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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO.STC/15-36/OA/2021

DIN :20220164WT0000111A31

आदेश की तारीख /

Date of Order : 11.01.2022

जारी करने की तारीख /

Date of Issue : 11.01.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव /

UPENDRA SINGH YADAV

आयुक्त /

COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-50/2021-22

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

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

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

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

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

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

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

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

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

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

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

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

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

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

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

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

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

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

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

-कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice no. STC/15-36/OA/2021 dated 23.04.2021 issued to M/s Saroj Vasudev Agrawal, 2, Textile Tech Society, Ashram Road, Gandhi Bridge Corner, Ahmedabad 380009

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- SD /2021-22**

M/s Saroj Vasudev Agrawal, 2, Textile Tech Society, Ashram Road, Gandhi Bridge Corner, Ahmedabad 380009, were issued SCN No. STC/15-36/2021 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad..

**BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S SAROJ VASUDEV AGRAWAL ARE AS FOLLOWS:**

M/s Saroj Vasudev Agrawal, 2, Textile Tech Society, Ashram Road, Gandhi Bridge Corner, Ahmedabad 380009, (hereinafter referred to as the 'Assessee' for the sake of brevity) are engaged in providing taxable services, and are holding Service Tax Registration No. ABRPA0269KSD002.

2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" in respect of M/s Saroj Vasudev Agrawal was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 & 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the records available with the Divisional office of Division-VII and on going through the Third Party Data provided by CBDT of the said assessee for the F.Y.2015-16 & 2016-17, the total sales of service (Value from ITR/ Form 26) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16 & 2016-17. Therefore, it appeared that the said assessee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for the F.Y. 2015-16 & 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16 & 2016-17. The difference in value as observed for FY 2015-16 & 2016-17 was as under:

Sr.No	F.Y.	Taxable value as per ST3 returns (in Rs.)	Gross Receipts from services(Value from ITR/26AS) (in Rs.)	Difference between value of services from ITR/26AS and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax Short Paid (in Rs.)
1	2015-16	0/-	9,37,47,045	9,37,47,045	1,35,93,322
	2016-17	0/-	12,03,31,660	12,03,31,660	1,80,49,749
			TOTAL	21,40,78,705	3,16,43,071

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. 3,16,43,071/- (including Cess ) on the differential value of Rs. 21,40,78,705/-.

4. As per Section 68 of the Finance Act, 1994, every person liable to pay service tax shall pay service tax at the rate specified in Section 66B in such manner and within such period which

is prescribed under Rule 6 of the Service tax Rules 1994. Therefore, it appeared that the assessee had short paid the service tax as tabulated above.

5. As per the provisions of Section 70 (Furnishing of Returns) of the Finance Act, 1994:

“(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.

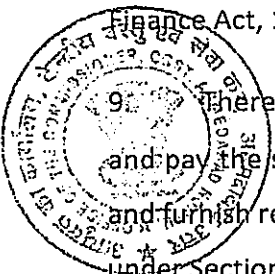
(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.”

6. As per the provisions of Section 73(1) of the Finance Act, 1994 where any Service Tax has not been levied or paid or has been short levied or short paid by reasons of willful mis-statement or suppression of facts with intent to evade payment of Service Tax, the Central Excise Officer may within five years from the relevant date, serve a notice on the person chargeable with Service Tax which has not been levied or paid or which has been short levied or short paid requiring him to show cause why he should not pay the amount specified in the notice.

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

8. From the documentary evidence available at the relevant time, it appeared that the said assessee had failed to pay/short paid/deposit Service Tax to the extent of Rs. 3,16,43,071/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year FY 2015-16 & 2016-17 vis-à-vis their ITR/Form 26AS. The said short payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 3,16,43,071/- (including Cess) worked out on value of Rs. 21,40,78,705/- and therefore, Service Tax was required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

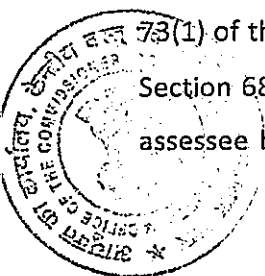
Therefore, it appeared that the said assessee had (i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994; (ii)



Failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994; (iii) Failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have not paid service tax as worked out in the Table for Financial Year 2015-16 & 2016-17; (iv) All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (vi) The said assessee also appeared liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994; (vii) The said assessee also appeared to have contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

10. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value, that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 & 2016-17. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 3,16,43,071/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the assessee which were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

11. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (as such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appeared that the said assessee had short paid/not-paid Service Tax of Rs. 3,16,43,071/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 ibid not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee had suppressed the facts from the department and had contravened the provisions



with an intent to evade payment of Service Tax. The said assessee had not discharged their Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.

12. No data was shared by the CBDT, for the period 2017-18 (upto June-2017) and the assessee had failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of issuance of SCN it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

Unquantified demand at the time of issuance of SCN.

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issue by the CBEC,

New Delhi clarified that:

*'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'*

13. The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2017-18 (upto June-2017) had not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. The assessee had also failed to provide the required information even after the issuance of letters and summons from the Department and the assessable value for the year 2017-18 (upto June-2017) was not ascertainable at the time of issuance of this Show Cause Notice. If any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action was to be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period 2017-18 (upto June-2017) covered under subject Show Cause Notice, was to be recovered from the assessee.

14. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax and they appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of Service Tax as discussed in the foregoing paras and therefore, the Service Tax amounting to Rs. 3,16,43,071/- (inclusive of Cess) not paid was required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.



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

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

17. The pre-SCN consultation with the Assessee was fixed on 23.04.2021, but the same was not attended by the assessee.

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

- (i) Service Tax of Rs. 3,16,43,071/- short/ not paid, should not be confirmed and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (ii) Interest at the appropriate rate should not be demanded and recovered from them under Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994.
- (iv) Penalty under the provisions of Section 77(2) of the Finance Act, 1994, should not be imposed on them for their failure to assess their correct Service tax liability and failure to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules 1994.

19. **DEFENCE REPLY:**

The assessee vide letter dated 14.05.2021 and 16.12.2021 submitted their written submission, wherein they interalia have stated that:

They had income from Transportation of Goods, Rent Income and Other Income during FY 2015-16 and 2016-17.

Goods Transport Agency Service falls within the purview of Notification 30/2012-ST dated 20.06.2012. The person specified thereunder are liable to pay service tax on receipt of

service. They stated that they have provided GTA services to those persons only. Therefore, the service tax was to be paid on Reverse charge basis by the service receiver. They were not liable to pay service tax on such income.(SIC)

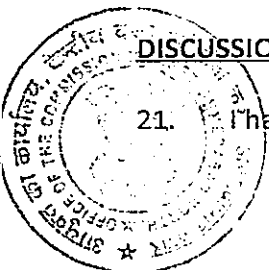
- They further added that they have provided services of clearing and Forwarding services representing as Labour services in Financial statement which is incidental service to main service of Transportation. It is a bundled service. As per Section 66F, in case of bundle service which gives such bundle its essential character, taxability of bundles service will be determined on the basis of service which gives the bundle its essential character. Hence, as main service is exempt from the purview of service tax, incidental service of C&F is as well exempt from service tax. They are not liable to pay service tax on such income.(SIC)
- They have rental income in FY 2015-16 and 2016-17, and they have paid service tax on it.
- They have other income as interest income, kasar Income which are exempt under 66D in Negative list of service tax.
- They stated they do not agree with gross receipt from services (value from ITR/ 26AS) disclosed in the SCN for FY 2015-16 and 2016-17, because they have not earned such gross receipt in the relevant financial year as well as the receipt disclosed in SCN has not been in agreement with Financial Statement /26AS of assessee in the relevant financial years.
- They stated the SCN alleges that ST-3 submitted by the assessee has Nil value, which is factually not correct. They have paid service tax on rent income which has been shown in their ST-3 Returns.
- They stated that they have fully paid service tax at prescribed rate on income liable to service tax, they have also assessed their liability properly and have paid service tax. Therefore, they have not contravened any provisions of section 66, 68 and 70 of the Finance Act, 1994. Since, they have paid service tax within prescribed time, they are not liable to pay interest under Section 75 of Finance Act, 1994.
- Lastly, they have requested to drop the proceedings in view of their submissions.

#### PERSONAL HEARING:

20. Personal Hearing was granted to the assessee on 15.12.2021. Shri Dilip U Jodhani, Chartered Accountant appeared on behalf of the noticee. He made reference to the noticee's reply dated 14.05.2021. He stated that the majority of their income is on account of GTA services, thus exempt. He has requested to drop the proceedings in the interest of justice. He also submitted that the noticee had paid the entire service tax dues except for those services which are exempt.

#### DISCUSSION AND FINDINGS:

21. I have carefully gone through the facts of the case and records available in the case file,







Carting" and "Transporters" in Form 3CD. The profit and Loss account annexed to the audit report shows the source of income to be from Carting, Freight and Labour Income, details of which are given below. As per Section 44AB, a specified person shall get his accounts audited by independent Chartered Accountant and submit the report duly signed and verified to the Income tax department. It is seen from Form 26AS, that the assessee has been paid amount by M/s. Ultratech Cement Limited and TDS has been deducted by M/s. Ultratech Cement under Section 194C and 194I of the Income Tax Act. As per the section 194C and 194I, the person paying the sum to the contractor for "work" as per the contract and person paying the "Rent" in respect to immovable property, requires to deduct the TDS. Therefore, it is apparent that the assessee has been paid the amount by M/s. Ultratech Cement Limited for Contractual service and renting of the immovable property. The details of amount paid are given below in the table. On perusing the sample invoices, it is seen that the same have been raised for Transportation of Cement. Therefore, from the above documentary evidences produced before me, I find that the assessee has income from providing services of Transportation of goods, Rent Income and Labour Income as has been stated by the assessee in their reply. The other income is from the interest / kasar account, which fall within the negative list of services. Hence, other income is not liable to service tax as such. As regard service tax liability of renting of immovable property, I find from the ST-3 Returns and Income as appearing in Form 26AS, that the assessee has paid appropriate service tax on Rental Income.

26. I also find that the assessee has contended that the income mentioned in the SCN does not show correct information and the figures are not in agreement with their financial statements. Therefore, the details of income appearing in the financial statements/ records of the assessee, as mentioned in the subject SCN and as disclosed in the ST-3 returns are tabulated below for ease of reference. On comparing the income mentioned in SCN and Form 26AS, I find that the income mentioned in the SCN is exactly double of income appearing in Form 26AS (under 194C and 194I).

(Amount in Rs.)

		FY 2015-16	FY 2016-17
1	Taxable value as per SCN	93747045	120331660
2	Total income as per Profit & Loss Account (from sale/operations)	54535003	59176339
	(i) Cement Carting	77010	0
	(ii) Freight	54133689	58839697
	(iii) Labour Income	324304	336642
	Other Income	7814	11302
3	Amount paid/credited as per FORM 26AS	46873521	60165830
	Under 194C, By Ultratech Cement Limited	45978817	59165532
	Under 194I, By Ultratech Cement Limited	894704	1000298
	Gross value of service as per ST-3		
	Renting of Immovable Property Service	894708	1080712



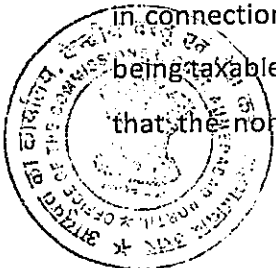
27. I find that the aforementioned records are prepared in a statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and they can also call additional information required for verification so as to arrive at a fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are maintained in the manner as provided by statute and give a true and fair view on the affairs of the company. The department has not adduced any other documents other than the data shared by the CBDT, therefore, I have no option other than to accept the information of nature of business/source of income of the assessee as appearing in their financial records and as produced by them, to be true and fair. Therefore, relying on the Profit and Loss accounts as produced by the assessee, I find that they have the following incomes which are liable to service tax.

(Amount in Rs.)

Income from Provision of services	FY 2015-16	FY 2016-17
Total Income as per Profit & Loss Account (from sale/operations)	54535003	59176339
(i) Cement Carting	77010	0
(ii) Freight	54133689	58839697
(iii) Labour Income	324304	336642

28. The assessee has submitted the copy of ledger Account and sample invoices in respect of income mentioned at (ii) of the above table, according to which, I find that they have provided Goods Transport Services to M/s. Ultratech Cement Limited only. In this case, I find that M/s. Ultratech Cement Limited have paid the freight to the assessee in connection with the GTA services received by them. M/s. Ultratech Cement Limited being a body corporate company falls within the category of persons specified paying the freight, and being the recipient of GTA Service by such person, they are liable to pay service tax under Reverse Charge Mechanism as provided under Notification No. 30/2012-ST dated 20.06.2012 issued under Section 68(2) of Finance Act.

29. The assessee has not provided any ledger account or invoices in respect of incomes mentioned at Sr. (i) and (iii) of the table above. The assessee has admittedly stated that they are in connection with the transportation of goods, therefore, there is no doubt of these services being taxable service. In respect of income under the head of "Cement Carting" (Sr.No. i), I find that the nomenclatures suggests it to be coming from Transportation of goods i.e. Goods



Transport Agency Service. In absence of any documentary evidence, I find that the case of the assessee is not proved that the recipient of service is liable to pay service tax in this case. The assessee has also contended that the labour income is also in relation to transportation of goods, however, the assessee has not produced any evidence in this regard, the sample invoices produced does not show such part therein, thus, it can not be said to be in relation to transportation of goods. In view of this, I find that the assessee has failed to prove their case and thus, they are liable to pay service tax on income mentioned at Sr. (i) and (iii) of the table above. The service tax liable to be paid by the assessee, after granting abatement available to the assessee in respect of GTA service, in terms of Sr. No. 7 of table provided in Notification No. 26/2012-ST dated 20.06.2012, has been worked out as under:

(Amount in Rs.)

	Description	FY 2015-16	FY 2016-17
	Cement Carting	77010	0
	Abatement 70%, applicable to GTA service	53907	0
A	Taxable service	23103	0
	Labour Income	324304	336642
	Abatement : NIL	0	0
B	Taxable service	324304	336642
C	Total Taxable Service (A+B)	347407	336642
	Service Tax rate (%)	14.5	15
	Service Tax Payable inclusive of cess	50374	50496
	<b>Total Service Tax Payable</b>	<b>100870</b>	

30. Based on above facts and circumstances, discussion and documentary documents available on records, I hold that the assessee is liable to pay the service tax amounting to Rs. 1,00,870/- out of the total demand of Service Tax of Rs. 3,16,43,071/- as per the notice. The remaining amount of demand of Service tax of Rs. 3,15,42,201/- is thus liable to be dropped as it is not sustainable. Therefore, I find that the assessee has failed to pay service tax amounting to Rs. 1,00,870/- under Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules 1994. Similarly, I find that the assessee has failed to assessee their correct service tax liability, they have failed to disclose the correct taxable income in their ST-3 Returns, thus, the assessee has failed to file correct service tax returns under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules 1994. I also find that Section 75 of Finance Act, 1994 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate. I thus hold that the assessee is also liable to pay the interest on the demand of service Tax of Rs. 1,00,870/-.

From the facts and discussion aforementioned, I find that the assessee has failed to assessee and discharge their service tax liability correctly and has failed to file correct service tax returns. The assessee has declared rental income only in their ST-3 Returns filed with the



department, they have not disclosed taxable income from Cement Carting, Labour Charges, and Transportation of Goods. Therefore, I find that the assessee has failed to disclose the correct taxable value in their ST-3 Returns. Therefore, I find that the assessee has mis-stated and suppressed the materials fact from the department, which displays the intention of the assessee to evade the payment of service tax. Moreover, the government has from the very beginning placed full trust on the assessee, accordingly measures like self assessment etc. based on mutual trust and confidence are in place. Further, the assessee are not required to maintain any statutory or separate records under the Excise / service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for purpose of service tax law. Moreover, returns are also filed online without any supporting documents. All these operate on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provisions is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is evident that the such facts of contravention and non payment of service tax, as discussed earlier, on the part of the assessee only came to the notice of the department when the audit was initiated by the department. In the case of *Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241*, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In *2009 (23) STT 275, in case of Lalit Enterprises v CST Chennai*, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under the proviso to Section 73(1) of Finance Act, 1994. By invoking the extended period of 5 years, the demand of Service Tax of Rs. 1,00,870/- along with applicable interest under Section 75 of the Finance Act, 1994, is justified. And for the same reasons, the said assessee is also liable for penal action under the provisions of Section 78 of the Finance Act, 1994. As regards, proposal of imposition of penalty under Section 77(2) of the Finance Act, 1994, I find that the assessee has failed to disclose the taxable value of GTA services in the ST-3 Returns, they have also failed to assessee their service tax liability correctly, thus, they have rendered themselves liable to penal action under Section 77(2) of the Finance Act, 1994.

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


#### ORDER

I confirm the demand of Service tax amounting to Rs. 1,00,870/- out of total demand of Service tax of Rs. 3,16,43,071/- and order to recover the same from the assessee under the proviso to Section 73(1) of the Finance Act, 1994. I also drop the

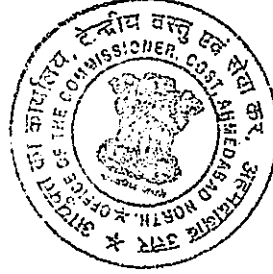


remaining amount of demand of service tax of Rs. 3,15,42,201/- as the same is found to be not sustainable and not correct.

- (ii) I order to charge interest and recovery of the same from them under the provisions of Section 75 of the Finance Act, 1994 on the demand confirmed at (i) above;
- (iii) I impose penalty of Rs. 1,00,870/- on them under the provisions of Section 78(1) of the Finance Act, 1994 on the demand at (i) above;
- (iv) I order to impose the penalty of Rs. 10,000/- on them under Section 77(2) of the Finance Act, 1994 for failure to assess their service tax liability and to file correct ST-3 returns under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules 1994.

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

By Regd. Post AD./Hand Delivery  
 F. No. STC/15-36/OA/2021



Date: 11.01.2022.

To  
 M/s Saroj Vasudev Agrawal,  
 2, Textile Tech Society,  
 Ashram Road, Gandhi Bridge Corner,  
 Ahmedabad 380009

Copy for information to:

- 1 The Principal Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
- 2 The Assistant Commissioner, CGST & C.Ex., Division-VII, Ahmedabad North.
- 3 The Superintendent, Range-I, Division-VII, Ahmedabad North.
- 4 The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- 5 ✓ Guard File.