आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर

CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद – 380009

FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD – 380009

ई-मेल/E-Mail : ofadjhq-cgstamdnorth@gov.in, oaahmedabad2@gmail.com

फ़ोन/Phone : 079-27544599 फैक्स/Fax : 079-27544463

निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. **STC/15-188/OA/2020**

आदेश की तारीख/Date of Order:- 27.04.2022

जारी करने की तारीख/Date of Issue :- 27.04.2022

DIN NO: 20220464WT0000222CEC

द्वारा पारित/Passed by:- आर गुलजार बेगम ***/R. GULZAR BEGUM***

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 02/ADC/GB/2022-23

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

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

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

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

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

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

(3) उक्त अपील की प्रति।

(4) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

(3) Copy of accompanied Appeal.

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

विषयः- कारण बताओ सूचना/ Show Cause Notice **F. No. STC/15-188/OA/2020 dated 09.12.2020** issued to M/s. Fasttrips, U.L.-15, Fairdeal House, Nr. Swastic Cross Road, Navrangpura, Ahmedabad, Gujarat- 380013.

BRIEF FACSTS OF THE CASE

M/s. Fasttrips, U.L.-15, Fairdeal House, Nr. Swastic Cross Road, Navrangpura, Ahmedabad, Gujarat- 380013 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.- DUGPS5907DSD001 & are engaged in the business of Providing Taxable Services

2. On perusal of the data received from CBDT, it was noticed that the assessee had declared different values in Service Tax Return (ST-3) and Income Tax Return (ITR/Form 26AS) for the Financial year 2015-16 & 2016-17. On scrutiny of the above data, it was also noticed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 & 2016-17as compared to the Service related taxable value declared by them in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

(Amount in Rs.)

Sr No	F. Y.	Total Gross Value Provided (STR)	Sale Of Services(ITR)	Total Value for TDS(including 194C,194 Ia,194Ib, 194J,194 H)	Higher Value (Value Difference in ITR & STR) OR (Value Difference in TDS & STR)	Rate of Duty (including Cess)	Result ant Service Tax short paid
1	2015-16				17655373	14.5%	2560029
2	2016-17	NULL	17078506	0	17078506	15%	2561776
Total							5121805

3. To explain the reasons for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form: 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns for the Financial Year 2015-16 & 2016-17, Letter dated 07.10.2020 were issued to the said assessee. However, the said assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner. For this reason, no further verification could be done in this regard by the department. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16 & 2016-17, the service tax liability of the service tax assessee has been ascertained on the basis of income mentioned in the Income Tax returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the Service tax liability under Section 67 of the Finance Act, 1994.

4. No data was forwarded by CBDT, for the period 2017-18 (upto June-2017) and the assessee has also failed to provide any information regarding rendering of taxable service for this period. Therefore, at the time of issue of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017). With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies 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."

5. From the data received from CBDT, it was noticed that 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 has not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. Further, the assessee has also failed to provide the required information even after the issuance of letters and summons from the Department. Therefore, the assessable value for the year 2017-18 (upto June-2017) is not ascertainable at the time of issuance of Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action will 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) not covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

6. The government has from the very beginning placed full trust on the service provider so far as service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust by the service provider, no matter how innocently. From the evidence on record, it appeared that the said assessee had not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider have made deliberate efforts to suppress the value of taxable service to the department and appears to have not paid the liable service tax in utter disregard to the requirements of law and the trust deposed in them. Such outright act in defiance of law, appears to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

7. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the assessee, have committed the following contraventions of the provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004:

(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 as discussed above;

(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 2016-17.

(iv) All the above acts of contravention on the part of the said assessee appear to have

been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid is required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years.

(v) 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 appears to be publishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

(vi) The said assessee is also 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) Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

8. The above said service tax liabilities of the assessee, FASTTRIPS, has been worked out on the basis of limited data/ information received from the Income tax department for the financial years 2015-16 & 2016-17. Thus, the present notice relates exclusively to the information received from the Income Tax Department.

9. It has been noticed that at no point of time, the assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2015-2016 to 2016-17. From the evidences, it appears that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs. 51,21,805/- (including Cess). It appears that the above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same is to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

10. Accordingly Show Cause Notice was issued to M/s.Fasstrips called upon to show cause as to why :

(i) The Service Tax to the extent of Rs. 5121805/- short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;

(ii) Service Tax liability not paid during the financial year 2017-18 (upto June-2017),ascertained in future, as per paras no. 7 and 8 above, 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 the provisions of Section 75 of the Finance Act, 1994;

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

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

11. The proceedings proposed and that may be taken against the said noticee, under the aforementioned provisions of the Central Excise Act, 1994 and the Central Excise Rules, 2002 or the Finance Act 1994 read with the Service Tax Rules, 1994 framed there under, are saved by the Section 174(2) of the CGST Act, 2017 and therefore the provisions of the Chapter V of the Finance Act, 1994 and the Rules made thereunder are applicable for the purpose of demand of Tax, Interest etc. and imposition of penalty under the said notice.

DEFENCE REPLY

12. The sais assessee vide letter dated 29.01.2021 submitted their reply to SCN wherein they denied all the allegations and averments made vide the subject notice as if they all are individually and specifically dealt with. They also submitted that they are providing service of travel agent and not registered as an ITAT agent. If the noticee was not registered as an IATA agent, the noticee was liable for service tax on margin method basis. They have also provided chart showing the sales, purchase, margin and service tax on commission for the year 2015-16 & 2016-17. According to which the assessee contended that they are liable for service tax as per margin method then the liability comes to Rs.2,69,273/- for the year 2015-16 & 2016-17 against which noticee has already deposited Rs.67,230/- during the impugned period and requested to drop the proceedings. The further contended that the department has computed demand of service tax for the period 2015-16 on the basis of income tax return data and while computing the service tax liability they have not considered the factual details.

13. They have relied upon the following case laws in support of their arguments to support their contention that the department had not taken factual facts into account & had raised the demand of service tax which was unjustified and the same was fit to be quashed/dropped ;

- 2013(31)STR673 (Tri-Bang) REGIONAL MANAGER, TOBACCO BOARD Versus COMMR. OF C. EX., MYSORE
- 2010 (20) S.T.R. 789 (Tri. - Mumbai) ANVIL CAPITAL MANAGEMENT (P) LTD.Versus COMMR. OF S.T., MUMBAI
- 2010 (19) S.T.R. 242 (Tri. - Ahmd.)COMMISSIONER OF SERVICE TAX, AHMEDABAD Versus PURNI ADS. PVT. LTD.
- 2009 (16) S.T.R. 63 (Tri. - Chennai) SIFY TECHNOLOGIES LTD. Versus COMMISSIONER OF SERVICE TAX, CHENNAI
- 2013 (30) S.T.R. 62 (Tri. - Ahmd.) BHOGILAL CHHAGULAL & SONS Versus COMMISSIONER OF S.T., AHMEDABAD

14. The assessee have further submitted that SCN covers the period from 01.04.2015 to 31.03.2017 and SCN had been issued on 09.12.2020, that the SCN had invoked the extended period of limitation. The assessee have submitted that they were filing income tax returns and service tax returns regularly from time to time, they have submitted that the extended period of limitation cannot be invoked in the instant case since there was no suppression, wilful misstatement.

15. The assessee have further submitted that penalty cannot be imposed under Section 78 of the Finance Act,1994, as they had not suppressed any information from the department and there was no wilful misstatement on part of the assessee. They have submitted that it had to be established that there was a short payment of service tax by reason of fraud collusion, wilful misstatement, and suppression of facts or contravention of any provisions of the Act or rules made thereunder with intent to evade payment of service tax. The assessee have submitted that SCN merely alleged baldly that there was suppression on the part of the assessee. The SCN had not brought any evidence/facts which can establish that the assessee had suppressed anything from the department. They have submitted that instant case was not the case of fraud, suppression, wilful misstatement of facts, etc., hence, the penalty under

Section 78 cannot be imposed on them. They have further submitted that they were entitled to entertain the belief that their activities were not taxable. They have relied upon the Hon'ble High Court of Gujarat decision in case of Steel Cast Ltd 2011(21)STR500(Guj).

16. The assessee have submitted that penalty under Section 77 was not imposable, as there was no short payment of service tax. They have submitted that they had always been and were still under the bonafide belief that they were not liable for payment of service tax. They have relied upon the decision of Hon'ble Supreme Court in the case of Hindustan Steel Ltd. Vs. The state of Orissa, the decision was followed by the Trinunal in the case of Kellner Pharmaceuticals Ltd., Vs. CCE. They have further submitted that the contraventions, if any, were not with the intention to wilfully evade payment of service tax. They have further relied upon the Hon'ble Supreme Court judgment in the case of Pushpam Pharmaceuticals Company V CCE. They have submitted that similar view had been taken by the Hon'ble Supreme Court in the case of CCE vs. Chemphar Durgs and Lininents. They have submitted that it is a settled principle of law that if a dispute is arising out of interpretation of the provisions of statute or exemption notification, no penalty could be imposed. They have relied upon the following case laws;

> 2002 (146) E.L.T. 118 (Tri. - Kolkata),,BHARAT WAGON & ENGG. CO. LTD. Versus COMMISSIONER OF C. EX., PATNA
>
> 2001 (135) E.L.T. 873 (Tri. - Kolkata) GOENKA WOOLLEN MILLS LTD. Versus COMMISSIONER OF C. EX., SHILLONG
>
> 2001 (129) E.L.T. 458 (Tri. – Del.) BHILWARA SPINNERS LTD. Versus COMMISSIONER OF CENTRAL EXCISE, JAIPUR

The assessee had requested to take a lenient view and drop the proceedings in the interest of justice.

PERSONAL HEARING:

17. Personal Hearing was granted to the assessee on 20.04.2022. Shri Vipul Khandar, Chartered Accountant, appeared for personal hearing on behalf the assessee. They referred to the written reply of the noticee tendered and also provided copy of balance sheet and sample invoices. They submitted that they are ready to pay any liability arises.

DISCUSSION AND FINDINGS

18. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding to adjudicate the SCN.

19. I have carefully gone through the Show Cause Notice, submission made by the noticee, Balance Sheet, and copies of invoices for the year 2015-16 to 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs. 51,21,805/- for the financial year 2015-16 to 2016-17 on the basis of data received from Income Tax authorities. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs.51,21,805/- for the financial year 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

20. On perusal of the reply to the SCN and reconciliation statement submitted by the assessee alongwith the reply to SCN, I find that the assessee are providing Domestic Air ticket, Hotel, International Air Ticket, Miscellaneous and package

services. They in their reply stated that they have liability of Rs.6,61,010/-. They also claim that they have deposited service tax of Rs.67,230/-. They have not produced any evidence to prove that they have paid any service tax on any of the serviced provided by them.. They have also not produced copy of STR to claim their fulfillment of ST liability. They have furnished following reconciliation statement wherein they claimed that they have shown purchase value of various services such as Domestic Air ticket, Hotel, International Air Ticket, Miscellaneous and package.

Year 2015-16

Service Name	Sales	Purchase	Margin	S.T.
Domestic Air Ticket	3561685	3367641	194044	23830
Hotel	1422079	1392981	29098	3573
International Air Ticket	6951981	6677132	274849	33753
Miscelleneous	1741870	1501635	240235	29503
Package	3977758	3671143	306615	37654
Total	17655373	16610533	1044840	128314

Year 2016-17

Service Name	Sales	Purchase	Margin	S.T.
Domestic Air Ticket	4976620	4825668	150952	19862
Hotel	2082493	1988797	93696	12328
International Air Ticket	5630330	5337347	292983	38550
Miscelleneous	1745323	1393270	352053	46323
Package	2821696	2452736	368960	48547
Total	17256462	15997818	1258644	165611

The assessee in their reply to SCN, furnished the above referred table wherein the total income has been segregated for various services such as Domestic Air ticket, Hotel, International Air Ticket, Miscellaneous and package etc. On perusal of the description of said services, I find that the assessee has not clearly mentioned the category of services under which they provided the services and the method how they arrived the taxable income and service tax thereon. They have shown substantial amount under the head "Miscellenous", however no description has been given for such category. Further the assessee has also failed to furnish any documentary evidence in support of their claim of segregation. In the absence of supporting documents, it is not possible to find out the taxability of any oft he category of service and its service tax liability. It also cannot be concluded that whether they are eligible for any exemption or abatement. Mere submission of details without supporting documents cannot be treated as genuine ground for determination taxability of each item. They have also claimed abatement in the written reply, however they have not mentioned any Notification Number to claim their abatement benefit. They have failed to produce any documents such as purchase invoices, sales invoices, ledgers or any other financial records to prove his claim they are not liable to pay service tax on the total sale of services for the years 2015-16 & 2016-17. In the absence of claim of any exemption Notification/ abatement Notification, I find that the entire sale proceeds earned by the assessee as per their financial records as well as data provided by the Income Tax Department is to be considered as taxable income and the liability to pay service tax on which falls on the assessee.

21. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified according to the different category of services. Further after introduction of negative list with effect from 01.07.2012, service has been defined as *"**service**" means any activity carried out by a person for another for consideration, and includes a declared service. Services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,*

(a) *Service by the Government/Local Authority*
(b) *Service by RBI*
(c) *Service by Foreign Diplomatic Mission located in India*
(d) *Service in relation to agriculture*
(e) *Trading of goods*
(f) *Manufacture of goods*
(g) *Selling of space/time for advertisement*
(h) *Services by access to road or bridge on a payment of Toll charges*
(i) *Betting, gambling or lottery*
(j) *Admission to Entertainment Events & Amusement Facilities*
(k) *Transmission or distribution of electricity*
(l) *Educational Services*
(m) *Renting of Residential dwelling for use as residence*
(n) *Financial services by way of extending deposits, loans or advances and inter se sale or purchase of foreign currency*
(o) *Transportation of Passenger with or without accompanied belongings*
(p) *Transportation of goods.*
(q) *Mortuary/Funeral services*

22. In view of the above, I find that the activities carried out by the assessee falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List the security service provided by the assessee does not fall under category of negative list of services under the provisions of Section 66D of the Finance Act. Therefore, I find that the said service provider is liable to pay Service Tax on income earned from provision of various taxable services provided for the period 2015-16 to 2016-17.

23. In the instant case the assessee was providing Air Travel Agency Services, Business Auxiliary services and Tour Package services during the years under consideration. In reply to SCN, they have stated that while doing the reconciliation of income with books of accounts, the department has not taken into factual details and without considering the factual details, the department has raised the demand which is not justifiable at all.

24. An assessee registered with Service Tax Department is required to provide information/documents to the department as and when required. However, in this case the assessee failed to furnish/provide the required documents in support of their claim to prove that they are not liable to service tax being the service tax provider. Even during the course of personnel hearing also the assessee failed to submit any documents proving that they are eligible for exemption from payment of service tax or abetment of value for the purpose of calculating service tax liability. In view of the above facts, it is proved that the assessee may not have the data of the service receivers or they might have been try to avoid furnishing the details which may have lead to proof that the service provider is liable to pays service tax. In the absence of the any of the supporting documents, I find that the liability to pay service tax on the entire amount falls on the assessee and therefore the unpaid service tax of Rs.51,21,805/- is correctly demanded from the said assessee and required to be recovered from the assessee, the service provider.

25. On scrutiny, I further observed and find that the assessee has not declared the service value of Rs. 1,76,55,373/- for the year 2015-16 & Rs.1,70,78,506/- for the year 2016-17 in their ST-3 returns and therefore they are liable to pay Service Tax of Rs. 51,21,805/- on the Services Provided by them on the value as stated above as the same is not declared in their ST-3 returns. The same is required to be recovered from them under the provisions of Section 73 of the Finance Act, 1994;

26. On perusal of para 6,7 and 8 of the SCN, I find that 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 the service tax liability was to be recovered from the assessee accordingly, I however, do not find any charges leveled for the demand for the year 2017-18 (Up to June 2017), in charging para of the SCN. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income from sale of services. I therefore refrain from discussing the taxability on other income other than the sale of service.

27. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behavior. M/s. Fasttrips deliberately not supplied their ST-3 Returns and other documents, the actual service provisions rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but only after going through the CBDT data these facts would have come to light. The said assessee himself admits in their reply to SCN that they were provided various services and not paid any service tax The said assessee in their submissions referred various case laws against invoking of extended period, however, in view of the above facts and discussion, it is correctly invoked the extended period while issuing SCN. Moreover, the Hon'ble apex court in the case of Rajasthan Spinning and Weaving Mills / High Court of Gujarat at Ahmedabad in Tax Appeal No. 338 of 2009 in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. dated 22.04.2010 has made the following observations regarding applicability of the extended period in different situations.

> *"11. A plain reading of sub-section (1) of section 11A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless of the fact that such non-levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.*
>
> *12. The Proviso under the said sub-section stipulates that in case of such non-levy, etc. of duty which is by reason of fraud, collusion, or any mis -statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under, the provisions of sub-section (1) of section 11A of the Act shall have effect as if the words one year have been substituted by the words five years.*
>
> *13. The Explanation which follows stipulates that where service of notice has been stayed by an order of a Court, the period of such stay shall be excluded from computing the aforesaid period of one year or five years, as the case may be.*
>
> *14. Thus the scheme that unfolds is that in case of non-levy where there is no fraud, collusion, etc., it is open to the Central Excise Officer to issue a show cause notice for recovery of duty of excise which has not been levied, etc. The show cause notice for recovery has to be served within one year from the relevant date. However, where fraud, collusion, etc., stands established the period within which the show cause notice has to be served stands enlarged by substitution of the words one year by the words five years. In other words the show cause notice for recovery of such duty of excise not levied etc., can be served within five years from the relevant date.*
>
> *15. To put it differently, the proviso merely provides for a situation where under the provisions of sub-section (1) are recast by the legislature itself extending the period*

within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of one year or five years as the case may be.

16. The termini from which the period of one year or five years has to be computed is the relevant date which has been defined in sub-section (3)(ii) of section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.

17. The proviso cannot be read to mean that because there is knowledge the suppression which stands established disappears. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.

18. The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term relevant date nugatory and such an interpretation is not permissible.

19. The language employed in the proviso to sub-section (1) of section 11A, is clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder , the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.

20. Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of section 11A would be applicable. However, such reasoning appears to be fallacious in as much as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.

21. It may be noticed that where the statute does not prescribe a period of limitation, the Apex Court as well as this Court have imported the concept of reasonable period and have held that where the statute does not provide for a period of limitation, action has to be taken within a reasonable time. However, in a case like the present one, where the statute itself prescribes a period of limitation the question of importing the concept of reasonable period does not arise at all as that would mean that the Court is substituting the period of limitation prescribed by the legislature, which is not permissible in law.

22. The Apex Court in the case of Rajasthan Spinning and Weaving Mills (supra) has held thus :

"From sub-section 1 read with its proviso it is clear that in case the short payment, nonpayment, erroneous refund of duty is unintended and not attributable to fraud, collusion or any willful mis -statement or suppression of facts, or contravention of any of the provisions of the Act or of the rules made under it with intent to evade payment of duty then the Revenue can give notice for recovery of the duty to the person in default within one year from the relevant date (defined in sub-section 3). In other words, in the absence of any element of deception or malpractice the recovery of duty can only be for a period not exceeding one year. But in case the non-payment etc. of duty is intentional and by adopting any means as indicated in the proviso then the period of notice and a priory the period for which duty can be demanded gets extended to five years."

23. This decision would be applicable on all fours to the facts of the present case, viz. when non-payment etc. of duty is intentional and by adopting any of the means indicated in the proviso, then the period of notice gets extended to five years."

In view of the above facts, the extended period is correctly invoked while issuing this Show Cause Notice

28. Further, they had not claimed any exemption for the said charges collected and provisions of the 'taxable services' during the aforesaid period in the ST-3 Returns, nor did they have sought any specific clarification from the jurisdictional Service Tax assessing authorities regarding the applicability of Service Tax on the services of the same covering the period of this notice. In view of the specific omissions and commissions as elaborated earlier, it is apparent that the assessee had deliberately suppressed the facts of provision of the Taxable Service in the ST-3 Returns during the relevant period. Consequently, this amounts to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of Service Tax.

29. I further find that M/s.Fasttrips had contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994, provided by them to their various service receivers during the period from 01.04.2015 to 31.03.2017:

(i) Section 67 of the Finance Act, 1994 read with Rule 2A(ii)(B)(ii) of Service Tax (Determination of Value) Rules, 2006, in as much as they have failed to determine the net taxable value of taxable service and declared the same to the department.

(ii) Section 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994 , as amended, in as much as they did not pay the appropriate Service Tax on the taxable services provided by them.

(iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they, as a service provider, have failed to furnish proper periodical returns in form ST-3 mentioning the particulars of the aforesaid taxable service provided by them, the value of taxable service determinable and other particulars in the manner as provided therein and incorporating the required information to the jurisdictional Superintendent of Service Tax.

30. All above acts of contravention constitute an offence of the nature as described under the provision of Section 77 of the Act, rendering themselves liable to penalty under Section 77(1) of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Service Tax Rules, 1994. They are also liable for penalty u/s. 77(2) of the Finance Act, 1994 for the failure to assess their correct Service Tax liability and failed 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;

31. As far as imposition of penalty u/s.78 of Finance Act, 1994 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under section 78 of fiancé Act, 1994 as they failed to pay the correct duty with the intend to evade the same. It is also a fact that they had deliberately not shown in their ST-3 Returns, the actual service provision rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but on verification of data received from CBDT these facts would have not come to light. They have never informed the Service Tax department about the actual provision of taxable services so provided by them to their service recipients during the relevant time and they have also not shown the aforesaid actual provision of taxable service provided them, in respective ST-3 returns filed by them at the relevant period. The assessee have thus, willfully suppressed the actual provision of taxable service provided by them with an intent to evade the Service Tax. It, thus, found that the assessee, as a service provider, deliberately suppressed the actual provision of the taxable services provided by them, from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed hereinabove. Hence I find that this is a fit case to impose penalty u/s.78 of Finance Act,1994.

32. Further, all the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part the service provider has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said service tax not paid/short paid is required to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years. All these acts of contravention of the provisions of Section 65, 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 liable to penal action under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

33. In view of the above discussion and findings, I pass the following orders:-

ORDER

(i) I confirm the Service Tax amounting to Rs. 51,21,805/- (Rupees Fifty One Lakhs Twenty One Thousand Eight Hundred Five only) under Section 73(1) of chapter V of Finance Act, 1994 read with section 174 of CGST Act,2017 as amended and order M/s. Fasttrips to pay up the amount immediately.

(ii) I order that interest be recovered from M/s. Fasttrips on the service tax amount of Rs. 51,21,805/- under the provisions of Section 75 of chapter V of the Finance Act, 1994.

(iii) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. Fasttrips under Section 77(1) of the Finance Act, 1994.

(iv) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. Fasttrips under Section 77(2) of the Finance Act, 1994.

(v) I impose a penalty of Rs. 51,21,805/- (Rupees Fifty One Lakhs Twenty One Thousand Eight Hundred Five only) on M/s. Fasttrips under section 78 of the Finance Act 1994 as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s. Fasttrips pays the amount of Service Tax as determined at Sl. No. (i) above and interest payable

thereon at (ii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Fasttrips shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

(R.GULZAR BEGUM)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North.

By Regd. Post AD./Hand Delivery
F.No. STC/15-188/OA/2020

Date: 27.04.2022

To
FASTTRIPS,
U.L.-15, Fairdeal House, Nr. Swastik Cross Road, Navrangpura, Ahmedabad, Gujarat-380013

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Deputy Commissioner Division-VII, Central Excise & CGST, Ahmedabad North.
3. The Superintendent, Range-III, Division-VII, Central Excise & CGST, Ahmedabad North
4. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
5. Guard File