN and there is no dispute as far as the receipt of the consideration for provision of service by the assessee is concerned. The only contention of the Assessee is that the services provided by them fall under GTA services and service was provided to companies who were liable to pay Service Tax under RCM as per Notification No. 30/2012 (Entry No. I(A)(ii)); that they have provided services to the following customers during the years F.Y. 2015-16 and 2016-17;

- i. JK Lakshmi Cement Ltd., Banas, Rajasthan
- ii. Lafarge India Pvt. Ltd., Chittorgarh
- iii. Trinetra Cement Ltd., Banswara
- iv. Udaipur Cement Works, Dabok, Chittod

that it is evident from the above list that services were provided to companies only and 100% of the turnover is liable for RCM by the recipient of services rendered by them. Therefore, I find that there is no dispute as far as the provision of services as well as receipt of income on provision of such services by the assessee for the period from 2015-16 and 2016-17 is concerned. The same is as given below:

TABLE - D

Sl. No.	Year	Total Taxable Value (Rs.)
1	2015-16	8,97,23,100
2	2016-17	8,99,03,376
	TOTAL	17,96,26,476

18. The 2nd issue that needs to be decided is, as to whether the services provided by the assessee during the period are liable for payment under RCM by the recipient of service as per Notification No. 30/2012 as claimed by them or otherwise.

19. Further, 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:

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.

19.2 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 cases, the service provider will be liable to pay service tax for rendering the GTA service.

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

TABLE - E

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	Trinetra Cement Limited	8,15,07,940	8,92,33,369
2	Udaipur Cement Works Ltd.	47,21,035	6,70,007
3	Nuvoco Vistas Corporation Ltd.	24,25,300	0
4	JK Lakshmi Cement Ltd.	10,68,825	0
	Total Income as per Form 26AS	8,97,23,100	8,99,03,376

19.4 I also find that the Assessee has produced several Bills/consignment notes evidencing the services rendered by them to the above mentioned clients during the period 2015-16 and 2016-17. For sake of reference, scanned copies of sample bill/consignment notes pertaining to each recipient during both the years i.e. 2015-16 and 2016-17 are reproduced below -

2015-16

GURUKRUPA TRANSPORT

Part No. : AANFGZB68D
 Service Tax No. : AANFGZB68DSD001
 Rambaug Road, Ramdevnagar, B/h. Hotel Sujata, Sabarmati, Ahmedabad-380 005.

Bill No. : 20 Date 20-04-2015

M/s. Trinetra Cement Ltd.
 Add. (Mali Cement) Wagnon, Balswara.

Date	Slip No.	Particulars	Weight	Truck No.	Rate	Amount Rs. Ps.
<u>11.04.15</u>	<u>20</u>	Transportation Charges of Fly. Ash. etc. from G.S.E.C.L. CTPS to Watekbari M.T.	<u>2160.340</u>		<u>677.</u>	
<u>20.04.15</u>		Trinetra Cement Ltd. (Mali Cement) Wagnon, Balswara.			<u>Rs. 1462,550</u>	<u>00</u>
TOTAL						<u>1462,550</u>
LESS Abatement 75% (*) (Applicable only if Convat credit not availed by Transportor)						
TAXABLE SERVICE						
Service tax on 20% & 12.35 %						<u>43876</u>
Education 2% on Service Tax						<u>297</u>
Sec. Higher Education 1% on Service Tax						<u>439</u>
G. TOTAL						<u>1516,762</u>
Rupees <u>Fourteen Lac Sixtytwo thousand Five hundred Fifty only</u>						
For. Gurukrupa Transport						

DECLARATION (Applicable only if abatement claimed)
 We hereby declare that Convat credit on Inputs, Capital goods and Input Services, used for providing the taxable service, has not been taken under the provisions of the Convat credit rules 2004.
 Interest @ 10% will be charged if bill is not paid after 15 days.

(E. & O. E.)



Subject to Ahmedabad Jurisdiction

GURUKRUPA TRANSPORT
 Pan No. AANFG2868D
 Service Tax Regn. No. AANFG2868DSD001
 PH: 72506699
 MO: 9825135582
 MO: 9829054427

Rambug Road, Ramdevnagar, B/h. Hotel Sujata, Sabarmati, Ahmedabad-380 005.

Bill No. : 184 Date : 25.08.15

M/s. Udaipur Cement Works
 Add. Dahod, Udaipur

Date	Slip No.	Particulars	Weight	Truck No.	Rate	Amount Rs. Ps.
06.08.15	60	Change of Cement in Truck from Udaipur Cement Works, Dahod to S.K. Poores, Daxiba, P.O.	526.950 MT		350	184415

TOTAL						184415
LESS Abatement 75% (*) (Applicable only if Convat credit not availed by Transporter)						
TAXABLE SERVICE						
Service Tax on 30% & 12.36% 14%						26418
Education 2% on Service Tax						
Soc. Higher Education 1% on Service Tax						
Rupees <u>One lac Eighty Four Thousand Four Hundred and Fifty only</u>						
For, Gurukrupa Transport Authorized Signatory						

DECLARATION (Applicable only if abatement claimed) (E. & O. E.)
 We hereby declare that Convat credit on Inputs, Capital goods and Input Services, used for providing the taxable service, has not been taken under the provisions of the Convat credit rules-2004.
 NOTE : Interest @ 18% will be charged if bill in not paid after 15 days.

Service Tax Regn. No. AANFG2868DSD001
 Category : Goods Transport Service

Phnoe No : 0982135582

GURUKRUPA TRANSPORT
 TRANSPORT CONTRACT & COMMISSION AGENT
 RAMDEV NAGAR, RAMBAUG ROAD OPP MUNICIPAL GARDEN,
 RAMNAGAR, SABARMATI, AHMEDABAD

Supplier Code :
6017476

Bill No : 184
 Date : 25.08.15
 Pan No. AANFG2868D

To,
 Lafarge India Pvt. Ltd.
 Shaila Tower, 4th Floor,
 J 1/16, Block EP & GP, Salt Lake Sector,
 V, Kolkata 700091

Period : 23.07.15 TO 31.07.15

SL. No.	Customer Name	Destination	Dispatch Qty	Received Qty	Freight Rate (PMT)	Freight Value (Rs.)
1	Nikita Enterprise	Dahod	22.39	22.515	946.00	21,180.94
Total:			22.39	22.515		21,180.94

Rs. Twenty One Thousand One Hundred Eighty & Paise Ninety Four Only.

Particular	Amount
Bill Amount	21180.94
Less: Abatement 70%	14826.66
Taxable Service	6354.28
Service Tax 3% on 30% of freight amt.	889.6
Total Service Tax	889.6
Person liable to pay Service tax M/S. Lafarge India Pvt Ltd.	

Declaration: We have not availed credit on inputs and capital goods used for providing taxable service and has also not availed benefit of notification No. 12/2003 - Service Tax dated 20.06.2003 (vide Notification No. 32/2004-Service Tax, dated 3.12.2004)

Gurukrupa Transport
 Authorised Signatory

Subject to Ahmedabad Jurisdiction

--- : Fright Bill : ---

GURUKRUPA TRANSPORT
 TRANSPORT CONTRACT & COMMISSION AGENT
 RAMDEV NAGAR, RAMBAUG ROAD OPP MUNICIPAL GARDEN,
 RAMNAGAR, SABARMATI, AHMEDABAD
 S Service Tax No : AANFG2868DS0001
 P PAN NO : AANFG2868D

Bill No : 37
 Bill Date : 20.05.15

M/S : JK LAKSHMI CEMENT LTD
 JK PURAM PINDWARA
 DIST : SIROHI (RAJ)

Goods Transportation Charges From
 Jk Puram to Following Station
 01.04.15 TO 28.04.15

SR	TRUCK NO	G.R NO	DATE	F.C NO	O.C NO	SHIPMENT NO	DESTINATION	WEIGHT (M.T)	RATE PER M.T	AMOUNT RS.
1	GJ1CZ 8735	196	04.04.15	467	S/T	2542066	RMC AHMEDABAD	18.63	792	14754.96
2	GJ01DT 4479	197	11.04.15	2266	S/T	2555122	RMC AHMEDABAD	20.13	792	15942.96
3	GJ18AU 8755	198	12.04.15	2525	S/T	2557031	RMC AHMEDABAD	20.41	792	16164.72
4	GJ18AX 5755	199	16.04.15	3461	S/T	2564665	RMC AHMEDABAD	20.28	792	16061.76
5	GJ18AX 8755	200	16.04.15	3428	S/T	2562041	RMC AHMEDABAD	20.28	792	16061.76
6	GJ01DT 4479	201	18.04.15	3939	S/T	2566788	RMC BARODA	20.47	1022	20920.34
7	GJ1CZ 8735	202	19.04.15	4363	S/T	2568622	RMC NARODA	20.33	773	15715.09
8	GJ01DT 4512	203	19.04.15	4362	S/T	2568604	RMC AHMEDABAD	20.53	792	16259.76
9	GJ18AX 6255	204	22.04.15	5210	S/T	2575328	RMC NARODA	20.3	773	15691.9
10	GJ1CZ 8752	205	28.04.15	6514	S/T	2577454	RMC BARODA	20.33	1022	20777.26
SERVICE TAX PAYABLE BY DEBTOR										
ONE LAC SIXTY EIGHT THOUSAND THREE HUNDRED FIFTY & PAISE FIFTY ONE ONLY								201.69		168350.51
For, Gurukrupa Transport										
Authorised Signature										

2016-17

॥ नया श्री सम्मिल ॥
 Subject to Ahmedabad Jurisdiction

Gurukrupa Transport

Service Tax No: AANFG2868D
 PAN No: AANFG2868D

Rambaug Road, Ramdevnagar, B/h. Hotel Sujata, Sabarmati, Ahmedabad-380 005.

Bill No: 109
 Date: 20.05.2015

M/s. Trishala Cement Ltd. (Pvt. Limited)
 Add. Wajvan, Banswara, Rajasthan

Date	Slip No.	Particulars	Weight	Truck No.	Rate	Amount Rs.	Paise
20.05.15	60	Transportation Charges of Fly Ash from G. S. C. Co. Gandhinagar to Trishala Cement Ltd. Wajvan, Banswara.	1133.850		650	963,806	
TOTAL						963,806	

LESS Abatement 75% (Applicable only if Convat credit not availed by transporter)

TAXABLE SERVICE



Subject to Ahmedabad Jurisdiction

Gundlupur Transport
 Ram No. : AANFG2860D P.I. : 27506699
 Service Tax No. : AANFG2868DS001 Mo. : 9825135582
 Mo. : 09829054427

Rambaug Road, Ramdevnagar, B/h. Hotel Sujata, Sabarmati, Ahmedabad-380 005.

Bill No. : 052

TRANSPORT BILL

Date 31-05-2016

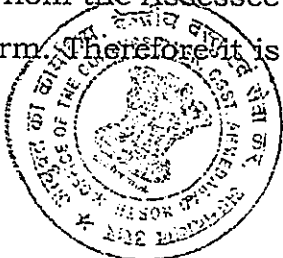
M/s. Udaipur Cement works
 Add. Dabok

Date	Slip No.	Particulars	Weight	Truck No.	Rate	Amount Rs. Ps.
01-04-16		Transportation Charge of Cement in tanker				
22-04-16		Udaipur Cement works Dabok to Rajpur Mines Dabok Area.	293.320	350	Rs. per ton.	102,683
					TOTAL	102,683
LESS Abatement: 75% (*) (Applicable only if Convat credit not availed by transporter)						
TAXABLE SERVICE						

19.5 On the basis of the names of recipients' reflecting in the 26AS of the Assessee, I find that the Assessee has rendered services to 4 clients i.e. (1) M/s. Trinetra Cement Limited (2) M/s. Udaipur Cement Works Ltd., (3) M/s. Nuvoco Vistas Corporation Ltd. (earlier known as Lafarge India Pvt. Ltd.) and (4) M/s. JK Lakshmi Cement Ltd. I find that as per Section 13 of the Companies Act, 1956, a company with last word "Limited" to its name, shall be a Public Limited Company. I also find that all the 4 clients of the Assessee are having "Limited" as the last word against their respective names. Further, I also find that all the said 4 clients are registered with the ROC and their respective CIN are as given below:

Sl. No.	Name of the Company	CIN	Status
1	M/s. Trinetra Cement Limited	L99999TN1987PLC082730	Active
2	M/s. Udaipur Cement Works Limited	L26943RJ1993PLC007267	Active
3	M/s. Nuvoco Vistas Corporation Limited	L26940MH1999PLC118229	Active
5	M/s. JK Lakshmi Cement Limited	L74999RJ1938PLC019511	Active

On the basis of the above facts, I discern that none of the said four clients to whom the Assessee has rendered GTA services are individuals or proprietorship firm. Therefore it is evidently clear that 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, as all these clients of the Assessee fall in list of persons mentioned under Sr. No. (a) to (f) of Notification No. 30/2012-ST dated 20.06.2012, who are liable to pay tax under RCM. I also find that the Assessee has also submitted copies of bills/consignment notes issued to these clients evidencing the GTA services rendered to them. Therefore it can be discerned that the Assessee is not liable to pay tax on the income received by them during period of 2015-16 and 2016-17 for the GTA services rendered by them.

20. In view of the aforementioned facts and circumstances pertaining to the subject case, I am of the considered view that the demand vide the SCN dated 23.04.2021 issued to the Assessee, is not tenable. In view of the demand itself being unsustainable and incorrect I also do not consider it necessary to enter into discussion on the need for invoking provisions for interest and penalty. Therefore, from the factual matrix as discussed in the foregoing paras, I pass the following order: -

ORDER

I hereby drop the proceedings initiated against M/s. Gurukrupa Transport, Ambicanagar, 6, Narayan Apartments, Rambaug Road, Ramnagar, Ahmedabad (Gujarat) - 380005, vide Show Cause Notice STC/15-83/OA/2021 dated 23.04.2021.

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

By Regd. Post AD./Hand Delivery

F.No. STC/15-83/OA/2021

To,

M/s. Gurukrupa Transport,
Ambicanagar, 6, Narayan Apartments,
Rambaug Road, Ramnagar,
Ahmedabad (Gujarat) - 380005

Date: ___/03/2023

Copy for information to:

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

