


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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-64/OA/2020

DIN-20220264WT0000874427

आदेश की तारीख / Date of Order :31.01.2022  
जारी करने की तारीख / Date of Issue :01.02.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV  
आयुक्त / COMMISSIONER

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-58/2021-22

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

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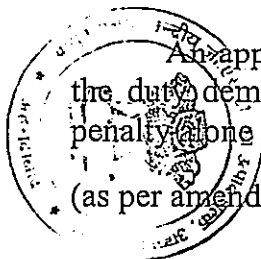
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर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

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice No. STC/15-51/OA/2020 dated 28.09.2020 issued to M/s. Lalli Forwarding Agency, Satej Apartment, D-401, Opp. Hotel Neesa Cambay Grand, S.G. Highway, Thaltej, Ahmedabad-380 061.

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

M/s. Lalli Forwarding Agency, Satej Apartment, D-401, Opp. Hotel Neesa Cambay Grand, S.G. Highway, Thaltej, Ahmedabad -380061, were issued SCN No. STC/15-51/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. LALLI FORWARDING AGENCY, ARE AS FOLLOWS:**

M/s. Lalli Forwarding Agency, Satej Apartment, D-401, Opp. Hotel Neesa Cambay Grand, S.G. Highway, Thaltej, Ahmedabad -380061 (hereinafter referred to as the 'Assessee' for the sake of brevity) are engaged in providing taxable services under the category of Transport of Goods by Road/ Goods Transport Agency Service, and are holding Service Tax Registration No.AAEFL7004PSD001.

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. Lalli Forwarding Agency was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15, 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.2014-15, the total sales of service (Value from ITR/ Form 26/ P&L Account ) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y.2014-15. 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.2014-15 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS/ P&L Account for the F.Y.2014-15. The difference in value as observed for F.Y.2014-15 was found to be as under:

F.Y.	Value Declared in ST-3 Returns	Value as per 26AS	Value as per P&L Account	Higher Value in Column 2,3, &4	Difference Between Value Declared in ST-3 Return & Value as per P&L Account	Service tax payable (12.36% including cess)
1	2	3	4	5	6	7
2014-15	0	5,34,030	24,05,65,414	24,05,65,414	24,05,65,414	2,97,33,885

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs.2,97,33,885/-including Cess) on the differential value of Rs.24,05,65,414/-.

It also appeared that as per Schedule 9 to P&L account of the assessee for FY 2014-15, they had Commission income amounting to Rs. 4,99,262/-, which appeared to be taxable income and Service Tax of Rs. 54,919/- (cum duty) also appeared liable to be recovered from the assessee. Therefore, it appeared that the assessee had short



paid the service tax of Rs. 2,97,88,804/- in total on the differential value of Rs. 24,05,65,414/- and Commission income of Rs. 4,44,343/- (cum duty).

4. The service tax liability of the assessee was worked out hereinabove on the basis of income mentioned in P&L Account of the assessee for the FY 2014-15. 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 said 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 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 the 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.2,97,88,804/- (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 2014-15 vis-à-vis their P & L Account. 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. 2,97,88,804/- (including Cess) worked out on the total value of Rs.24,10,09,757/- (Rs. 24,05,65,414/- + Rs. 4,44,343/-) 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 had not paid service tax as worked out in the Table for Financial Year 2014-15; (iv) contravened the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 which appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (v) 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)also 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 2014-15. 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. 2,97,88,804/-. 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 (at 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. 2,97,88,804/- 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 FY 2015-16, 2016-17 and 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 2015-16, 2016-17 and 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 issued 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.'*



The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Gross Receipts From Services (From ITR)" for the FY 2015-16, 2016-17 and 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 FY 2015-16, 2016-17 and 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 2015-16, 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. 2,97,88,804/-(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:

Service Tax of Rs. 2,97,88,804/- short/ not paid, should not be confirmed and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.

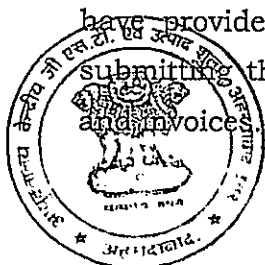


- (ii) Service tax liability for the FY 2015-16, 2016-17 and 2017-18 (upto June 2017) to be ascertained, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from 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 Rule 7C of Service Tax Rules 1994 should not be imposed on the assessee for late filing the return for April 2014 to September 2014.
- (vi) Penalty under the provisions of Section 77(1) under the Finance Act, 1944 should not be imposed on the assessee for failure to provide the documents called for.
- (vii) Penalty under the provisions of Section 77(2) of the Finance Act, 1994, should not be imposed on the assessee for failure to assess their correct Service tax liability and for failure to file correct returns under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules1994.

**DEFENCE REPLY:**

19. The assessee vide their letter dated 24.01.2022 have submitted their written submission, wherein they interalia have stated that:

- They had provided Goods Transport Agency Services by hiring vehicles and transporting goods of various persons /firms/companies and had also issued consignments notes/vouchers/ invoices.
- They were registered with the service tax department till September 2014, and they had filed service tax returns upto September 2014. That, thereafter, they had surrendered their service tax registration on 23.01.2015. Therefore, there was no activity or business from April 2015 onwards and their firm was closed. They have also stated that figures of sale of services for 2015-16 to June 2017, may be treated as Nil.
- The service tax has been proposed to be levied on value as per P&L Account which is higher than the amount shown in the Form 26AS. That, the entire figures had been taken from the balance sheet and the income tax report.
- Their entire amount received during the period was from the sale of "Transportation of goods by Road" in the capacity of a Goods Transport Agency. They have provided the customer wise break-up of the entire amount as under. While submitting the break-up customer wise they have also provided the copy of ledgers and invoice.





(Amount in Rs.)		
1.	Total amount shown as per Balance sheet (P&L)	24,05,65,414
2.	GTA Service provided to Shree Fuels and Minerals	23,36,49,985
	GTA Service provided to Electrotherm (India) Ltd	64,02,685
	GTA Service provided to Earth Enterprise	16,877
	GTA Service provided to Kutch Chemical Industries Ltd	1,32,455
	GTA Service provided to Regency Corporation	2,06,008
	GTA Service provided to S.R Ferro Alloys	34,768
	GTA Service provided to VasmateSulphar Industries	1,22,636
	Total	24,05,65,414

• They have stated that the GTA service provided by them were taxable under Reverse Charge Mechanism under Notification No. 30/2012-ST dated 20.06.2012. The abatement to the taxable value was also available under Notification No, 26/2012-ST dt. 20.06.2012. Therefore, they were not liable to pay service tax, and burden to pay service tax was shifted to the receiver of the GTA service. Therefore the subject demand is not sustainable and is liable to be dropped. The demand of interest, late fees and penalties are also not sustainable and are also liable to be dropped.

**PERSONAL HEARING:**

20. Personal Hearing was granted to the assessee on 25.01.2022. The personal hearing was attended by Shri R. Subramanya, Advocate on behalf of the assessee, through video conferencing. During the personal hearing, he made a reference to their written submission dated 24.01.2022 and reiterated that they had provided GTA services and thus they were not liable to pay Service Tax. They accordingly have requested to drop the proceedings in light of their written submission.

**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 on 24.01.2022 and the documents submitted by the assessee.

22. 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 with CBIC for FY 2014-15. The difference in taxable value was worked out after comparing the higher income declared in ITR /Form 26AS / P& L Account vis-à-vis taxable value disclosed in ST-3 Returns as mentioned herein above. It was also observed from P&L Account for FY 2014-15 that the assessee had earned Commission income as well. Therefore, the total difference of Rs.24,10,09,757/- (Rs. 24,05,65,414/- + Rs. 4,44,343/-) in value was observed for FY 2014-15, therefore, it appeared that the assessee had short paid the Service tax of Rs. 2,97,88,804/- 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. 2,97,88,804/- on the taxable value of Rs.24,10,09,757/- (Rs. 24,05,65,414/- + Rs. 4,44,343/-) for the Financial Year 2014-15 under proviso to section 73(1) of Finance Act, 1994 or not.

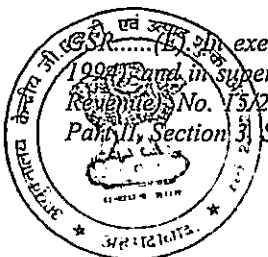
23. I find that the assessee vide their letter dated 24.01.2022 have submitted their submission and documents. The documents submitted were copies of Ledgers of "Transport Charges (Iron Ore & Manganese)" and "Transport Charges other Items" and copies of invoices for FY 2014-15. I find that the assessee has contended that they had provided GTA services to their customers during FY 2014-15 and they have surrendered their service tax registration on 23.01.2015 to the department and that thereafter, their business was closed. They have also contended that the service tax liability on GTA service provided by them was on recipient of their service in terms of Notification No. 30/2012-ST dt. 20.06.2012; That they were not liable to pay service tax on GTA services provided by them during 2014-15. They have also argued that the abatement was also available to the GTA services as per Notification No. 26/2012-ST dtd. 20.06.2012. I find that the assessee has provided a list of customer wise service provided by them and have also provided their customer's business status and their GSTN Numbers.

24. On going through the invoices and ledgers submitted by the assessee, it is discerned that the assessee have provided GTA services to various customers. I find that it is also admitted fact by the assessee that they have provided taxable service by way of transportation of goods by Road/ GTA service. I find that the customer wise break up has been provided by the assessee, which is found to be tallying with the ledgers submitted by the assessee vide their reply dated 24.01.2022. Further, on verifying the GSTN numbers of the customers of the assessee, their business status (constitution of the customer) and GSTN numbers are found to be correct.

Name of the Customers	Status	GST Number
Shree Fuels and Minerals	Partner Ship Firm	24ACDFS4777P1ZE
Electrotherm (India) Ltd	LIMITED COMPANY	24AAACE2669L1ZI
Earth Enterprise	Proprietorship	24DTKPS0085P1ZZ
Kutch Chemical Industries Ltd	Public Limited Company	24AABCK8460A1ZX
Regency Corporation	Partner Ship Firm	27AAMFR6389M1Z6
S.R Ferro Alloys	Partner Ship Firm	23ABHFS7377Q2Z9
VasmateSulphar Industries	HUF	29AACPV7294B1ZC

25. Now, in order to examine the liability to pay service tax by the assessee or otherwise on GTA service rendered by them, I would like to look at the legal provisions contained in Notification No. 30/2012-ST dated 20.06.2012 and Notification No. 26/2012-ST dated 20.06.2012. The relevant excerpts of the said notifications are reproduced as under for ease of reference:

**"Notification No. 30/2012- dt.20.06.2012 as amended.**



exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994) and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the

Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004- Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

**I. The taxable services, -**

(A)(i).....

(ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is, -

- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);  
 (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;  
 (c) any co-operative society established by or under any law;  
 (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;  
 (e) anybody corporate established, by or under any law; or  
 (f) any partnership firm whether registered or not under any law including association of persons;

(II) The extent of service tax payable thereon by the person who provides the service and any other person liable for paying service tax for the taxable services specified in paragraph I shall be as specified in the following table, namely:-

**TABLE**

Sl. No	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by any person liable for paying service Tax other than the service Provider
(1)	(2)	(3)	(4)
1.	.....		
2.	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	NIL	100%

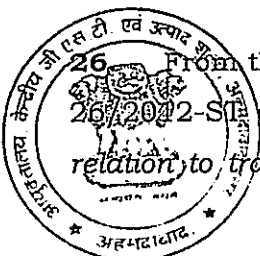
**“Notification No. 26/2012- ST dt. 20.06.2012 (Before amendment vide Noti. No. 08/2015-ST dt. 01.03.2015):**

G.S.R..... (E) - In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act), and in supersession of notification number 13/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 211 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of the description specified in column (2) of the Table below, from so much of the service tax leviable thereon under section 66B of the said Act, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (3) of the said Table, of the amount charged by such service provider for providing the said taxable service, unless specified otherwise, subject to the relevant conditions specified in the corresponding entry in column (4) of the said Table, namely:-

**TABLE**

Sl. No	Description of taxable service	Percentage	Conditions
(1)	(2)	(3)	(4)
1.	.....		
.....			
7.	Services of goods transport agency in relation to transportation of goods other than used household goods.	25	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004.”

From the above legal position, it is seen that as per Sr. no. 7 of Notification No. 26/2012-ST dt. 20.06.2012, in respect of Services of goods transport agency in relation to transportation of goods, the service tax is payable on 25% of the taxable



value of the GTA service. The Notification No. 30/2012-ST dt. 20.06.2012 has been issued under section 68(2) of the Finance Act, 1994, which specifies the service and the person (being the Service Recipient) liable to pay service tax on such specified service. Accordingly, as per sub para A(ii) of Paragraph I and Sr. No. 7 of the table provided in Paragraph II of the Notification No. 30/2012-ST, the persons enlisted as (a) to (f) who pays the freight, is liable to pay service tax on GTA service. Therefore, in view of this legal position, the person liable to pay service tax on GTA service provided by the assessee is determined and service tax payable by the assessee is as under:

Recipient of GTA service from the assessee	Recipient's business status/ constitution	Person covered under Sr. No. (a) to (f)	Liable to pay Service Tax (Provider/ Recipient)	Value of taxable service (Rs.)	Abated value (25% of Value)	Service Tax payable by the assessee. (@12.36%) (Rs.)
Shree Fuels and Minerals	Partner Ship Firm	(f)	Recipient	23364998 5	5841249 6	0
Electrotherm (India) Ltd	LIMITED COMPANY	(e)	Recipient	6402685	1600671	0
Earth Enterprise	Proprietorship	Not covered	Provider	16877	4219.25	521
Kutch Chemical Industries Ltd	Public Limited Company	(e)	Recipient	132455	33113.75	0
Regency Corporation	Partner Ship Firm	(f)	Recipient	206008	51502	0
S.R Ferro Alloys	Partner Ship Firm	(f)	Recipient	34768	8692	0
VasmateSulphar Industries	HUF	(a) Manufacturer AACPV7294BXM001	Recipient	122636	30659	0
				24056541 4		
Total service tax payable						521

Therefore, I find that the assessee is liable to pay service tax of Rs. 521/- in respect of GTA service provided to M/s. Earth Enterprise, whereas in other case, the service recipients are liable to pay service tax under RCM.

27. I find that the SCN had also demanded service tax of Rs. 54,919/- on Commission Income of Rs. 4,99,262/- received by the assessee during the year 2014-15. Further, assessee has not tendered any defence submission in this regard. I observe that after introduction of new system of taxation of services in negative list regime w.e.f 01.07.2012, 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 notification.

The term "Service" has been defined under Section 65B (44) of the Finance Act, 1994 ('Act') as under:

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

The terms "Taxable Service" has been defined under Section 65B (51) of the Act as under:

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

28. I find that prior to 01.07.2012 i.e. before introduction of a new system of taxation of services, the tax was levied on services of specified description only. The taxation system of services had widened the scope of levy of tax on services without specific description of service. Accordingly, any activity carried out by a person for another person in lieu of the consideration is taxable service. I find that

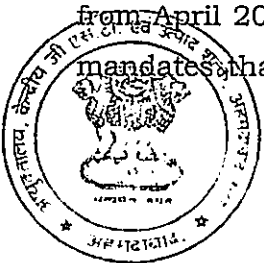


assessee's reply is silent over this income. It is evident that the assessee has neither paid service tax on commission income nor has claimed any exemption from payment of tax. Therefore, in view of above legal position, I find that the commission income is liable to service tax under section 66B of the Finance Act, 1994, accordingly, I find that the assessee is liable to pay service tax of Rs. 54,919/- as demanded under the subject SCN.

29. From the above factual, legal position and documents submitted by the assessee, I find the difference in the value of service as alleged in the subject SCN is on account of the non disclosure of the value of GTA services provided by the assessee in ST-3 Returns as tax liability on GTA service was considered to be on recipient's end by the assessee. I find that apart from the differences noticed in the figures reported in ST-3 returns and in P&L Account, the department has not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non payment of service tax. Having considered these factual and documentary evidences available on records, I find that the assessee is liable to pay service tax of only Rs. 55440/- (Rs. 521/- on GTA service Plus Rs. 54,919/- on Commission Income) out of total demand of Rs. 2,97,88,804/-. The rest of the demand of Rs. 2,97,33,364/- is thus liable to be dropped on merits being not correct and legally not sustainable.

30. As regards proposal to levy of late fees, I find that the assessee had filed ST-3 Return for the period from April 2014 to September 2014 on 20.11.2014, after the due date i.e. 14.11.2014. Therefore, there was a delay of 6 days in filing of the return by the assessee. I find that the Rule 7C of Service Tax Rules 1994 mandates late fees of Rs. 500/- for the delay of first fifteen days from the due date for filing the ST-3 Return. Therefore, the assessee is liable to pay late fees of Rs. 500/- for filing the return late by 6 days.

31. 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. 55440/- for the period from FY 2014-15. Therefore, I find that the assessee has contravened the provisions of Section 68 and 66B of the Finance Act, 1994 read with Rules 2 and 6 of the Service Tax Rules 1994, in as much as they have failed to pay service tax to the tune of Rs. 55,440/- though they were liable to pay the same; they have also contravened the provision 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 file correct ST-3 Returns for the period from April 2014 to September 2014. 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. 55,440/- .

32. From the facts and discussion aforementioned, I find that the assessee has failed to assess and discharge their service tax liability for the period FY 2014-15, and has failed to file correct service tax returns for same period. The assessee has failed to disclose their taxable income by not filing the correct service tax returns and not paying legitimate service tax due to the govt. account, though they were having income which were liable to service tax. This clearly demonstrates the intention of the assessee to evade the payment of service tax. These acts of non payment of service tax, non filing of the service tax returns, suppressing the materials fact from the department were done with an intent to evade the payment of service tax. 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. 55,440/- 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, the proposal for imposition of penalty under Section 77(2) of the Finance Act, 1994, I find that the assessee has failed to assess their service tax liability and has failed to file their correct service tax returns as required under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994, thus, they have rendered themselves liable to



penal action under Section 77(2) of the Finance Act, 1994. As regards imposition of penalty under section 77(1) for failure to provide documents/ details for investigation, I find that the SCN has not pointed out any specific ground for levelling the charge. I find that the subject SCN does not mention which documents were called for by the department. In the absence of any specific evidence/ grounds in this regard, I refrain myself from imposing penalty under Section 77(1) of the Finance Act, 1994.

33. As regards the levy of service tax for FY 2015-16 to 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 has not provided any details/information/ documents for the FY 2015-16 to 2017-18 (upto June,2017) and has also submitted that they had surrendered their registration w.e.f 23.01.2015, 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:

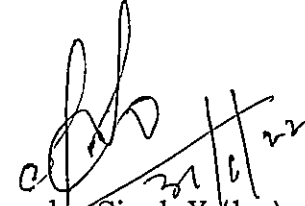
**ORDER**

- (i) I confirm the demand of Service tax amounting to Rs. 55,440/- out of total demand of Service tax of Rs. 2,97,88,804/- 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. 2,97,33,364/- 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. 55,440/- on them under the provisions of Section 78(1) of the Finance Act, 1994 on the demand at (i) above; If the service tax amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the Service Tax amount, provided if such penalty is also paid within such period of 30 days.

(iv) I order to levy late fees of Rs. 500/- from the assessee under Rule 7C of the Service Tax Rules 1994 for late filing the ST-3 Return for the period April 2014 to September 2014.



- (v) I refrain from imposing penalty on the assessee under Section 77(1) of the Finance Act, 1994.
- (vi) I order to impose the penalty of Rs. 10,000/- on them under Section 77(2) of the Finance Act, 1994 for their 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/15-51/OA/2020

Date: 31 .01.2022.

To  
 M/s. Lalli Forwarding Agency,  
 Satej Apartment, D-401,  
 Opp. Hotel Neesa Cambay Grand,  
 S.G. Highway, Thaltej, Ahmedabad -380061

Copy to:

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