
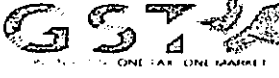


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फोन नंबर/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

निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/4-42/O&A/L.G/Prev/2016-17

आदेश की तारीख/Date of Order : - 04.01.2021

जारी करने की तारीख/Date of Issue :- 04.01.2021

**DIN NO:20210164WT000077757C**

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / *Marut Tripathi*

संयुक्त आयुक्त / *Joint Commissioner*

**मूल आदेश संख्या / Order-In-Original No. 31/JC/MT/2020-21**

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।

(67) उक्त अपील की प्रति।

(68) 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:

(67) Copy of accompanied Appeal.

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

विषय/Subject: विचारण बताओ सूचना/ The Show Cause Notice No.STC/4-42/O&A/L.G/Prev/2016-17 dated 04.01.2017 issued to M/s.L.G.Chaudhary, M-6/64, Gokul Apartment, Near Parasnagar Bus Stop, Sola Road, Naranpura, Ahmedabad 380 063.



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## BRIEF FACTS OF THE CASE:

M/s. L.G. Chaudhary, M-6/64, Gokul Apartment, Near Parasnagar Bus Stop, Sola Road, Naranpura, Ahmedabad-380063 (hereinafter referred to as 'the said noticee') a Partnership Firm, are engaged in Government Road Construction Work. The said service provider is registered with service tax department w.e.f. 23.12.2011 under the category of "Industrial & Commercial Construction", "Transportation of Goods by Road" however they have not discharged their Service Tax Liabilities for the services provided by them and also not filed any Service Tax returns.

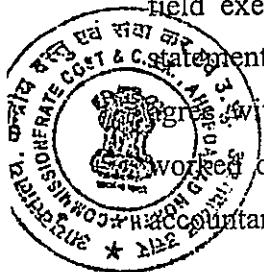
2. Officers of the Service Tax (Preventive) conducted the visit of the premises of the noticee under Rule 5A of the Service Tax Rules, 1994 on 07.2.2014. It was found that the said noticee had been registered with the Service Tax department having Service Tax registration No. AACFL5043JSD001 and mainly engaged in "Road Construction Work" which is exempted but they have expend huge amount against the "Carting & Transportation" services. The matter was investigated and documents were called for under letter/summons proceedings on the spot and the same were scrutinized. As no partner/responsible person was available in the registered premises, statement of Shri Dinesh R. Chaudhary, Field Executive of M/s. L. G. Chaudhary, Ahmedabad was recorded on 07.02.2014 under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 wherein, he interalia stated that M/s. L. G. Chaudhary is a partnership firm established in 2004 having two Partners namely Shri Godadbhai M Chaudhary, At post-Davol, Taluka-Kheralu, District-Mehsana and Shri Laljibhai G Chaudhary, At post- Davol, Taluka- Kheralu, District - Mehsana; that the head office of the firm is situated at M-6/64, Gokul Apartment, Near Parasnagar Bus Stop, Sola Road, Naranpura, Ahmedabad-380063 since last five years; that he is looking after all the work related with online tendering of contract, agreement of contract day to day work related to the firm; that the firm is engaged in the activities of construction of Road, site formation, resurfacing, widening & raising of internal roads, earthing works and repair and maintenance of Roads; that for these contracts they make agreement with the clients and as per the said agreement, they design, testing and commissioning of the same as per technical specification and details shown in the said agreement; that their firm is registered with the service tax department on 23.12.2011 for the services "Manpower Recruitment Agency", Construction of Commercial and Industrial Service", "Transport of Goods by Road"; that they have taken service tax registration but neither paid service tax on Carting Expenses liability under reverse charge mechanism and nor filed service tax return for the same; that as per balance sheet & books of accounts of their firm, the carting & transportation expenses and their service tax liability on their taxable service received under reverse charge mechanism "Goods Transport Agency" Service by them for the financial year 2008-09 to December-

Summons dated, 08.02.2014, 18.02.2014 and 05.03.2014 were issued to Shri Laljibhai Chaudhary, one of the Partners and summons dated 31.07.2014 were issued to Shri Dinesh R. Chaudhary for producing certain relevant documents and for recording statement, however as no



records were produced and no responsible person remained present for the statement. On the basis of permission granted by the Commissioner, Service Tax, Ahmedabad, a visit under rule 5A of Service tax Rules, 1994 was conducted and a Statement of Rameshbhai Chaudhary, Accountant of M/s. L. G. Chaudhary was recorded on 15.09.2014, under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 wherein he stated that the firm having service tax registration and engaged in Government Road Construction Service. On being asked about the unpaid service tax liability for the period from 2008-09 to Dec- 2013-14 was to the tune of Rs. 1,32,01,908/- against that they have paid Rs. 25,00,000/- as per the challans dated 04.03.2014, 27.03.2014 and 21.03.14; that he stated that the amount of service tax liability was calculated on the basis of total amount of expenses incurred on carting and transportation, there might be some of transaction wherein the transportation expenses of the individual consignment would be less than Rs. 750/- and according to Notification No. 32/2004 dated 03.12.2004 such transaction would be exempted from the Service Tax. They were yet to calculate the final Service Tax liability after claiming the exemption as per the said notification; that they have made it for the F.Y. 2009-10 to 2010-11 but as calculation was yet to be finalized so the different amount may be adjusted for the subsequent Financial Year. On being further asked about filling of ST-3 returns as they were registered with the Service Tax department; that he stated that they were not aware of filling of return. Further, he produced the documents viz; (1) Copy of form 26AS for the F.Y. 2009-10 to 2013-14 (2) copy of provisional Balance Sheet for the F.Y. 2013-14, (3) Details of all the current accounts and saving accounts (4) copy of vouchers of Transportation and carting for the year 2009-10 & 2010-11. (5) Copy of the e-payment of Rs. 5,00,000/- made on 15.09.2014.

4. A Statement of Shri Laljibhai G. Chaudhary, Partner of M/s. L. G. Chaudhary was recorded on 16.09.2014 under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 wherein regarding the business activities of the firm, he stated that the above firm is a Partnership firm having two partners, one himself and other his father Shri Godadbhai Chaudhary, aged 74 years; that he is mainly looking after the business of the firm and his father being old occasionally visit the above firm; that their main business activity is Govt. Road Construction and their firm is still doing the same business; that service tax registration as shown in their ST-2 registration certificate is for "Manpower Recruitment Agency", "Construction of Commercial and Industrial Service" and "Transport of Goods by Road", but they have not done any activity of "Manpower Recruitment" till date; that they have received the Summons dated 07.02.2014, 18.02.2014 and 15.09.2014 issued by the department, but as he was busy in handling family dispute, he was not able to furnish his statement and deeply regret for the same; that he do not agree with the statement of Shri Dineshbhai R Chaudhary as he is just a field executive in their office and he is not aware of accounting work and stand with the statement of Shri Rameshbhai Chaudhary, Accountant recorded on 15.09.2014; that he did not agree with the service tax liability of Rs. 1,32,01,908/- under the category of GTA Service tax worked out as per their letter dated 07.02.2014 which was neither signed by him nor by his accountant; that further with reference to service tax on freight and carting, as per notification



No. 32/2004-ST dated 03.12.2004, individual consignment less than Rs. 750/- would be exempted from service tax; that further it is submitted that most of the individual consignment bills would be less than Rs. 750/- in their case and hence their service tax liability would come out to be much less than Rs. 1,32,01,908/- as per the letter dtd. 07.02.2014; that calculation is yet to be finalized for actual service tax liability after taking into consideration the above mentioned exemption notification; that they were not aware of filing of return as they had to take the registration to file the tender in the Govt, organization, they are ready to pay the applicable late fees and penalty as per Service Tax Rules, 1994 and they will comply without fail; that they furnished their Bank details; that they will submit the remaining bills/vouchers for the period 2009-10 to 2013-14 for carting/transportation within 10 days.

4.1 The noticee vide letter dtd. 08.10.2014 submitted copies of relevant documents from the F.Y.2009-10 to 2013-14 along with summary of calculation of service tax on GTA service wherein total service tax (including Edu. Cess and HSEC) which comes to Rs. 6,38,752/- along with interest. In the sheet the said service provider has claimed the benefit of Notifn. 34/2004-Service Tax dtd. 03.12.2004 which is pertaining to majority of its consignments in which exemption admissible to goods transported as single consignment if freight charged not exceeds Rs. 750/-. As per Notifn. No. 34/2004-Service Tax dtd. 03.12.2004 which is reproduced as under:-

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, from the whole of service tax leviable thereon under section 66 of the said Act, where,-

- (i) The gross amount charged on consignments transported in a goods carriage does not exceed rupees one thousand five hundred; or
- (ii) The gross amount charged on an individual consignment transported in a goods carriage does not exceed rupees seven hundred fifty

**Explanation** .- For the purposes of this notification, "an individual consignment" means all goods transported by a goods transport agency by road in a goods carriage for a consignee.

This notification shall come into force on the first day of January, 2005. F. No. 341/18/2004-TRU (Pt.)"

Legal Provision:

5. "Goods Transport Agency Service" :

Whereas, Section 65 (105)(zzp) of the finance Act 1994 provides for service tax of "Transport of Goods by Road" service v.z.e. from 01.01.2005 and the service provider "Goods Transport Agency" is made liable to pay the service tax and w.e.f 18.04.2006, "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, Rule 2 (1)(d)(v) of the Service Tax Rules,



1994 read with Section 68 (2) of the Finance Act 1994 provides that in case consignor or consignee of goods is specified person viz., (a) a factory; (b) a company; (c) a corporation; (d) a society; (e) a co-operative society; (f) a registered dealer of excisable goods; (g) a body corporate or a partnership firm, then the person who pays or is liable to pay freight is liable to pay Service Tax.

6. It appeared that the said service provider being a partnership firm is liable to pay service tax on Goods transport agency services under reverse charge mechanism for the transportation expenditure incurred by them as per provisions of Section 66 of the Finance Act 1994. It further appeared that, they failed to assess their correct Service Tax liability under GTA service as specifically pointed out for the transport expenditures incurred by them and failed to explain and prove that as to why they are not liable to pay service tax. On face reading of the invoices/ bills submitted by the said noticee it appeared that the bills / invoices is more than Rs. 750/-. However they did not submit any individual consignment note/Invoices raised by their Service provider for transportation of goods and therefore, they are liable to pay Service Tax on the transport expenditures shown in their books of accounts by denying the benefit of exemption of Rs.750/- per consignment as per Noti. No. 34/2004-Service Tax dtd. 03.12.2004.

7. Section 67 of the Finance Act 1994 provides for valuation of taxable services for charging of service tax, as per which:-

"(1) Subject to the provisions of this chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, -

(i) In a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service

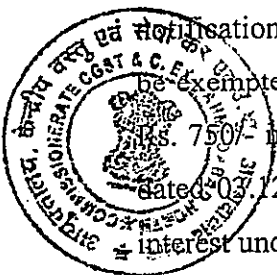
(ii) provided or to be provided by him;

8. Outcome of the investigation:-

(i) The said service provider is registered with service tax department w.e.f. 23.12.2011 under the category of "Industrial & Commercial Construction", "Transportation of Goods by Road", however they have not discharged their Service Tax liability for the services provided and have not filed Service Tax returns for the period 2011-12.

(ii) The said Service provider has made Carting Expenses & Transportation expenses and shown in their books of account however they had not discharged their Service Tax liability on such expenses.

(iii) The partner of the said noticee in his statement dated 16.09.2014, had stated that as per Notification No. 32/2004-ST dated 03.12.2004, individual consignment less than Rs. 750/- would be exempted from service tax; that most of the individual consignment bills would be less than Rs. 750/- in their case. Therefore they were eligible for exemption notification No. 32/2004-ST dated 03.12.2004 and according to them the Service Tax liability of Rs. 6,38,752/- along with interest under the Category of GTA Service.



(iv) The said noticee vide letter dated 05.01.2016 submitted that according to them the total Service Tax liability for the period 2009-10 to 2013-14 under various categories worked out as detailed below:-

Sr. No	Nature of Service	Period	Service Tax + Interest+15% penalty Payable ( Rs. )			Service Tax + Interest+15% penalty Paid
			S.T	Int	Penalty	
1	GTA Service	2009-10 to 2013-14	5,10,798	1,27,954	76,620	S.T.Rs.5,10,798/- + Int. Rs. 1,27,954/- + 15% penalty Rs.76,620/-
2	Works Contract Service	2010- 11 to 2011- 12	5,49,584	2,77,308	82,438	S.T.Rs.5,49,584/- + Int. Rs. 2,77,308/- + 15% penalty Rs.82,438/-
3	Supply of Tangible Goods Service	2011-12	1,06,352	73,339	15,953	S.T.Rs.1,06,352/- +Int. Rs.73,339/- + 15% penalty Rs.15,983/-
Total Payment Rs.			11,66,734	4,78,601	1,75,011	

9. Further, they submitted that they have paid a lump sum of Rs. 30 Lakhs, vide (1) challan No. 01251 dtd. 04.03.14, for Rs. 10,00,000/- (2) Challan No. 00349 dated 21.03.14 dtd. 5,00,000/- (3) Challan No. 00033 dtd. 27.03.14 for Rs. 10,00,000/- (4) Challan No. 01068 dtd. 15.09.14 for Rs. 5,00,000/- under the category of GTA Service and requested to adjust the same against their Service Tax and Interest liability of Rs. 16,45,335/- as mentioned in the above table, the remaining amount of Rs. 13,54,665/- (Rs. 30,00,000 - Rs. 16,45,335) they will adjust against their future Service Tax Liability. They have adjusted Service tax of Rs. 1,56,509/- for the period 2014-15 and Rs. 40,941/- for the period Apr'2015 to Sept'2015 from their remaining amount of Rs. 13,54,665/-. Therefore, the net remaining amount Rs. 11, 57,215/- is available. Further, they have also paid the penalty of Rs. 1,75,011/- vide Challan No. 00402 dated 12.01.16 on their Service Tax liability of Rs. 11,66,734/- [Rs. 5,10,798/- (under GTA) + Rs. 5,49,584/- (under WCS) + Rs. 1,06,352/- (Supply of Tangible Goods Service)].

(v) The said noticee vide letter dated 22.02.16 has requested for rectification of mistake of payment of Service Tax deposited under wrong accounting code as per Trade Notice No. 12/2015-16 dated 07.10.15. The said assessee had made payment of Service Tax amounting to Rs. 30,00,000/- under the accounting code of Transport of Goods by Road Service i.e; 000440262. The said assessee requested to change the accounting code under Supply of Tangible Goods Service of Rs. 1,06,352/- as Service Tax and Rs. 73,339/- as interest, Under GTA Service of Rs. 1,27,954/- as interest, under Works Contract Service of Rs. 5,49,584/- as Service Tax and Rs. 2,77,308 as interest total amounting to Rs. 11,34,537/-. With reference to the noticee's request above the Sr. Accounts Officer, ePAO, S.Tax Mumbai vide letter dated 09.03.2016 informed that "necessary correction have been made in books of accounts of this office".



(vi) However, on going through the copies of Invoices/ Bills raised for transportation /carting expenses submitted by the said assessee, it was observed that all Invoices/bills were more than Rs.750/- therefore, the noticee is not eligible for exemption as per the notification No. 32/2004-ST dated 03.12.2004 and liable to pay the service Tax on GTA services received under reverse charge mechanism.

(vii) Vide letter dated 12.07.16 requested to the noticee to provide the Balance Sheet for the Financial year 2013-14 and 2014-15, Photocopies of invoices for the F.Y. 2013-14 and 2014-15 towards transportation of goods/ carting expenses, Trip wise chart for the F.Y. 2011-12 to 2014-15. In this regard they vide letter dtd. 12.07.16 submitted the Balance sheet for the Financial year 2013-14 and 2014-15.

(VIII) In view of the above it appeared that the gross amount shown towards "Transportation Expenditure and Carting Expenses" in the books of accounts of the said service provider and as has been admitted and reiterated by the representative of the said service provider in his statement dated 14.09.2014 shall be the gross value for the purpose of charging of service tax as per Section 67 of the Finance Act 1994 and as per the details of transportation/carting expenses shown in the books of accounts of the said service provider and furnished by the authorized representation of the said service provider, their service tax liability from 2011-12 to 2014-15 is calculated as under:-

F. Y.	Gross carting Expenses in B/s.	Abatement (75%)	^Net Taxable Value	S. Tax rate	S.Tax Payable
2011-12	72441004	54330753	18110251	10.30	1865356
2012-13	210766818	158075114	52691705	12.36	6512695
2013-14	36332457	27249343	9083114	12.36	1122673
2014-15	5148980	3861735	1287245	12.36	159103
<b>Total</b>	<b>324689259</b>	<b>243516944</b>	<b>81172315</b>		<b>9659827</b>

10. Therefore, it appeared that the said service provider is liable to pay the service tax of Rs. 96,59,827/- as detailed in para 8(viii) above (including education & secondary education cess) under the Transport of Goods by Road Service (G.T.A. Service) for the period from 2011-12 to 2014-15.

11. As per Clause (1) of Section 68 of the Finance Act, 1994, every person providing taxable service to any person shall pay service tax at the rate specified in Section 66 in such manner and within such period as prescribed under Rule 6(1) of the Service Tax Rules, 1994 and as per Section 68(2) of the Finance Act, 1994 read with Rule 2(1)(d)(v) of the Service Tax Rules, 1994 provides for payment of service tax in case of GTA service by a specified person (i.e. a Partnership firm) who pays the freight whether as consignor or consignee.

As per Clause (1) of Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994, every person liable for paying the service tax shall make an application to the





jurisdictional Superintendent of Central Excise in Form ST-1 for registration within a period of thirty days from the date on which the service tax under section 66 of the Finance Act, 1994 (32 of 1994) is levied.

13. As per Clause (1) of Section 70 of the Finance Act, 1994 every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding two thousand rupees, for delayed furnishing of return, as may be prescribed and as per Rule 7 of the Service Tax Rules, 1994, every assessee shall submit a half-yearly return in Form 'ST-3' or 'ST-3A', as the case may be, along with a copy of the Form TR-6, in triplicate for the months covered in the half yearly return by the 25<sup>th</sup> of the monthly following the particular half-year.

14. Thus, it appeared from the foregoing discussion that the said service provider have contravened the provisions of:

- i) **Section 66 and Section 68** of the Finance Act, 1994 read with Rule 2(I)(d)(v) and Rule 6 of the Service Tax Rules, 1994 in as-much-as they have failed to pay the service tax amounting to Rs. 96,59,827/- (includes education cess and secondary & higher education cess) for the period from 2011-12 to 2014-15 in respect of "Transport of Goods by Road service" within the stipulated time limit;
- ii) **Section - 69** of the Finance Act, 1994 read with Rule - 4 of the Service Tax Rules, 1994 in as much as they failed to take service tax registration within a period of 30 days on which the service tax under Section - 66 of the Finance Act, 1994 is levied i.e., service tax is levied from January, 2005 onwards but they have not obtained service tax registration within time limit;
- iii) **Section - 70** of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value received by them and to file ST-3 returns for the said services provided / received during the period from 2011-12 to 2014-15.

15. All the above acts of contravention as discussed above, on the part of the said noticee, appeared to have been committed by suppression of the facts with intent to evade payment of service tax in as much as the said noticee had not taken the service tax registration and not paid appropriate service tax on GTA services. The noticee cannot plead ignorance of law to his rescue as they are supposed to know all relevant provisions. They have never sought for any clarification in the matter from the department, which implies the intention to evade tax.

Therefore, it appeared that the said service tax of Rs. 96,59,827/- not paid by them is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years in as much as they have never informed the department about their activities nor obtained service tax registration and nor paid the service tax and therefore, it appeared that they have suppressed the facts from the department and



contravened the provisions of service tax laws with intent to evade payment of service tax.

16. Whereas it further appeared that interest is also required to be recovered from the noticee at the applicable rate time being in force as per Section 75 of the Finance Act 1994.

17. It further appeared that all these acts of contravention of the provisions of Section 66, 68, Section 69 and Section 70 of the Finance Act, 1994 read with Rule 4, Rule 6 and Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of :-

(i) Section 77(1) and Section 77(2) of the Finance Act, 1994 for the failure to make an application for service tax registration and to file prescribed service tax return within the stipulated time and

(ii) Section 78 of the Finance Act, 1994 for suppressing the facts that they are providing taxable services from the Department with intent to evade payment of service tax total amounting to Rs. 96,59,827/- during the period from 2011-12 to 2014-15.

18. Therefore, M/s. L. G. Chaudhary, M-6/64, Gokul Apartment, Near Parasnagar Bus Stop, Sola Road, Naranpura, Ahmedabad-380063 was issued show cause notice No.STC/4-42/O&A/L.G./Prev/2016-17 answerable to the Additional Commissioner, Service Tax, Ahmedabad, having his office at 1<sup>st</sup> floor, Central Excise Building, B/h. Panjra Pole, Ambawadi, Ahmedabad-15 as to why:-

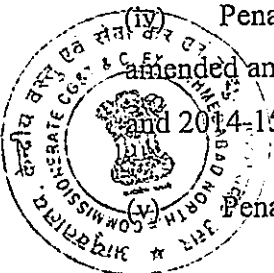
(i) Services Tax amounting to Rs. 96,59,827/- ( Rupees Ninety Six Lakhs Fifty Nine Thousand Eight Hundred Twenty Seven only) (including education cess and secondary & higher education cess ) under the "Transport of Goods by Road" service for the period from 2011-12 to 2014-15 should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994, invoking the larger period of five years as and during the course of investigation the Service Tax amounting to Rs. 5,53,637/- paid by him willingly, the same should not be appropriated from the total Service Tax liability.

(ii) Interest at the applicable rate should not be demanded and recovered from them for the delay in making the payment, under section 75 of the Finance Act, 1994 as amended and during the course of investigation, the interest amounting to Rs. 1,04,051/- paid by him willingly for the period 2011-12 and 2014-15, the same should not be appropriated against their total interest liability.

(iii) Penalty should not be imposed upon them under Section 77 (1) and Section 77 (2) of the Finance Act, 1994 as amended;

(iv) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 as amended and the penalty amounting to Rs. 59,569/- paid by him willingly for the period 2011-12 and 2014-15, the same should not be appropriated against the total penalty.

(v) Penalty should not be imposed upon them under Section 69 of the Finance Act, 1994 read



with Rule - 4 of the Service Tax Rules, 1994 in as much as they failed to take service tax registration within a period of 30 days on which the service tax under Section - 66 of the Finance Act, 1994 is levied i.e., service tax is levied from January, 2005 onwards but they have not obtained service tax registration within time limit;

(vi) Penalty should not be imposed upon them under Section 70 of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value received by them and to file ST-3 returns for the said services provided / received during the period from 2011-12 to 2014-15.

#### DEFENSE REPLY:

19. In reply to the above show cause notice, vide letter dated February, 2017, addressed to the Additional Commissioner, Service Tax, Ahmedabad, M/s. L. G. Chaudhary stated that –

1) “We would like to beg for a personal hearing to present our case in reply of the said Show Cause Notice.

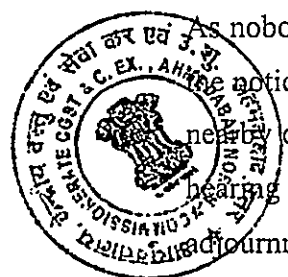
2) We would also like to ensure that our submission related to the case will be submitted or on before the date of personal hearing granted by your good selves”.

20. Further, in pursuance of Notification No.12/2017-Central Excise (NT) to Notification No.14/2017-Central Excise (NT) all dated 09.06.2017 issued by the Central Board of Excise & Customs, corrigendum to the show cause notice F. No. STC/4-42/O&A/LG/Prev/2016-17 dated 28.07.2017 was issued making the show cause notice answerable to the Additional Commissioner, Central GST & Central Excise, Ahmedabad North.

#### PERSONAL HEARING:

21. No reply was filed by the noticee to the show cause notice. Therefore, the Assistant Commissioner (O&A), Central GST & Central Excise, vide letter F. No. STC/4-42/ O&A/ LG/ Prev/2016-17 dated 01.08.2017 requested them to file written reply to the show cause notice within a week's time. As the noticee had not responded, vide this office letter of even number dated 01.11.2017, date of personal hearing was fixed for 15.11.2017 and communicated it to the noticee. As nobody turned up for the personal hearing nor any communication was received for adjournment of hearing, another date for personal hearing was fixed for 12.12.2017. This hearing was postponed to 19.12.2017 due to the preoccupation of the Additional Commissioner. Vide letter dated 08.12.2017, the noticee requested for personal hearing in the first week of January 2018. The noticee's request was considered and fresh date of hearing was fixed for 10.01.2018.

As nobody turned up for hearing, next date of personal hearing was fixed for 30.01.2018. Again, noticee requested for postponement of hearing to the last week of February 2018 or any other date. This request was also considered by the Additional Commissioner and the date of hearing was fixed for 27.02.2018. Nobody appeared for personal hearing nor any request for adjournment was received. Thereafter, hearing was fixed for 19.12.2018 and 08.01.2019. The noticee vide their letter dated 18.12.2018 and 8<sup>th</sup> January 2019, requested for hearing for second



week of February 2019. Therefore, the hearing was fixed for 12.02.2019. Nobody appeared for the personal hearing. Vide this office letter dated 04.10.2019, the noticee was again requested to file the reply to the show cause notice. Again, no reply has been received from the noticee. Due to the change of adjudicating authority, further hearing was fixed for 19.11.2019. Nobody appeared for personal hearing and also no request has been received for postponement of hearing.

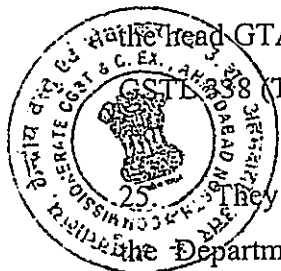
22. Subsequently, vide their letter dated 22.11.2019, they filed the reply wherein they submitted that –

They mainly engaged in providing exempted service under the heading construction services other than residential complex including commercial/industrial buildings or civil constructions. They registered for the same including Goods Transport Agency Service and Manpower Recruitment Agency Service. They stated that the statement was recorded by the Department of a field executive who knew nothing about Service Tax Law. That the officers have done gross error by not considering the elementary provision applicable to GTA Services i.e. where the consignment notes is less than or equal to Rs.750/-, no Service Tax is applicable.

23. They stated that they submitted relevant documents vide letter dated 08.10.2014 for the period 2009-10 to 2013-14 specifying the Service Tax liability under GTA Service amounting to Rs.6,38,752/- along with interest. They stated that they paid Service Tax amounting to Rs.30,00,000/- under Service category of "Goods Transport Agency Service". However, they had applied for rectification of mistake in payment of Service Tax in appropriate category. They have appropriated the said amount against Service Tax and interest payable. They also paid penalty of Rs.1,75,011/- vide challen No.00402 dated 12.01.2016. That, the Departmental officer has re-calculated the Service Tax liability based on books of accounts. The Departmental officer has straight away taken base of ledger named "Carting expense" and "Transport expense" without considering the exemption entry No.21 of Notif.No.25/2012-ST dated 20.06.2012 and calculated the Service Tax liability of Rs.96,59,827/- and issued SCN demanding interest and penalty and invoking extended period of time.

24. They denied all the charges leveled against them in the notice. They stated that they are not liable to pay any Service Tax, interest and penalty and therefore, the SCN should be quashed. They stated that the SCN was issued without verifying the consignment notes. The ledgers included total transportation expenses included for carrying out construction activity including exempted service below Rs.750/- They relied the relevant extract of the exemption. They stated that no proper analysis carried out by the Department for calculating Service Tax liability under the head GTA. They relied the case of Enterprenurship Development Vs CCE, Bhopal (2017 (4) (Tri-Del).

They stated that they paid Service Tax of Rs.30,00,000/- at the time and after the visit of the Departmental officers till the final calculation was done after considering the limit of



Rs.750/- and also paid Rs.1,75,011/- towards penalty. According to them, total liability of Service Tax is Rs.13,64,184/- and interest Rs.4,78,601/- totaling to Rs.18,42,785/- for the period from 2009-10 to 2015-16 (H1) and they made excess payment of Service Tax of Rs.11,57,215/- .

26. Regarding interest and penalty, they stated that they are not liable to pay interest and no penalty is payable by them under Section 76, 77 and 78 of the Finance Act, 1994. They also stated that extended period is not invocable in the present case as no fraud, collusion/wilful misstatement is involved. They relied the following case laws:-

- 1) Municipal Corporation of Delhi Vs Jagannath Ashok Kumar, (1987) AIR 2316 (Supreme Court)
- 2) Ram Krishna Travels Pvt.Ltd Vs CCE, Vadodara (2007-TMI-CESTAT-Mumbai)

27. They also requested to drop the proceedings and also requested for personal hearing. Subsequently, vide their letter dated 08.01.2020, they stated that they have applied under "Sabka Vishwas Legacy Dispute Resolution Scheme, 2019 and produced copy of SVLDRS-1. However, they have not paid the amount of amount/disputed Service Tax as per SVLDRS. The matter was also fixed for personal hearing on 10.01.2020, 12.11.2020. Due to change of adjudicating authority, hearing was also fixed on 29.12.2020. Nobody appeared for the personal hearing nor any request for postponement of hearing was received.

#### DISCUSSION AND FINDINGS:

28. I have carefully gone through the records of the case. I find that sufficient opportunities were given to the noticee to file the reply to the show cause notice and also for appearing for personal hearing. They filed the reply in the month of November 2019, after a lapse of two and half years. They also failed to utilize the opportunities given to them for the personal hearing. On the other hand, the noticee was adopting the delay tactics on one pretext or another. Substantial time has been passed. This issue can not be prolonged any longer. Therefore, I am taking up the matter for adjudication.

29. The issue to be decided in the present case is whether Service Tax demand of Rs.96,59,827/- raised by the Department is justified in view of the assessee's explanation that exempted service has been included in the figures taken by the Department. I find that Section 65 (105)(zzp) of the finance Act 1994 provides for service tax of "Transport of Goods by Road" service w.e. from 01.01.2005 and the service provider "Goods Transport Agency" is made liable to pay the service tax and w.e.f 18.04.2006, "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, Rule 2 (1)(d)(v) of the Service Tax Rules, 1994 read with Section 68 (2) of the Finance Act 1994 provides that in case consignor or consignee of goods is specified person viz., (a) a factory; (b) a company; (c) a corporation; (d) a society; (e) a co-operative society; (f) a registered dealer of excisable goods; (g) a body corporate or a partnership



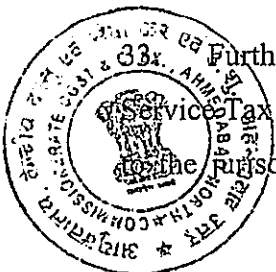
firm, then the person who pays or is liable to pay freight is liable to pay Service Tax. Therefore, the service provider being a partnership firm is liable to pay service tax on Goods Transport agency services under reverse charge mechanism for the transportation expenditure incurred by them as provided under Section 66 of the Finance Act, 1994. The noticee's only argument is that that the individual bills were of less than Rs.750/-. I find that the Audit Officers have gone through the copies of invoices/bills raised for transportation/carting expenses submitted by the said assessee and it was observed by the Audit officers that all invoices/bills were of more than Rs.750/-. Therefore, I find that they are not eligible for exemption as per the Notification No.32/2004-ST dated 31.12.2004. They have not contested the issue of taxability on the Service. They did not submit any individual consignment note/invoices raised by their service provider for transportation of goods and therefore, the tax payer is liable to pay service tax on the transport expenditures shown in their books of accounts by denying the benefit of exemption of Rs.750/- per consignment as per Notification No.34/2004-Service Tax and they are liable to pay the Service Tax on GTA services received under reverse charge mechanism. Accordingly, I hold that the assessee is liable to pay the Service Tax on GTA services received under reverse charge mechanism.

30. The assessee has submitted a lengthy submission stating that the Department has not taken the correct figures while calculating the Service Tax, that they have already paid excess Service Tax, that they are not liable to pay any Service Tax, interest and penalty in this case. They have also relied a few case laws in this regard. I find that the said case laws are not applicable in the present case as in the said cases, facts and circumstances are different. The issue involved in the present case is not payment of Service Tax on GTA under reverse charge mechanism. Further, in all the cases, Audit officers have satisfied that individual bills/invoices are above Rs.750/- and taxable under RCM. Therefore, I reject the assessee's claim that they are not liable to pay Service Tax.

31. In view of the above, it appeared that the said service provider is liable to pay the service tax of Rs. 96,59,827/- (including education & secondary education cess) under the Transport of Goods by Road Service (G.T.A. Service) for the period from 2011-12 to 2014-15.

32. Clause (1) of Section 68 of the Finance Act, 1994 provides that, every person providing taxable service to any person shall pay service tax at the rate specified in Section 66 in such manner and within such period as prescribed under Rule 6(1) of the Service Tax Rules, 1994 and as per Section 68(2) of the Finance Act, 1994 read with Rule 2(1)(d)(v) of the Service Tax Rules, 1994 provides for payment of service tax in case of GTA service by a specified person (i.e. a partnership firm) who pays the freight whether as consignor or consignee.

Further, as per Clause (1) of Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994, every person liable for paying the service tax shall make an application to the Jurisdictional Superintendent of Central Excise in Form ST-1 for registration within a



period of thirty days from the date on which the service tax under section 66 of the Finance Act, 1994 (32 of 1994) is levied.

34. As per Clause (1) of Section 70 of the Finance Act, 1994 every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding two thousand rupees, for delayed furnishing of return, as may be prescribed and as per Rule 7 of the Service Tax Rules, 1994, every assessee shall submit a half-yearly return in Form 'ST-3' or 'ST-3A', as the case may be, along with a copy of the Form TR-6, in triplicate for the months covered in the half yearly return by the 25<sup>th</sup> of the monthly following the particular half-year.

35. From the foregoing discussion, it has come to light that the said service provider has contravened the provisions of:

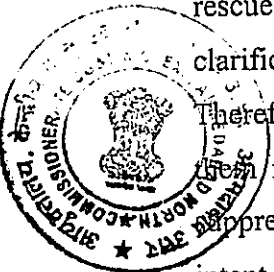
(i) Section 66 and Section 68 of the Finance Act, 1994 read with Rule 2(l)(d)(v) and Rule 6 of the Service Tax Rules, 1994 in as-much-as they have failed to pay the service tax amounting to Rs. 96,59,827/- (includes education cess and secondary & higher education cess) for the period from 2011-12 to 2014-15 in respect of "Transport of Goods by Road service".

(ii) Section - 69 of the Finance Act, 1994 read with Rule - 4 of the Service Tax Rules, 1994 in as much as they failed to take service tax registration within a period of 30 days on which the service tax under Section - 66 of the Finance Act, 1994 is levied i.e., service tax is levied from January, 2005 onwards but they have not obtained service tax registration.

(iii) Section - 70 of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value received by them and to file ST-3 returns for the said services provided / received during the period from 2011-12 to 2014-15.

36. In view of the contravention as discussed above, I hold that the noticee have committed suppression of the facts and contravention of the aforesaid provisions with intent to evade payment of service tax in as much as they had not taken the service tax registration and not paid appropriate service tax on GTA services. The noticee cannot plead ignorance of law to their rescue as they are supposed to know all relevant provisions. They have never sought for any clarification in the matter from the department, which implies the intention to evade tax. Therefore, the said service tax of Rs. 96,59,827/- not paid by the noticee is to be recovered from them in terms of proviso to Section 73(1) of the Finance Act, 1994. I hold that they have suppressed the facts from the department and contravened the provisions of service tax laws with intent to evade payment of service tax.

37. I hold that interest is also required to be recovered from the service provider at the



applicable rate time being in force as per Section 75 of the Finance Act 1994.

38. All these acts of contravention of the provisions of Section 66, 68, Section 69 and Section 70 of the Finance Act, 1994 read with Rule 4, Rule 6 and Rule 7 of the Service Tax Rules, 1994 the noticee is punishable under the provisions of :-

- (i) Section 77(1) and Section 77(2) of the Finance Act, 1994 for the failure to make an application for service tax registration and to file prescribed service tax return.
- (ii) Section 78 of the Finance Act, 1994 for suppressing the facts that they are providing taxable services from the Department with intent to evade payment of service tax total amounting to Rs. 96,59,827/- during the period from 2011-12 to 2014-15.

39. As per sub section 1 ( ii ) of Section 78 (1) of Finance Act, 1994 where any tax as determined under sub-section (2) of section 73 and the interest payable thereon under section 75(1) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such tax, the amount of penalty liable to be paid by such person shall be 25% (twenty five per cent) of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified.

40. In view of the above discussion, I pass the following orders:-

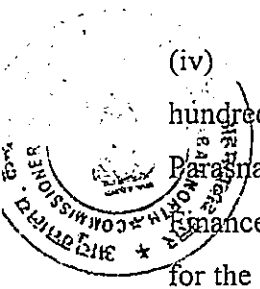
#### ORDER

(i) I confirm Services Tax amounting to Rs. 96,59,827/- ( Rupees Ninety Six Lakhs Fifty Nine Thousand Eight Hundred Twenty Seven only) (including education cess and secondary & higher education cess ) under the "Transport of Goods by Road" service for the period from 2011-12 to 2014-15 under proviso to Section 73(1) of the Finance Act, 1994. Service Tax amounting to Rs. 5,53,637/- (Rupees five lakhs fifty three thousand six hundred thirty seven only) paid by the noticee willingly, during the course of investigation is ordered to be appropriated against Service Tax liability.

(ii) I order that the interest be charged at the applicable rate on the Service Tax of Rs.96,59,827/- under section 75 of the Finance Act, 1994 as amended and during the course of investigation, the interest amounting to Rs. 1,04,051/- paid by him willingly for the period 2011-12 and 2014-15, is ordered to be appropriated against the interest liability.

(iii) I impose a penalty of Rs.10,000/- (Rupees ten thousand only) on M/s. L. G. Chaudhary, M-6/64, Gokul Apartment, Near Parasnagar Bus Stop, Sola Road, Naranpura, Ahmedabad 380 063 under Section 77 (1) and Section 77 (2) of the Finance Act, 1994.

(iv) I impose a penalty of Rs.96,59,827/- (Rupees ninety six lakhs fifty nine thousand eight hundred twenty seven only) on M/s. L. G. Chaudhary, M-6/64, Gokul Apartment, Near Parasnagar Bus Stop, Sola Road, Naranpura, Ahmedabad 380 063 under Section 78 of the Finance Act, 1994 as amended and the penalty amounting to Rs. 59,569/- paid by him willingly for the period 2011-12 and 2014-15, is ordered to be appropriated against the penalty payable by





them.

(v) I do not impose any penalty on them under Section 69 of the Finance Act, 1994 read with Rule - 4 of the Service Tax Rules, 1994 as they had already registered with Service Tax.

(vi) I impose a penalty of Rs.20,000/- on M/s. L. G. Chaudhary, M-6/64, Gokul Apartment, Near Parasnagar Bus Stop, Sola Road, Naranpura, Ahmedabad 380 063 under Section 70 of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994.

(vii) I further Order that in the event the entire amount demanded as above is paid within thirty days from the receipt of this Order along with applicable interest, the amount of penalty liable to be paid by them shall be 25% (twenty five per cent) of the penalty imposed at Sr. No.(iv) above, subject to the condition that such reduced penalty is also paid within the said period of 30 days (thirty days) in terms of clause (ii) of Section 78(1) of the Finance Act, 1994.

41. The Show Cause Notice No.STC/4-42/O&A/L.G/Prev/2016-17 dated 03.01.2017 issued to M/s.L.G.Chaudhary, M-6/64, Gokul Apartment, Near Parasnagar Bus Stop, Sola Road, Naranpura, Ahmedabad 380 063, is disposed-off in the above manner.



(Maru J. Pathi)  
Joint Commissioner  
CGST & C.Ex, Ahmedabad North

F.No.STC/4-42/O&A/L.G/Prev/2016-17

Dtd. 04.01.2021

By Registered Post A.D/Hand Delivery.

To  
M/s. L. G. Chaudhary,  
M-6/64, Gokul Apartment,  
Near Parasnagar Bus Stop,  
Sola Road Naranpura,  
Ahmedabad-380063.

Copy to :

- 1) The Commissioner, CGST & Central Excise, Ahmedabad North.
- 2) The Deputy/Assistant Commissioner, CGST & Central Excise, Division-VII, Ahmedabad North
- 3) The Superintendent, CGST & Central Excise, AR-I, Division-VII, Ahmedabad North.
- 4) Guard File. ✓

