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(1st Floor)
Navrangpura, Ahmedabad-380009

फ़ोन नंबर./ PHONE No.: 079-2754 4599 फैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO.STC/15-53/OA/2020

DIN: 20220164WT000012171F

आदेश की तारीख़ / Date of Order : 11.01.2022

जारी करने की तारीख़ / Date of Issue : 18.01.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-52/2021-22

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

This copy is granted free of charge for private use of the person(s) to whom it is sent.

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

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near 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 हैंचार प्रतियों में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से क) प्रतियाँ संलगन की जाएंगीम एक प्रमाणित प्रति होगी।

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

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

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

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

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

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

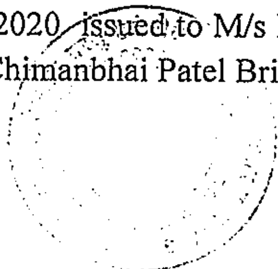
The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

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

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

विषयः -कारण बताओ सूचनाः

Subject- Proceedings initiated vide Show Cause Notice no. STC/15-53/OA/2020 dated 28.09.2020 issued to M/s Prince Transport, Gayatri Complex, 108, Near Power House, Near Chimanbhai Patel Bridge, Sabarmati, Ahmedabad-380005



ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 52 /2021-22

M/s. Prince Transport, Gayatri Complex, 108, Near Power House, Near Chimanbhai Patel Bridge, Sabarmati, Ahmedabad-380005, were issued SCN No. STC/15-53/OA/2020 dated 28.09.2020 by the Principal Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad..

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S PRINCE TRANSPORT ARE AS FOLLOWS:

M/s. Prince Transport, Gayatri Complex, 108, Near Power House, Near Chimanbhai Patel Bridge, Sabarmati, Ahmedabad-380005 (hereinafter referred to as the 'Assessee' for the sake of brevity) are engaged in providing taxable services, and are holding Service Tax Registration No. AAPFP8949QSD001.

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. Prince Transport was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 to 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

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 to 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 to 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 to 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16 to 2016-17. The difference in value as observed for FY 2015-16 to 2016-17 was as under:

Sr. No.	F.Y.	Value as per B/S, P&L, Form 26AS, Or Total Sale of Service as per ITR	Total Gross Value provided (STR)	Value difference in ITR and STR	Resultant Service Tax short paid (including cess)
1	2014-15	9,04,79,124	4,28,64,127	4,76,14,997	58,85,214
2	2015-16	9,75,07,305	2,34,72,326	7,40,34,979	1,07,35,072
3	2016-17	9,11,88,656	1,34,87,597	7,77,01,059	1,16,55,159
TOTAL →		27,91,75,085	7,98,24,050	19,93,51,035	2,82,75,445

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. 2,82,75,445/- (including Cess) on the differential value of Rs. 19,93,51,035/-.

4. Letters dated 12.02.2018, 03.05.2018, 30.07.2019 and 13.07.2020 were issued to the assessee to explain the difference and to submit documents in support thereof viz. Balance Sheet, Profit and Loss Account, Income Tax Return, Form 26AS, etc. However, the assessee neither submitted the details nor submitted explanation for the same. Therefore, the service tax liability of the assessee was worked out solely on the basis of income mentioned in ITR /Form 26AS, which were shared by Income tax

Department. The said income was considered as the Total Taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.

5. 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.

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

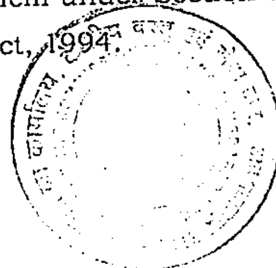
"(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed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

7. 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.

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

9. 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. 2,82,75,445/- (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 to 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. 2,82,75,445/- (including Cess) worked out on value of Rs. 19,93,51,035/- 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.



10. 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 to 2017-18 (upto June 2017); (iv) by 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 made themselves liable to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (vi) also made themselves 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) contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

11. 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 to 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. 2,82,75,445/-. 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.

12. 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. 2,82,75,445/- 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.

13. 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 FY 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."

14. The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the FY 2016-17 and 2017-18 (upto June-2017) had not been disclosed thereof by the Income Tax Department, nor the reason for the said 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 FY 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 FY 2016-17 and 2017-18 (upto June-2017) covered under subject Show Cause Notice, was to be recovered from the assessee.

15. 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. 2,82,75,445/- (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.

16 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.

17. 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.

18. Therefore, Show Cause Notice dated 28.09.2020 was issued to the assessee asking them as to why:

(i) Service Tax of Rs. 2,82,75,445/- 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) Service tax liability for the FY 2017-18 (upto June 2017) to be ascertained, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.

(iii) Interest at the appropriate rate should not be demanded and recovered from them under Section 75 of the Finance Act,1994;

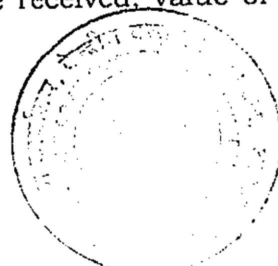
(iv) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994.

(v) Penalty under the provisions of Section 77(1) and 77(2) of the Finance Act, 1994, should not be imposed on them.

19. **DEFENCE REPLY:**

The assessee vide their letter dated 18.02.2021 submitted their written submission, wherein they interalia have stated that:

- They had provided Cab service and medical ambulance service.
- That as per Sr. Mo. 9 of the Notification No. 26/2012-ST dated 20.06.2012 abatement of 60% was available to them for providing Rent-a-Cab service i.e. service of renting of any motor vehicle designed to carry passengers. The service tax was payable only on 40% of the value of Rent-a-Cab service.
- They provided the details of rent income received, value of Taxable service and abatement available to them as under:



Financial Year	Rent Income	Abatement	Taxable Service	
2014-15	90479124	47614997	42864127	Exempt Ambulance service
2015-16	97507305	74034979	23472326	
2016-17	91188656	77701059	13487597	
Total	279175085	199351035	79824050	

- They stated that the values of service shown in the Service tax returns were abated value and not the gross value.

PERSONAL HEARING:

20. Personal Hearing was granted to the assessee on 29.09.2021, 26.10.2021, 18.11.2021, 15.12.2021 and 07.01.2022 to defend their case. Out of abovementioned letters, three letters were returned back by the postal authority with remark "refused", in two case, one with remark "left". The assessee was also sent letter through mail ID VISAMO.2008 @Gmail.com on 23.11.2021, informing them to appear for PH on 15.12.2021. The assessee neither attended the Personal hearing nor have they responded to letters sent to them. Therefore, it appears that the assessee is not interested in defending their case in person.

DISCUSSION AND FINDINGS:

21. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply submitted vide letter dated 18.02.2021 and documents submitted with reply.

22. I find that the assessee has failed to appear for Personal Hearing, inspite of being asked to do so repeatedly as mentioned in Para-20 above for defending their case. Under the circumstances, left with no recourse, I take up the matter for adjudication proceeding ex-parte on the basis of records/documents available since ample opportunities have been given to the assessee to attend and defend their case in person.

22.1 In this connection, I find that Hon'ble Supreme Court, High Courts and Tribunals have, in several judgments/decision held, that *ex-parte* decision will not amount to violation of principles of Natural Justice.

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

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

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

(Emphasis Supplied)"

b) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T.

118 (Cal.) in Civil Rule No. 128 (W) of 1961, decided on 13-9-1963, has observed that;

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

(Emphasis supplied)"

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

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

(Emphasis Supplied)"

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

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

(Emphasis Supplied)"

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

"Natural justice — Opportunity of personal hearing not availed of—Effect — Confiscation order cannot be held mala fide if passed without hearing.

- If the petitioner was given an opportunity of being heard before the confiscation order but did not avail of, it was not open for him to contend subsequently that he was not given an opportunity of personal hearing before an order was passed. [para 28]

(Emphasis Supplied)"

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

"7. *Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of*

audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."

23. On going through the SCN, I find that basically the essence of the case is that data of Sales /Gross receipt from services/ Total Amount Paid/Credited under 194C, 194H, 194I, 194J" were shared by the CBDT for FY 2014-15 to 2016-17. The difference in taxable value was worked out after comparing the income declared in ITR /Form 26AS vis-à-vis taxable value disclosed in ST-3 Returns. The difference of Rs. 19,93,51,035/- in value was observed for FY 2014-15 to 2016-17, therefore, it appeared that the assessee had short paid the service tax of Rs. 2,82,75,445/- on such differential value, for providing the taxable service. Therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 2,82,75,445/- on the differential taxable value of Rs. 19,93,51,035/- for the Financial Year 2014-15 to 2016-17 under the proviso to section 73(1) of Finance Act, 1994 or not.

24. I find that the assessee in their aforementioned reply dated 18.02.2021 have stated that the had provided the Rent-A-Cab Service and Medical Ambulance Service. The assessee has also contended that the tax was payable on 40% of the value of service in case of Rent-a-Cab Service as 60% abatement in value of service was available to them under Notification No. 26/2012-ST dated 20.06.2012. The assessee has stated that the value shown in ST-3 Returns were abated value. They have supplied copies of Profit and Loss Account, Balance Sheet, Form 3CB/3CD, Some ledgers accounts which are not relevant to the matter (other than Income Ledgers) for 2014-15 to 2016-17 with their defence reply. They have provided the details of rent income, value of taxable service and abatement claimed as follows:

Financial Year	Rent Income	Abatement	Taxable Service	
2014-15	90479124	47614997	42864127	Exempt Ambulance service
2015-16	97507305	74034979	23472326	
2016-17	91188656	77701059	13487597	
Total	279175085	199351035	79824050	

25. I observe that after introduction of new system of taxation of services in negative list regime, any activity carried out by a person for another person for a consideration is taxable service except those services specified in the negative list or exempt list by virtue of mega exemption.

The relevant text to Section 65B (44) of the Finance Act, 1994 ('Act') reads as under:

"'service' means any activity carried out by a person for another for consideration, and includes a declared service""

'Taxable Service' defined under Section 65B (51) of the Act reads as under:

""taxable service" means any service on which service tax is leviable under section 66B"

26. I find that there is no dispute regarding provision of service and taxability of the same. The assessee, in their defence reply, has admittedly mentioned the provision of service to the tune of Rs. 27,91,75,085/- by them. The same value is found to be tallying with value of income as alleged in the SCN for the period from 2014-15 to 2016-17.

27. As per ST-3 returns for the period FY 2014-15 to 2016-17, the details of service provided, abatement and exemption claimed by the assessee are as under:

As per ST-3 Returns — Service Description : Rent-a-Cab Scheme Operator service					
FY	Period	Gross Value of service provided	Abatement Claimed	Exemption Claimed	Net Taxable Value
2014-15	Apr-Sep	8510573	5106344	3404229	0
	Oct-Mar (Partial RCM)	24947502 + 9406052	14968502	14682026	4703026
	Total -A	42864127	20074846	18086255	4703026
2015-16	Apr-Sep	12757898	6550966	0	6206932
	Oct-Mar	10714428	5412524	0	5301904
	Total -B	23472326	11963490	0	11508836
2016-17	Apr-Sep	9182569	5509541	0	3673028
	Oct-Mar	4305028	2583018	0	1722010
	Total -B	13487597	8092559	0	5395038
Grand Total	(A+B+C)	79824050	40130895	18086255	21606900

28. I find that the assessee has contended that the abatement of 60% value of taxable service was applicable to the service of Rent-a-cab service and tax was payable on 40% of the value under Sr. No. 9 of Notification 26/2012-ST dated 20.06.2012. Further, they have stated that they have shown the abated value in the ST-3 Returns. If the argument of the assessee is considered to be true, then they were required to pay service tax on the Taxable Value of Rs. 11,16,70,034/- i.e. on 40% of the Gross Value of Service provided by them. On perusing the ST-3 data, I find that the assessee has paid the service tax on the value of service of Rs. 2,16,06,900/, which is very much less than the abated value of Rs. 11,16,70,034/- as mentioned above. Similarly, the abatement as claimed in the reply is also not found to be tallying with 60% of the Gross value of service provided.

29. The assessee has not provided any working of abatement claimed from taxable value of service provided by them. Their claim of abatement is without any supporting documents or evidence. They have also not explained how the value of service, abatement/ claimed and net taxable service had been arrived at in the ST-3 Returns and Details provided in their reply . As discussed hereinabove, any activity in lieu of the consideration is taxable service unless it is shown/proved to be covered within the exempt category of service or negative list of service. In the instant case, it is evident from the ITR/Form 26AS and P&L accounts, that the assessee has received the consideration from the sale of services, hence, the service tax is leviable on such income.

Further, in absence of any documentary evidence, the benefit of the abatement under Notification No. 26/2012-ST can not be extended on the differential value of service as pointed out in the SCN. Under such circumstances, the reply of the assessee is not acceptable for the reason that the same is not supported by any concrete documentary evidences. Accordingly, I find that the assessee has failed to substantiate their case with any tangible/ concrete evidence. Thus, I am left with no option but to hold that the assessee is liable to pay service tax of Rs. 2,82,75,445/- as sought to be demanded in the subject SCN on the differential value of service of Rs. 19,93,51,035 /- for the period from FY 2014-15 to 2016-17.

30. Based on above facts and circumstances, discussion and documents available on records, I hold that the assessee is liable to pay the service tax amounting to Rs. 2,82,75,445/- on the differential value of service of Rs. 19,93,51,035 /- as per the subject SCN for the period from FY 2014-15 to 2016-17. By not paying the service tax to the tune of Rs. 2,82,75,445/-. I find that the assessee has contravened the provisions of Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of service provided by them; the assessee has also contravened the provisions of Section 66B and 68 of the Finance Act, 1994 read with Rule 2 & 6 of the Service Tax Rules, 1994 in as much as they have failed to pay service tax correctly at the appropriate rate within such time and such manner as prescribed under the said provisions; I find that the assessee has also contravened the provisions of Section 70 of Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994 in as much as they have failed to assess their correct service tax liability and have failed to disclose the correct taxable income in their ST-3 Returns. 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. 2,82,75,445/-.

31. From the facts and discussion aforementioned, I find that the assessee has failed to assess and discharge their service tax liability correctly and has failed to file correct service tax returns. The assessee has short declared the value of taxable service provided in their service tax returns. Therefore, I find that the assessee has mis-stated and suppressed the materials fact from the department, which clearly and unambiguously 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 have been put 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 inquiry 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. 2,82,75,445/- 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(1) & 77(2) of the Finance Act, 1994, I find that the assessee has failed to provide the information/ documents sought by the department and has also failed to assess their service tax liability correctly, thus, they have rendered themselves liable to penal action under Section 77(1) & 77(2) of the Finance Act, 1994.

32. As regards the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against 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 and the service tax liability was to be recoverable from the assessee accordingly. Since, the assessee had not provided any details/information/ documents for the F.Y.2017-18 (upto June,2017) or reason for the non disclosure was made to know to the department, I refrain myself from entering in to the said period to determine liability of assessee for service tax.

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

ORDER

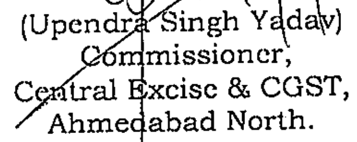
(i) I confirm the demand of Service tax amounting to Rs. 2,82,75,445/- (Rupees Two Crore Eighty Two Laks Seventy Five Thousand Four Hundred Forty Five only) and order to recover the same from the assessee under the proviso to Section 73(1) of the Finance Act, 1994

(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. 2,82,75,445/- (Rupees Two Crore Eighty Two Laks Seventy Five Thousand Four Hundred Forty Five only) on them under the provisions of Section 78(1) of the Finance Act, 1994.

(iv) I order to impose penalty of Rs. 10,000/- on them under Section 77(1) of the Finance Act, 1994 for failure to provide the information/ documents sought by the department.

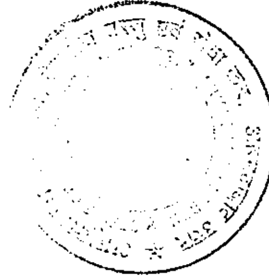
(v) I order to impose penalty of Rs. 10,000/- on them under Section 77(2) of the Finance Act, 1994 for failure to assess their service tax liability and to file correct ST-3 returns under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules 1994.



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

By Regd. Post AD./Hand Delivery
F. No. STC/15-53/OA/2020

Date: .01.2022.



To
M/s. Prince Transport,
Gayatri Complex, 108,
Near Power House,
Near Chimanbhai Patel Bridge,
Sabarmati, Ahmedabad-380005

Copy for information to:

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