
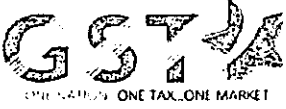


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/4-69/O&A/15-16

आदेश की तारीख/Date of Order: - 28.02.2019
जारी करने की तारीख/Date of Issue :- 08.03.2019

द्वारा पारित/Passed by:-

ए.एस. चौहान / *M. S. Chauhan*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 05-06/ADC/2019/MS

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या इ.ए.-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रु .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner (Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 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 Commissioner (Appeal) 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)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय: -कारण बताओ सूचना/Show Cause Notice F. No. STC/4-69/O&A/15-16 dated 20.07.2018 and F. No. STC/15-12/OA/2018 dated 17.04.2018 issued to M/s Gujarat State Road Transport Corporation, Accounts Department, Central Office, ST. Central Workshop, Narodahmedabad-382346



BRIEF FACTS OF THE CASE-

M/s Gujarat State Road Transport Corporation, Central office, S.T. Central Workshop, Naroda, Ahmedabad- 382346 (hereinafter referred to as "M/s GSRTC" or noticee) are engaged in providing following services and are having Service Tax Registration No. AAACG5587HST001.

- a. Courier Agency Service,
- b. Sale of space or time for Advertisement Service
- c. Business Support Service (BSS),
- d. Rent-a-Cab (Contract Carriages) and
- e. Renting of immovable property services

2. During the course of audit of records for period of 2009-10 to 2013-14 by officers of office of the Principal Director of Audit (central) Ahmedabad (CERA), it was observed that M/s GSRTC had entered into a contract on 24.05.2007 with M/s Sai Marketing & Trading Company for transportation of parcels, allied services and operation of courier services through their buses for a period of 3 years (2007-08 to 2009-10).

2.1 As per the contract, M/s GSRTC was required to provide space in their buses for transport of courier packages/goods and also provided necessary covered space for running booking office at its own designated bus station premises depending on availability and convenience of the Corporation and where covered space was not possible, uncovered space was to be provided at the bus stations wherever possible.

2.2 M/s Sai Marketing & Trading Company were the sole agents for the said purpose they were required to pay a monthly installment to GSRTC against receipt of such services.

2.3 M/s GSRTC had paid service tax amounting to Rs.24,21,125/- under the category 'Courier Agency service' for the period from 01.09.2007 to 31.05.2008. However, after receiving clarification, from Director (Service Tax) vide letter F.No.137/123/2010-CX-4 dated 09.05.2011, that the service provided by them (M/s GSRTC) was not taxable under Courier Agency Service, they had claimed refund of service tax amounting to Rs.24,21,125/- from the Department.

2.4 The letter of Director (Service Tax) had clarified that this service could neither be covered under 'Goods Transport Agency' nor under 'Business Auxiliary Service' but "the same had been covered under definition of 'Business Support Service' after amendment in the definition of 'Business Support Service' from 01.05.2011 i.e after addition of '*operational or administrative assistance in any manner*' by Section 74 of the Finance Act, 2011 (8 of 2011).

3. M/s GSRTC had classified the services provided by them under the category of "Business Support Service" and started paying service tax on this income from July, 2011. They had paid service tax up to June, 2012 and thereafter discontinued paying service tax in view of clause 22 of Mega Exemption Notification No.25/2012-ST dated 20/06/2012, which provided that "*services by way of giving on hire - (a) to a State Transport Undertaking, a motor vehicle meant to carry more than twelve passengers; or (b) to a goods transport agency, a means of transportation of goods are*

exempted from payment of service tax." and the Negative List.

4. Subsequently, M/s. GSTRC on 01.05.2011 had appointed M/s. Ashapura Trade & Transport Pvt. Ltd. (for the period of 5 years from July, 2011) as their agent for carrying out the aforesaid activity. It was also revealed during the course of audit (correspondence dated 08/10/2012 between CA and GSRTC) that they had not paid any service tax on such services during the period from July, 2012 to March, 2015.

5. M/s GSRTC, vide their letter dated 12.04.2015, had stated that;

- They provided space in the buses run by them for transportation of parcel of M/s Ashapura Trade and Transport Pvt. Limited.
- The entire work related to booking, transshipment, delivery, loading, unloading of parcel, courier and specific allied service was the sole responsibility of M/s Ashapura Trade and Transport Pvt. Limited.
- The buses of GSRTC are utilized for movement of goods from one place to another.
- In this case, the charges were received by GSRTC for providing space in their buses as well as on the roof tops for transportation of courier/ parcel provided to M/s Ashapura Trade and Transport Pvt. Limited.
- As per Section 66D of the Finance Act, 1994, only service provided by way of transportation of goods by way of (a) Goods Transportation Agency and (b) Courier Agency Service is taxable.
- Other services provided by Way of transportation of goods are covered in the Negative List [Section 66D (p) of Finance Act, 1994].
- Thus, the amount is received is towards transportation of goods in buses owned by GSRTC, therefore, the same is covered under Negative List.

6. Considering the letter F.No. 137/123/2010-CX-4 dated 09.05.2011 issued by the Director (ST) categorizing the services provided by M/s GSRTC under 'Business Support Services' and the fact regarding payment of service tax by M/s GSRTC during the period July'2011 to June'2012 under the said category it became necessary to examine as to whether the services provided under Business Support Services were covered under the Negative List or Mega Exemption Notification No.25/2012-ST dated 20/06/2012 as claimed by M/s GSRTC vide their letter dated 12.4.2015.

6.1 Definition of "support services of business or commerce" means *services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational or administrative assistance in any manner, formulation of customer service and pricing policies, infrastructural support services and other transaction processing."*

Explanation - For the purposes of this clause, the expression "infrastructural support services" includes

providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security (Section 65(104c) of the Finance Act, 1994)

And

"Taxable Service" means any service provided or to be provided to any person, by any other person, in relation to support services of business or commerce, in any manner;

(Section 65 (105) (zzzq) of the Finance Act, 1994)

6.2 Further, as per Section 66D of the Finance Act, 1994, the negative list shall comprise the following services, namely-

(a) Services by Government or a local authority excluding the following services to the extent they are not covered elsewhere -

- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) transport of goods or-passengers; or
- (iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities;

6.3 In view of the above it is evident that any support service provided by the Government to business entities except the services mentioned at sr. no. (i), (ii) and (iii) would be taxable.

6.4 In the present case, M/s GSRTC had provided space in buses/covered-uncovered spaces at Bus Stations for carrying out activity of transportation of goods (parcel) to nominated agent. The principal activity was being undertaken by the nominated agent while assistance or support was provided by M/s GSRTC. This was nothing but services falling under the category of 'Business Support Service' and was accordingly taxable even after introduction of Negative List and issuance of Notification No. 25/2012-ST dated 20.6.2012. The fact that the services provided to nominated agent falls under 'Business Support Service' had been confirmed by letter F.No. 137/123/2010-CX-4 dated 09.05.2011 issued by the Director (ST).

7. M/s GSRTC was carrying out the aforesaid activity themselves between August, 2010 and June, 2011. However, after appointment of sole agent for the said activities, the services provided by M/s GSRTC fell under the category of Business Support Service and the same had not been covered in negative list/exemption notification. Thus, the service tax exemption availed by M/s GSRTC during the period from July, 2012 to March, 2015 was incorrect.

8. M/s GSRTC had appointed M/s. Ashapura Trade and Transport Private Ltd. for carrying out aforesaid activity for a period of 5 years starting from July, 2011. As per letter dated 24.09.2015, M/s GSRTC had during the period July, 2012 to March, 2015 received an amount of Rs.11,66,58,279/- towards the services provided by them to M/s. Ashapura Trade and Transport Private Ltd. Thus, their total service tax liability came out to Rs.1,44,18,963/-. The details of service tax liability are worked out in **Annexure-A to the show cause notice** and as under-

Period of service provided by agent M/s. Ashapura Trade & Transport Pvt. Ltd.	Monthly installment (i.e. value of service)	No. of Months	Total amount earned by GSRTC (as per register of parcel income) from agents (col.2 x col.3)
July, 2012 to June, 2013	32,30,554/-	12	3,87,66,648/-
July, 2013 to March, 2014	35,55,554/-	9	3,19,99,986/-
April, 2014 to June, 2014	35,55,54/-	3	1,06,66,662/-
July, 2014 to March, 2015	39,13,887/-	9	3,52,24,983/-
Total			11,66,58,279/-
SERVICE TAX PAYABLE @ 12.36%			1,44,18,963/-

GSRTC was already paying service tax on license fee income earned towards renting of shops/stalls at bus stations under "Renting of Immovable Property" service for period beyond July, 2012.

9. It appeared that M/s. GSRTC was liable to pay Service tax of Rs.1,44,18,963/-(Rupees One Crore Forty Four Lakh Eighteen Thousand Nine Hundred Sixty Three only) including E.Cess & H.E.Cess on total income Rs.11,66,58,279/- received by them during the period from July, 2012 to March, 2015 under Business Support Services. (Details as per Annexure-A to this SCN)

10. Pre show cause notice consultation in the case was fixed on 06.03.2017. Shri Rohan Thakkar, C.A., appeared on behalf of M/s. Gujarat State Road Transport Corporation for pre show notice consultation. He emphasized that the activity of transportation of goods by GSRTC is not classifiable under BSS. He stated that the classification & definition relied by CERA pertain to period prior to introduction of Negative List. He also insisted that the provision applicable from 1.7.2012 be relied in case SCN is issued.

11. In view of the above, M/s GSRTC was issued a Show Cause Notice F.No. STC/4-69/O&A/15-16 dated 20.07.2017 calling them to Show Cause to the Additional/Joint Commissioner CGST, Ahmedabad-North, as to why:-

- (i) The amount of Rs. 11,66,58,279/- (Rupees Eleven Crore Sixty Six Lakhs Fifty Eight Thousand Two Hundred and Seventy Nine only) charged and received by them should not be treated as taxable value under the category of "Business Support Service" for the period from July, 2012 to March, 2015 and accordingly Service Tax amounting to Rs. 1,44,18,963/- (Rupees One Crore Forty Four lakhs Eighteen Thousand Nine hundred Sixty Three only), including Education Cess and Higher Education Cess, should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 (as amended from time to time) for the reasons detailed here-in-above.
- (ii) Interest should not be demanded / recovered from them on the amount demanded at (i) above under the provisions of Section 75 of Chapter V of the Finance Act, 1994.
- (iii) Penalty should not be imposed upon them under Section 77(2) of the Finance Act, 1994 for the failure to self-assess the correct taxable value.
- (iv) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for suppressing the value of taxable services provided by them and for contravening the

provision of the Finance Act, 1994 and rules made there under with intent to evade payment of service tax.

12. Further the assessee continued to follow the same practice and another SCN F.No. STC/15.12/OA/2018 dated 17.04.2018 demanding Service tax amounting to Rs. 1,59,86,057/-, under Section 73 (1A) of the Finance Act, 1994, covering the period from April 2015 to June 2017 was issued to the assessee. Besides the demand of Service tax demand of interest and proposal for imposition of Penalty under Section 76 and 77 of the Finance Act, 1994 was also proposed.

DEFENCE REPLY –

13.1 The noticee filed their written Submission SCNs vide letters dated 09.03.2018 & 04.02.2019. The assessee has made their defence inter alia, as follows-

13.2 The assessee has referred briefly to the demand and has submitted, inter alia, that

1. GSRTC is an organization registered under the Road Transport Corporation Act, 1950 and is owned and controlled by State Government.
2. Gujarat State Road Transport Corporation (GSRTC) is a passenger transport organization providing bus services both within Gujarat and neighboring states. They provide various services inter alia, city services, intercity services interstate services.
3. Gujarat state road transport Corporation (GSRTC) is a Government of Gujarat Undertaking.

13.3 The facts of the present cases are that GSRTC is engaged in the passenger transportation services in its buses. In the buses, there is also space available on the top of the bus as well as in the cabin meant for keeping luggage of passenger after keeping passengers luggage. GSRTC has provided space in the buses for transporting parcels of Ashapura Trade and Transport Private Limited. Ashapura Trade and Transport Private Limited is engaged in providing the service of courier agency. It is the parcel which has been booked by Ashapura Trade and Transport Private Limited for which space is provided in the buses run by GSRTC. The question is, 'whether service tax is leviable on the said activity of providing space in the buses run by GSRTC?'

13.4 The period covered in the Show Cause Notices is from 01.07.2012 to March 2015 and from April 2015 to June 2017, therefore, the law that will be applicable only which is prevalent during 01.07.2012 to June 2017 i.e., after introduction of Negative List.

13.5 As per section 66B of the Finance Act, 1994, 'There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent, on the value of all services, other than those services specified in the negative list provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed'.

13.6 As per section 66D of the Finance Act, 1994, the negative list shall comprise of the following services, namely:-

- (p) services by way of transportation of goods-
- (i) by road except the sendees of-
 - (A) a goods transportation agency; or
 - (B) a courier agency;

13.7 The above clause needs to be interpreted very minutely. The activity will be taxable only when it is of a courier agency or a goods transportation agency. Except that, all other activity of road transportation are covered under Negative List.

13.8 Now it needs to be ascertained as to whether the activity that is being conducted by GSRTC is covered under courier agency or under a goods transportation agency or other neither of it. Let us have a look to this aspect in subsequent paragraphs.

13.9 First of all, let us analyze as to whether the activity that is being conducted by GSRTC is classifiable under Courier Agency or not? As per section 65B(20) of the Finance Act, 1994, "*courier agency*" means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilizing the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles;

13.9.1 The following are the essential elements to treat an activity in the category of 'courier agency'

- i. The services can be rendered by any person who is engaged in a specific service of door to door transportation of time sensitive documents, goods or articles;
- ii. The service is to be rendered by utilizing the services of a person, either directly or indirectly;
- iii. The said person is to *carry* or accompany the said documents, goods or articles.
- iv. Such transportation should be of time sensitive documents

13.9.2 The main activity which distinguishes a courier agency from other transport agencies is that the courier agencies is that the courier agency arranges transportation from 'door' of the sender to the 'door' of the addressee. In other words, the documents, goods, or articles are expected to be picked by the representative of the courier agency from the premises of the sender and later transported and delivered to the premises of addressee.

In the present case, GSRTC is not engaged in door to door transportation of time sensitive documents. Rather, it is Ashapura Trade and Transport Private Limited which is collecting documents and parcels and it delivers to the ultimate customer at their address. It is Ashapura Trade and Transport Private Limited which is engaged in door-to-door transportation of documents and parcels. GSRTC is merely transporting goods in its buses that is being handed over by Ashapura Trade and Transport Private Limited from one destination and to be dropped at the another destination. GSRTC does not have a knowledge as to for whom the document or parcel ultimately belongs to.

13.9.3 The term used in the definition is that the person must be *engaged in the door-to-door transportation*.

The term 'engage' means to take part or devote attention and effort, to employ ones' self as per the Law Lexicon by P. Ramnathalyer.

While interpreting the expression 'actively engaged in the conduct of business' occurring in section 2(7)(iii)(b) of the Finance Act, 1962, the Gujarat High Court inter alia, observed as follows:

"The expression 'engaged in' is a term of various meaning depending on the context in which it is used but ordinarily it is intended to signify continuous occupation or employment; of action as well as physical participation. However, the term is often employed to denote a present obligation to devote time, attention and efforts to a particular activity, although for a time being, there may not be any active participation or wholesome involvement in such activity"- CIT v. Natvarlal Tribhovandas (1973) 87ITR 703 (Guj)

A person can, therefore, be said to be 'engaged in' providing a service, if he carries on such a service, not as an isolated transaction, but as an organized and fairly continuous activity. In the present context, to fit the activity of a person in the definition of courier agency, 'the organization must undertake courier service as an organized and fairly continuous activity and not as an isolated or occasional act or transaction. Since, GSRTC is engaged in the activity of passenger transportation by virtue of its establishment under the Road Transport Corporation Act, 1950 and therefore, is not engaged in the business of courier agency.

13.9.4 Further, in order to qualify the activity of a courier agency, it must be engaged in transportation of time-sensitive documents, goods or articles.

In the present case, GSRTC is not engaged in door to door transportation of time sensitive documents. Rather, it is Ashapura Trade and Transport Private Limited which is collecting documents and parcels and it delivers to the ultimate customer at their address. To deliver the documents on time is the responsibility of Ashapura Trade and Transport Private Limited and not that of GSRTC. Ashapura Trade and Transport Private Limited merely uses the spaces of bus for the purpose of transportation of the documents that it has collected. It is Ashapura Trade and Transport Private Limited's discretion as to whether to utilize the services of GSRTC or any other entity for the purpose of delivering time sensitive documents and parcels to its customers.

Further, it is to be noted that the buses run by GSRTC are as per the schedule framed by it and not as per the instructions of Ashapura Trade and Transport Private Limited to deliver its time sensitive documents and parcels that it has booked for its customers. It is Ashapura Trade and Transport Private Limited to select and identify as to whether a particular bus will be able to transport its documents in time that it has contracted with its customers or not. For Ashapura Trade and Transport Private Limited, GSRTC is not changing its route or timings. Further, a person may have to deliver its documents in any part of India; however, GSRTC has its operations in Gujarat and few other states, but not in the entire country. Thus, the GSRTC is not engaged in transportation of time sensitive documents.

13.9.5 From the above, it is concluded that the activity done by GSRTC is not classifiable under the definition of 'courier agency'.

14. Now, let us also check as to whether the activity that is being conducted by GSRTC for which SCN has been issued is classifiable as a goods transport agency or not?

14.1 Attention is invited to Section 65B(26) of the Finance Act, 1994 which interprets goods transport agency as "*Goods transport agency*" means any person who provides services in relation to transport of goods by road and issues consignment note, by whatever name called.

Further, Para 2(r) of Notification No 25/2012-ST defines goods carriage as "*Goods carriage*" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988) and that As per Section 2(14) of the Motor Vehicles Act, "*Goods carriage*" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods-

Thus, it is not disputed that the buses of GSRTC are considered as goods carriage in terms of definition as contained in section 2(14) of the Motor Vehicles Act since it is used for transportation of goods, however, that will not make GSRTC as a goods transport agency.

14.2 One of the conditions for levy of service tax on transport of goods by Road is that the consignment note must be issued. The provisions regarding issuance of consignment note is contained in Rule 4B of Service Tax Rules, 1994.

As per Explanation to Rule 4B, '*consignment note*' means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency'

The consignment Note shall also contain the details of the consignment note number and date, gross weight of the consignment. [2nd Proviso to Rule 4A of Service Tax Rules, 1994]

As per Rule 4B, 'any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the recipient of service.

• In under mentioned cases, it has been considered that when the transporters did not issue consignment notes or GRs or Challans or any documents containing the particular as prescribed in Explanation to Rule 4B of the Service Tax Rules, 1994, the Transporters cannot be called 'Goods Transport Agency' and, hence, in these cases, the service of transportation of goods provided by the transporters would not be covered in the definition of Goods Transport Agency. This principle has been held in:

- South Eastern Coal Fields Ltd v. CCE [2014 (8) TMI 857 - (Delhi- Tri)]
- Ultra Tech Cement Ltd. Versus Commissioner of Central Excise, Kolhapur [2017 (11) TMI 297- (Mumbai- Tri)]

- Premier Industries India Ltd. Versus C.C.E., Indore [2017 (11) TMI 481- (Mumbai-Tri)]
- M/s. Kranti SSK Ltd. Versus Commissioner of Central Excise & Service tax, Kolhapur [2017 (6) TMI 275- (Mumbai-Tri)]
- M/s Western Coal Fields Ltd. Versus CCE, Nagpur [2017 (5) TMI 398- (Delhi-Tri)]

Since, in the present case, no consignment not has been issued by GSRTC for the goods transported of Ashapura Trade and Transport Private Limited, therefore, the activity for which SCN has been issued is not classifiable under the category of 'goods transport agency'.

15. Thus, from the above, the activity that is being conducted by GSRTC for which SCN has been issued is not covered either in the category of courier agency or as a goods transport agency. However, the activity that GSRTC has done is transportation of goods, but such transportation is neither categorized as courier agency or as a goods transport agency. As a reason, such activity is covered in the negative list by virtue of Section 66D (p) of the Finance Act, 1994.

However, this aspect has not been appreciated in the SCN as well as in the pre consultation meeting. The reason for taxing the activity is taken from the time when the service tax was there under selective approach (i.e., law has been relied upon which was there upto 30.06.2012); however, the activity undertaken by GSRTC is from 01.07.2012 to 31.03.2015 when the negative list was prevalent. On introduction of negative list, there were certain activities which earlier were not taxable become taxable and there were certain activities which were taxable become exempt. Thus, the law that is to be relied upon should be one that is prevalent when the activity was undertaken.

16. Without prejudice to above, para 6.2 of the SCN states that the negative list shall comprise of the following services:

- (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere-
- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
 - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - (iii) transport of goods or passengers; or
 - (iv) Support services other than services covered under clauses (i) to (iii) above, provided to business entities;

16.1. In this regard, attention is invited to the opening lines of section 66D(a) which states that services by Government or a local authority excluding the following services to the extent they are not covered elsewhere***. Thus, when the services that are specified in the exclusion part of section 66D(a) of the Act are covered elsewhere, then the latter provision will cover meaning thereby that if the services, though are stated in exclusion part of section 66D(a) of the Act, if it

has been specified elsewhere as in the present case is covered under section 66D(p) of the Act, then what is contained in section 66D(p) will prevail and not what is contained in section 66D(a) of the Act or its exclusion.

16.2 Further, even if what is stated in SCN is assumed correct for the time being (not admitted), then in case the support services are provided by GSRTC, then the liability of service tax will be on service recipient in terms of Sr No 6 of Notification Number 30/ 2012-ST as amended and not that of GSRTC.

16.3 Further, attention is invited to Section 66F (2) of the Act, which states that *'Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description,* in the present case, there are two description possible, viz., one is transport of goods by road as per assessee and another is support services as stated in SCN. If the two interpretations are possible, then the more specific description is transport of goods by road and not that of support services.

16.4 Thus, for the goods transportation service, there is a specific clause as stated in section 66D(p) in the negative list and thereby is not covered by section 66D(a) of the Act.

16.5 By virtue of above, the activity is not taxable for the reasons stated above.

[On limitation and penalty]

17. The assessee further submitted that the extended period invoked by the department is not warranted.

18. Attention is invited to para 13 of the SCN which reads as, "From the evidence, it appeared that M/s GSRTC had not taken into account all the incomes received by them for rendering taxable services for the purpose of payment of Service tax and thereby minimize their tax liabilities. The deliberate efforts to mis-declare the value of taxable services in ST-3 returns and not paying the correct amount of service tax is utter disregard to the requirements of law and breach of trust deposed on them and such outright act in defiance of law appears to have rendered them liable for stringent penal action as per the provisions of section 78 of Finance Act,1994 for suppression of concealment or furnishing inaccurate value of taxable service with intent to evade payment of service tax."

19. The assessee most respectfully draws your kind attention to the provisions of section 73(l) the Finance Act, 1994 which states that 'Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within thirty months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Further, the proviso states that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "thirty months", the words "five years" had been substituted.

20. Thus, the notice covering period of five years is to be issued only when there is a fraud, collusion, suppression of facts, willful misstatements with intent to evade payment of service tax. If the assessee is not guilty of suppression of facts, collusion, willful misstatement of facts etc. extended period of limitation cannot be invoked- CC v. MMK Jewellers (2008) 225 ELT 3 SC).

21. There is no merit in invoking extended period of limitation on this basis. Firstly, there has been no non-cooperation by us as regards submission of data in respect of providing details to the department and the same is clearly disclosed in our books of accounts, and such books of accounts are open for scrutiny by any person because such books of accounts are submitted before the State Government as well as with the parliament; and even the Range, Divisional and Audit officers of Central Excise and Service Tax Department also have access to such audited books of accounts. Therefore, there is no basis for the allegation that the assessee has deliberately withheld the information from the department. Moreover, we have shown all the transactions in our books of accounts including balance-sheet. Further, GSRTC is a corporation owned by the Government and Government cannot do any act for evading tax. The Range and Divisional officers also have copies of books of accounts with them and assessments are made on the basis of such documents by the Excise authorities.

22. The law about invocation of extended period of limitation is well settled and only in a case where the assessee knew that certain information was required to be disclosed and yet the assessee deliberately did not disclose such information, the case would be that of suppression of facts when the Excise officers called for certain information and the assessee did not disclose the same or deliberately disclosed wrong information, that would be a case of willful misstatement. Even in cases where certain information was not disclosed as the assessee under a bonafide impression that it was not duty bound to disclose such information, it would not be a case of suppression of facts as held by the Hon'ble Supreme court in tire landmark cases at Padmini products and Chemphar Drugs & Liniments reported in 1989(43) ELT195 (SC) and 1989 (40) ELT 276(SC) respectively.

What is "suppression" is once again considered by the Hon'ble Supreme Court in the case of continental Foundation Jt. venture v/s CCE Chandigarh reported in 2007 (216) ELT 177 (SC), and it is held by the Hon'ble Supreme Court with regard to the proviso to section 11A of the Central Excise Act, 1944, which is akin to the proviso to section 73 of the Finance Act, 1994, that mere omission to give correct information was not suppression of facts unless it was

deliberate and to stop the payment of duty. In the case like Messrsjaiprakash industries Ltd reported in 2002 (146) ELT 481 (SC) also the Hon'ble Supreme Court has held that a bonafide doubt as to non-dutiability of goods was sufficient for the assessee to challenge the demand on the point of limitation. Thus, it is a totality settled legal position that extended period of limitation by invoking proviso to the main section for demanding duty or tax beyond the normal period of limitation would be justified only when the assessee knew about the duty/tax liability and still however, he did not pay the tax and deliberately avoided such payment, and it was only in such a situation where suppression of facts on part of the assessee could be justifiably alleged by the Revenue. However, mere failure in giving correct information would not be a case where the Revenue can invoke extended Period of limitation.

23. Thus, the notice covering period of five years is to be issued only when there is a fraud, collusion, suppression of facts, willful misstatements with intent to evade payment of service tax. If the assessee is not guilty of suppression of facts, collusion, willful misstatement of facts etc. extended period of limitation cannot be invoked- CC v. MMK Jewellers (2008) 225 ELT 3 SC).

24. Further, the SCN also does not clearly states how there is suppression of facts. In this regard, CBEC has issued Circular No. 312/28/97-CX dated 22/04/1997 which states that The Supreme Court has ruled in the case of M/s Padmini Products, and Chemphar Drugs, etc. that mere non-declaration is not sufficient for invoking the longer period, but a positive misdeclaration is necessary. These judgments should be studied carefully and it should be ensured that the law laid down by the Supreme Court is fully respected and followed and that longer period available under the proviso to Section 11-A of CESA/ Section 28 of the Customs Act is not invoked, without proper justification.

25. *In another Circular No. 268/102/96-CXCBECE has stated as under ' It has been observed by the Board that CEGAT, in some cases, had held that show Cause Notice are time barred in as much as ingredients of suppression of fact, willful misstatement, etc. have either not been stated in the SCN or have not been substantiated as laid down by the Supreme court in the case of Commissioner of Central Excise vs. H.M.M. Ltd. -1995 (76) ELT 497. As per the existing instructions SCNs for extended period are required to be issued by the Commissioner. It is absolutely necessary that the SCNs should clearly state the grounds for extended period of demand.'*

26. Hon' Supreme Court in Rainbow Industries v CCE (1994) (74) ELT 3 SC = AIR 1994 SC 2783 have held that in order for the extended period to apply, two ingredients must be present-willful suppression, mis-declaration etc., and intention to evade duty. This Judgment was followed in ONGC v. CCE -1995 (79) ELT 117 (CEGAT).

27. It was held in Tamilnadu Housing Board v. CCE -1995 Suppl (1) SCC 50 = 74 ELT 9 (SC) that the powers to extend period from one year to five years are exceptional powers and hence, have to be construed strictly.

28. Intention to evade payment of duty is not mere failure to pay duty. It must be something more, i.e., the assessee must be aware that the duty was leviable and he must deliberately avoid payment of duty. 'Evade' means defeat the provision of law of paying duty. It is made more

stringent by the use of the word 'intent'. In other words the assessee must deliberately avoid payment of duty which is payable in accordance with law. In *Padmini Products v. Collector of Central Excise 1989 (43) E.L.T. 195*, it was held that where there was scope for doubt whether case for duty was made out or not, the proviso to Section 11A of the Act would not be attracted.- *Tamilnadu Housing Board v. CCE 1994 (74) E.L.T. 9 (SC) = 1994 (9) TMI 69*.

29. Intention to evade duty is built into the expression 'fraud and collusion', but misstatement and suppression is qualified with the word 'willful'. Therefore, it is not correct to say that there can be suppression or misstatement of fact, which is not willful and yet constitutes a permissible ground for invoking the proviso to section 11A- *Sarabhai M Chemicals v CCE 2005 179 ELT 3 (SC 3 member bench)*.

30. In the present case, we are still under a belief that the service tax is not required to be paid on the transportation activity as the same is covered under section 66D(p) of the Finance Act. Thus, there is no suppression of fact in the present case.

31. Moreover, the SCN states that the facts are not disclosed by the assessee. In this regard, it is humbly and respectfully submitted that there can be no suppression of facts if the facts which are not required to be disclosed are not disclosed. This principle was followed in

- a. *Smt. ShirishtDhawan v Shaw Brothers - 1992 (1) SCC 534*
- b. *Apex Electricals (P.) Ltd v UOI (1992) 61 ELT 413 (Hon' Gujarat High Court)*
- c. *Unique Resin Industries v CCE 1995 (75) ELT 861 (CEGAT)*
- d. *Gammon Far Chems Ltd v CCE (1994) 71 ELT 59 (CEGAT)*
- e. *GuficPharma P Ltd v CCE (1996) 85 ELT 67 (CEGAT)*
- f. *CCE v Moti Laminates P Ltd (1997) 96 ELT 191 (CEGAT)*
- g. *Balsara Extrusions v CCE (2001) 131 ELT 586 (CEGAT)*
- h. *Ranka Wires v CCE (2005) 187 ELT 374 (CESTAT)*
- i. *Pioneer Electronics v CCE (2005) 189 ELT 71 (CESTAT)*

32. If a party bona fide believes in legal position (e.g., that no duty is payable or no license is required in his case) and even if there is a scope for such belief and doubt, penal provision of section 11A will not apply. This principle was held in

- a. *Padmini Products v CCE-1989 (43) ELT 195 (SC)*
- b. *CCE v Surat Textile Mills - 2004 (167) ELT 379 (SC- 3 member bench)*
- c. *GopalZardaUdhyog v CCE -2005 (188) ELT 251 (SC- 3 member bench)*

33. If there was a bonafide belief, penalty u/s 11AC is not applicable - *Sourthen Electronics v CCE (2007) 212 ELT 276 (CESTAT)*.

34. If a case relates to interpretation of law, extended period of limitation is not warranted - *PT Education and Training Service v CCE (2009) 19 STT 478 (CESTAT)* as well as held in *CCE v Krishna Coaching Institute (2009) 19 STT 486 (CESTAT)*.

35. If the issue is amenable to dual interpretation, longer period of limitation is not invocable. This principle was held in *Shri Shakti LPG Ltd v. CCE (2005) 187 ELT 487 (CESTAT)* as well as *Ploypin Ltd v CC (2007) 214 ELT 347 (CESTAT)*.

36. If assessee believed that there was no duty payable, extended period of five years is not applicable:- *Hindustan Steel Industries v CCE (2003) 162 ELT 235 (CEGAT)*- Departmental Appeal Dismissed - 163 ELT A44.

37. If the assessee bonafide believed that no duty is payable, there is no intention to evade duty' and hence, extended period of five years is not applicable- Singareni Collieries Co Ltd v Collector -1988 (37) ELT 361 (CEGAT) quoted and followed in South India Carbonic Gas Industries v CCE-1994 (72) ELT 168 (CEGAT).

38. In the present case, the audit by CERA was conducted and the reply to the query was given on 12.04.2015. Thus, one can fairly say that department was aware about the position even before 12.04.2015 whereas the SCN was issued on 20.07.2017. In this regard, we would like to take help of under mentioned judgments.

- a. In Gammon India v. CCE (2002) 146 ELT 173 (CEGAT), information was asked for by department was supplied in 1990 and supplementary information was also supplied in 1991. However, demand was raised in 1993. It was held that demand was not sustainable as department was aware of the activity.
- b. In respect of clearances after the date of knowledge of department about short levy or non-levy, the demand has to be restricted to only one year- Upper Doab Sugar Mills v CCE (1987) 32 ELT 124 (CEGAT) quoted and followed in Kamal Polywood and Allied Inds (P.) Ltd (1996) 82 ELT 323 (CEGAT), where notice issued four years after knowledge of department of the activity of appellant was held as time barred.

39. The assessee submitted that penalty under section 78 is not leviable and the SCN is time barred and therefore liable to be set aside.

40. As the activity conducted by GSRTC is covered in the negative list and therefore, no tax is payable, as a reason, interest is also not payable in terms of section 75 of the Act.

41. Further the assessee submitted that as far as penalty under section 77(2) is concerned for not disclosing full, true and correct information about the value and nature of services provided by GSRTC, it is humbly submitted that in ST-3 return, one can show only figures; there is no space where one can write anything. Even, there is no remarks column in ST-3 to state. Without prejudice, in ST-3 return, the value of taxable service is to be provided. What is contained in Negative List is outside the purview of Service Tax, therefore, it needs not be stated. Further, the activity is covered in the negative list by virtue of section 66D(p) of the Act and therefore, is not taxable. As a reason, penalty under section 77(2) is also not leviable. They requested to be heard in person before the case is decided.

PERSONAL HEARING

42. Personal hearing in the both SCNs was accorded to noticee on 21.12.2018, 16.01.2019 & 05.02.2019. Shri Rohan Thakkar, Chartered Accountant on behalf of the Company appeared before me for personal hearing on 05.02.2019. He re-iterated the submission made in the reply to SCNs vide their letter dated 09.03.2018 & 04.02.2019.

Discussion and Findings:-

43. I have carefully gone through the contents of the instant SCNs and the defence submissions made by the noticee on dated 09.03.2018 and 04.02.2019 as well as the oral

submissions made by the representative of noticee during the course of personal hearing.

44. The issue to be decided in the present case is whether the activity covered by the noticee falls under "Support services of business or commerce" or otherwise.

45. In the present SCNs it has been alleged that initially for the period from 2007-08 to 2009-10, M/s GSRTC came into a contract with M/s Sai Marketing & Trading Company. As per contract, M/s GSRTC was required to provide space in their buses for transport of courier packages/goods and also provided necessary covered space for running booking office at its own designated bus station premises depending on availability and convenience of the Corporation and where covered space was not possible, uncovered space was to be provided at the bus station wherever possible. And for such activity M/s GSRTC paid service tax under the category of "Courier Agency Service". Further a clarification was sought from the Board, the Board vide letter F. No. 137/123/2010-CX-4 dated 09.05.2011 clarified that the activity of M/s GSRTC could neither be covered under "Goods Transport Agency" nor under "Business Auxiliary Service" but the same had been covered under definition of "Business Support Service" after amendment in the definition of "Business Support Service". Further, M/s GSRTC provided the same service to M/s Ashapura Trade & Transport Pvt. Ltd. from July, 2011 and classified the services provided by them under category of "Business Support Service" and started paying service tax upto June 2012. Thereafter, they discontinued paying service tax in view of clause 22 of Mega Exemption Notification No. 25/2012 dated 20.06.2012, which provided that "services by way of giving on hire- (a) to a State Transport Undertaking, a motor vehicle meant to carry more than twelve passengers; or (b) to a goods transport agency, a means of transportation of goods are exempted from payment of service tax".

46. The relevant extract of the Board's letter F. No. 137/123/2010-CX-4 dated 09.05.2011 is as under:-

"The matter has been examined. It is clarified that the activity of Gujarat State Road Transport Corporation in providing space in their buses to M/s Shri Sai marketing & Trading Company, Jalgaon for transport of goods etc. is mere transportation but cannot be covered under Goods Transport Agency Service as no consignment note is being issued. The said activity is also not covered under Business Support Service during the relevant period. However, after the amendment of the words "operational or administrative assistance of any kind", the activity of GSRTC would constitute operation assistance and would be liable to service tax with effect from 01.05.2011."

47. Section 65 (104k) of the Finance Act, 2011, w.e.f. 01.05.2011, defines the "support services of business or commerce" as under:-

"Support services of business or commerce means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational or administrative assistance in any manner, formulation of customer service and pricing policies, infrastructural support services and other transaction processing."

48. In the instant case, I find that in the SCNs it has been alleged that the activity carried

out by the noticee is "Support services of business or commerce", however the noticee in their defence has submitted that the activity carried out by them should be covered in the negative list by virtue of Section 66D(p) of the Finance Act, 1994 instead of "Business Support Service".

49. Section 66D(p) of the Finance Act, 1944 is reproduce below:-

"Services by way of transportation of goods-

(i) by road except the services of-

(A) a goods transportation agency; or

(B) a courier agency.

50. I find that there was deed made and entered on 01.07.2011 between M/s GSRTC (the Licensor) and M/s Ashapura Trade and Transport Pvt. Ltd. (the Licensee). The features of the deed are reproduce below:-

"1. General

a. Whereas the LICENSOR intends to continue commercial activity of the part of its infrastructure to generate additional revenue by appointing licensee for the transportation of parcels, specific allied services i.e. transport of unaccompanied luggage, Transport of new papers/magazine parcels, etc., Transport of Taddy/Maddy, Milk Cans, Transport of Tiffin boxes and free Transport of students Tiffin boxes and courier services by Licensor's all buses (except A/C, Volvo Luxury Services) having luggage carrier as well as all dickeys in the entire state of Gujarat and inter State services in the adjoining states operated by the Licensor. AND WERE AS THE LICENSOR is intending to give existing space available on roof as well as all dickeys of the all buses (except A/C, Volvo Luxury Services) and space available at the parcels offices located at its various bus stand pick up sheds, as mentioned in Schedule 'A' an experienced transporter, who can independently under take the transportation, booking/delivery of the parcels, specific allied services i.e. Transport of unaccompanied luggage, Transport of new papers/magazine parcels, etc., Transport of Taddy/Maddy, Milk Cans, Transport of Tiffin boxes and free Transport of students Tiffin boxes and courier services by the all buses (except A/C, Volvo Luxury Services) of Licensee contract basis and also arrange and deal with the said business and where as the Licensor had invited tenders from the firms/agencies carrying business in this field by giving notice in the new papers and WHERE AS THE PARTY OF THE SECOND PART i.e. the Licensee in response to the tender notice, STG/TR.PARCEL/OT-6/2010-11 dated 01.03.2011, vide its letters dated 25-4-2011 and 09-05-2011 quoted its rates and the total amount of the guaranteed payment on account of carrying out the business of transportation of the parcels, specific allied services and courier by the all buses (except Luxury Buses) of the Licensor, for the 1st year, 2nd year, 3rd year, 4th year and 5th year of the contractual period and to pay the guaranteed revenue of Rs. 22,56,66,647.00 (Rupees Twenty Two Crore Fifty Six Lac Sixty Six Thousand Six Hundred Forty Seven only) for the contractual period, the amount expected by the Licensor and WHERE AS the

Licensor has carefully considered the tender offer of the Licensee and decided to appoint the party of the SEONCD PART as its sole Licensee for undertaking booking, delivering and transportation of parcels, specific allied services and courier by the all buses (except A/C, Luxury Services) and allowing to utilize space of parcel offices, without any kind of rent/charges mentioned in Schedule "A" annexed hereto for a fixed period of Five Years, effective from 01.07.2011 to 30.06.2016 i.e. the Licensee shall not accept any parcel, courier and specific allied services for transportation beyond the date of expiry of contract period and WHEREAS the LICENSEE in pursuance of the Licensor's decision as aforesaid agreed and undertake to pay the licensor a sum of Rs. 3,52,66,647/- (Rupees Three Crore Fifty Two Lacs Sixty Six Thousand Six Hundred Forty Seven only) for the 1st year, Rs. 3,87,66,647/- (Rs. Three Crore Eighty Seven Lacs Sixty Six Thousand six hundred forty seven only) for the 2nd year, Rs. 4,26,66,647/- (Rs. Four Crore twenty six lacs sixty six thousand six hundred forty seven only) for 3rd year, Rs. 4,69,66,647/- (Rs. Four crore sixty nine lacs sixty six thousand six hundred forty seven only) for 4th year and Rs. 6,20,00,059/- (Rs. six crore twenty lacs fifty nine only) for 5th year payable in equal monthly installment for ever year in advance and agree to pay first month's installment amount Rs. 29,38,887/- (Rs. Twenty nine lacs thirty eight thousand eight hundred eighty seven only) as one month's guaranteed revenue of the first year at the beginning of the contract to the licensor, inter-alia amongst terms and conditions hereinafter mentioned, NOW ESENTS WITHNESSTH.

b. The Licensor hereby grants the Licensee w.e.f. 01.07.2011 the right to book, deliver, transshipment, handling, loading, unloading and transportation of parcels, specific allied services and to carry out the business of courier by the all buses (except A/C, Volvo Luxury Services) of the licensor from all types of clients including the Government, semi-Government, Banks and Public Undertakings for a period of five years more particulary commencing from 01.07.2011 to 30.06.2016 and the licensee agrees to pay to the Licensor in acutance i.e. on/or before 5th of every month, the entire amount of guaranteed revenue and agreed to be paid by the Licensee in 12 equal monthly installments for ever respective year. The payment shall be made at Central Office of Licensor on the prescribed due date under intimation to the Chief Traffic & Commercial Manager SO AS TO AVOID DELAY IF REALISATION OF CASE.

c. The Licensor will provide space/lands without any kind of rent/charges at its bus stands for parcels offices space is available as "Annex A" And space available on the roof as well as all the dickeys of the all buses (except A/C, Volvo Luxury Services) having luggage carrier in its possession for transportation of parcels, specific allied services and courier, without any financial liability whatsoever during the contractual period. The list of existing parcel offices of the Licensor is annexed as "Annex A".

d. The entire execution of the work of booking, delivery, transshipment, handling, loading & unloading and transportation of parcels, specific allied services and to

carry out the business of courier will be the sole responsibility of the Licensee. In case of licensor hiring private buses for its operation, all the rights of licensee under the agreement will be applied to those private buses also, and no such rights will be passed on to the private bus owners. In case of further privatization of depot, routes, buses or any part of corporation, the right of licensee will not be jeopardize by the corporation.

e. The License is issued on conditions mentioned below and further subject to the general conditions annexed hereto.

f. The Licensor shall not indemnify and shall not be liable for any loss incurred by the Licensee, its customer, bankers, financial institutions, personnel engaged by the Licensee or any other person connected in the business of the Licensee.

g. All rights regarding any charges/improvements to be made after the commencement of the scheme are vested with the Licensor.

h. If any kind of problem from licensor regarding parcel service, is raised by the licensee than solution would be brought within 15 days mutually.

i. In the event of any dispute arising as to the interpretation of terms and conditions, the decisions of the vice Chairman & Managing Director for the purpose by the Licensor shall be final and binding on both the parties.

j. If the Licensee fails to cover any of the stand mentioned in Annexure "A" for the period of 6 months. The Licensor is at liberty to engage some other agency to cover that area by giving advance intimation to the Licensee.

k. In case the Licensee is unable to commence his business at all places through out the state at a time, the Licensor shall operate following allied services for the convenience of the people as per the existing rules up to maximum of 60 days

(a) Which is required in the interest of public and passenger

(b) Un-accompanied Luggage

(c) News papers, Magazine parcels etc.

(d) Transport of taddy/maddy, milk cans

(e) Transport of Tiffin boxes

i. Passes issued by the Licensor for the transport of above mentioned articles would be valid till expiry and the Licensee shall not claim any freight charges either from the pass holders and/or from the Licensor on this account.

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51. On carefully going through the deed made and entered between M/s GSRTC and M/s Ashapura Trade and Transport Pvt. Ltd., I find that the claim of noticee regarding merely transportation of goods by road is not correct but the activity carried out them is support of business or commerce in operational manner. Therefore, the allegation made in the instant SCN that the noticee had provided space in buses/covered-uncovered spaces at Bus station for carrying out activity of transportation of goods, specific allied services and courier by the all buses to nominated agent. The principal activity was being undertaken by the nominated

agent i.e. M/s Ashapura Trade and Transport Pvt. Ltd. while assistance or support was provided by M/s GSRTC is found correct. I also find that the Board's vide letter F. No. 137/123/2010-CX-4 dated 09.05.2011 has confirmed that the activity carried out by M/s GSRTC covers under taxable service viz. "Business Support Service" w.e.f. 01.05.2011.

52. The noticee in their defence submission has countered that the merit of invocation of extended period of five years and penalty proposed under Section 78, of the Finance Act, 1994 in the SCNs. In this reference, I find that in the era of self assessment the assessee is sole responsible for declaring their correct value of taxable income as well as payment of correct service tax in their half yearly ST-3 returns filed with the department. However, M/s GSRTC had not taken into account all the incomes received by them for rendering taxable services for the purpose of payment of service tax and thereby minimize their tax liabilities. The deliberate efforts to suppress the value of taxable service in their ST-3 returns for the period from July 2012 to June 2017 and not paying the correct amount of service tax is utter disregard to the requirements of law and breach of trust deposed on them and such outright act in defiance of law have rendered them liable for stringent penal action. Hence, reliance on judgment of various Hon'ble Tribunal and Courts by the noticee is on the subjected matter is not applicable in the instant case. Therefore, I confirm the penalty proposed in the instant SCNs.

53. From the forgoing paras, I find that the demand of service tax including Education Cess and Higher Education Ceess amounting to Rs. 1,44,18,963/- (Rs. One Crore Forty Four Lacs Eighteen Thousands Nine hundred and Sixty Three only) for the period from July 2012 to March 2015 and amounting to Rs. 1,59,86,057/- (Rs. One Crore Fifty Nine Lacs Eighty Six Thousands and Fifty Seven only) for the period from April 2015 to June 2017 demanded in the Show Cause Notices bearing F. No. STC/4-69/O&A/15-16 dated 20.07.2018 and F. No. STC/15-12/OA/2018 dated 17.04.2018 respectively is legal and proper.

Order:-

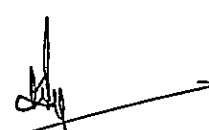
54. In view of above I pass the following orders:-

- (i) I confirm the amount of Rs. 11,66,58,279/- (Rupees Eleven Crore Sixty Six Lacs Fifty Eight Thousands Two Hundred and Seventy Nine only) charged and received by them as taxable value under the category of "Business Support Service" for the period from July 2012 to March 2015 and accordingly confirm the demand for recovery of Service Tax amounting to Rs. 1,44,18,963/- (Rs. One Crore Forty Four Lacs Eighteen Thousands Nine Hundred and Sixty Three only) including Education Cess and Higher Secondary Education Cess under proviso to Section 73(1) of the Finance Act, 1994 as amended from time to time.
- (ii) I confirm the demand for recovery of Service Tax amounting to Rs. 1,59,58,057/- (Rs. One Crore Fifty Nine Lacs Fifty Eight Thousands and Fifty Seven only) including Education Cess and Higher Secondary Education Cess for the period April 2015 to June 2017 under proviso to Section 73(1A) of the Finance Act, 1994 as amended from time to time.
- (iii) I confirm the demand for recovery of interest at the appropriate rate on Service tax mentioned at sr. no. (i) and (ii) above, under Section 75 of the

Finance Act, 1994 as amended from time to time.

- (iv) I impose Penalty of Rs. 1,44,18,963/- (Rs. One Crore Forty Four Lacs Eighteen Thousands Nine Hundred and Sixty Three only) under Section 78(1) of the Finance Act, 1994 for suppressing the value of taxable services provided by them.
- (v) I impose Penalty of ten percent of the amount of service tax confirmed at Sr. (ii) above, under Section 76 of the Finance Act, 1994.
- (vi) I impose Penalty of Rs. Ten thousands only for each of SCN F.No. STC/4-69/O&A/15-16 dated 20.07.2017 and F. No. STC/15-12/OA/2018 dated 17.04.2018 under Section 77(2) of the Finance Act, 1994 for the failure to self assess the correct taxable value;

55. Show Cause Notices bearing F. No. STC/4-69/O&A/15-16 dated 20.07.2017 and F. No. STC/15-12/OA/2018 dated 17.04.2018 are disposed of in the above terms.


(Mahavir Singh Chauhan)
Additional Commissioner
CGST, Ahmedabad North

F. No. STC/4-69/O&A/15-16

Date- 28.02.2019

By Registered AD Post/Speed Post/Hand Delivery

To

M/s Gujarat State Road Transport Corporation
Accounts Department, Central Office,
ST. Central Workshop, Naroda Ahmedabad-382346

Copy to:-

- (1) The Principal Commissioner, CGST, Ahmedbad North.
- (2) The Dy/Asst. Commissioner, CGST, Division-I, Ahmedabad North.
- (3) The Superintendent, CGST, AR-IV, Division-I, Ahmedabad North.
- ✓ (4) Guard File.