
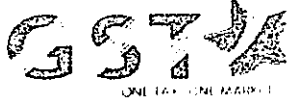


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर./ PHONE No.: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

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20220464WT000091969D

फा.सं./F.No. STC/15-211/OA/2021-22

आदेश की तारीख/Date of Order :- 29.04.2022

जारी करने की तारीख/Date of Issue :- 11.05.2022

द्वारा पारित/Passed by:-

मुकेश राठौर / Mukesh Rathore

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 05/ADC/MR /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 विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच 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. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) 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।

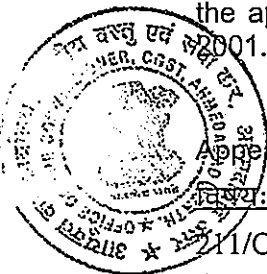
(4) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -४ (ST-4) 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.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No. STC/15-211/OA/2021-22 dated 23.04.2021 issued to M/s K Log Global Pvt Ltd., c/o Kataria Automobiles Limited, Near K. S. Lokhandawala Complex, O/s Dariapur Darwaza, Dariapur, Ahmedabad.



BRIEF FACTS OF THE CASE :

M/s. K Log Global Pvt. Ltd., c/o Kataria Automobile Limited, Near K. S. Lokhandwala Complex, O/s Dariapur Darwaza, Dariapur, Ahmedabad (hereinafter referred to as 'the said assessee') and holding Service Tax Registration No. AACCK6627NSD001 under the category of Transport of goods by road/goods transport agency service and Supply of Tangible goods service. The said assessee was engaged in activity of providing taxable service during the period from October, 2015 to June, 2017.

2. As per the information received from the Income tax Department that the said assessee had earned substantial service income, letters dated 14.06.2019, 09.07.2020 and summons dated 08.08.2020 have been issued to the said assessee, for seeking the documentary evidence in respect to their income and other financial statements for the subject period, in order to verify the taxability under service tax. In compliance of this office letters & summon, the said assessee has provided the copies of the following documents :

- i). Audited Balance Sheet and Profit & Loss A/c from 2015-16, 2016-17;
- ii). Copy of incomes ledgers pertaining to April-June, 2017;
- iii). Copy of ST-3 for the period from October, 2015 to June, 2017; and
- iv). Form 26AS from 2015-16 to 2016-17.

3.1 Ongoing through the financial documents provided by the assessee, it was observed that the said assessee was engaged in transportation related service and earned income in two categories: Income from Hiring of Vehicle and Freight Income. The details are as under :

Table - I

Description	2015-16	2016-17	2017-18
Income from Hiring of Vehicles	5,43,72,377	5,23,59,768	1,13,20,498
Freight Income	50,53,31,510	25,70,96,518	4,25,62,024
Total	55,97,03,887	30,94,57,946	5,38,82,522

3.2 As per ST-3, it is observed that the said assessee has provided services of "Supply of Tangible goods service" as well as "Transport of goods by road/goods transport agency (GTA) services". The details are as under :

Table - II

Category of service	2015-16	2016-17	2017-18 (June, 2017)
Supply of Tangible service	5,43,72,381	5,23,59,741	1,13,20,498
GTA	0	0	0
Total	5,43,72,381	5,23,59,741	1,13,20,498

4 From the above, it is observed that the Sales/Gross Receipt from Services (Value from ITR) are not tallying with Gross Value of Service Provided, as declared in ST-3 Return of the subject period.

Further, it is observed that the assessee has provided the transportation related service under the category of Supply of tangible goods and the income earned from this is shown in Balance sheet as Income from Hiring of Vehicles. Similarly, for the transportation related service under the category of GTA and the income earned from this is shown in Balance sheet as Freight Income. The details are as under :

Table - III

F.Y.	Total income as per Balance Sheet		Income as per ST-3		Difference
	Freight Income as per Balance Sheet	Income from Hiring of Vehicles as per Balance sheet	Supply of Tangible service	of GTA	
2015-16	50,53,31,510	5,43,72,377	5,43,72,381	0	50,53,31,506
2016-17	25,70,96,518	5,23,59,768	5,23,59,741	0	25,70,96,545
2017-18 (Apr to June)	4,25,62,024	1,13,20,498	1,13,20,498	0	4,25,62,024

5. From the above, it is observed that there is difference on actual value received towards taxable services provided by the assessee. In their defense, the assessee has submitted the documents/invoices vide letter dated 17.02.2021, in support of their claim that they have provided (i) the transportation related services to various clients as GTA service provider, availing benefit of notification no. 30/2012-ST dated 20.06.2012, where NIL service tax is payable by the service provider, providing services of GTA, to a body corporate etc., and (ii) the services by way of giving on hire, to a GTA, a means of transportation of goods, availing exemption under serial no. 22(b) of Notification No.25/2012-ST dated 20.06.2012.

6. However, in some cases, as enlisted in **Annexure-1**, the assessee has failed to submit the documents/invoices or other evidences to prove that (i) they have provided transportation related services to various clients as **GTA** service provider, where service provider were not liable for payment of service tax, in view of notification no. 30/2012-ST dated 20.06.2012; OR (ii) they have provided the services by way of giving on hire, to a **GTA**, a means of transportation of goods, where exemption is available under serial no. 22(b) of Notification No.25/2012-ST dated 20.06.2012. The service tax liability on the same is calculated as under:-

Table - IV

Period	Value	Rate of Service Tax (inclusive cesses)	Total Service Tax Payable
2015-16	5,79,71,073	14.50%	84,05,806
2016-17	6,82,72,997	15%	1,02,40,950
2017-18 (Apr to June)	26,55,296	15%	3,98,294
Total	12,88,99,366		1,90,45,050

7. It was observed that the assessee has failed to prove that (i) they have provided transportation related services to various clients as **GTA** service provider, where service provider were not liable for payment of service tax, in view of notification no. 30/2012-ST dated 20.06.2012; OR (ii) they have provided the services by way of giving on hire, to a **GTA**, a



means of transportation of goods, where exemption is available under serial no. 22(b) of Notification No.25/2012-ST dated 20.06.2012. Therefore, the assessee is liable to pay service tax amounting to **Rs.1,90,45,050/-**, for the period from October, 2015 to June, 2017, as calculated as above.

8. Services provided by a **GTA** in respect of transportation of goods by road, are taxable in the hands of service provider, where the person liable to pay freight is other than (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) any **body-corporate** established, by or under any law; or (f) any **partnership firm** whether registered or not under any law including association of persons. In none of the case mentioned in Annexure-I, the assessee has submitted any consignment note to prove that they have provided service under GTA.

9. Services by way of giving on hire, a means of transportation of goods, are taxable, as declared service under clause (f) of Section 66E of the Finance Act, 1994, which reads as, **transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods**, in the hands of service provider, where the services are not provided to a Goods Transport Agency (**GTA**). In none of the case mentioned in Annexure-I, the assessee has submitted any document to prove that they have provided service by way of hire to GTA.

LEGAL PROVISIONS OF FINANCE ACT, 1994 w.e.f 01.07.2012:

10. As per SECTION 65B (44) OF FINANCE ACT, 1994: -

[(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely, --

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.]

10.1 As per SECTION 65B(22) OF FINANCE ACT, 1994: -

"declared service" means any activity carried out by a person for another person for consideration and declared as such under Section 66E;

As per SECTION 65B(51) OF FINANCE ACT, 1994: -

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

10.3 As per new SECTION 66B of Finance Act, 1994: -



"There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed".

10.4 As per SECTION 66D OF FINANCE ACT, 1994 :

"The negative list shall comprise of the following services, namely :

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;

(ii)to.....

(B) to (m),

(n) services by way of-

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;

(ii) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;

(o).....

(p) Services by way of transportation of goods

(i) by road except the services of

- a. Goods Transport Agency;
- b. A Courier Agency.

(q).....

10.5 As per SECTION 66E,

Declared Service: - The following shall constitute declared services, namely: -

(a)

(b) to (e).....;

(f) **transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods**

(g); and

(j).....;

10.6 As per Section 68. Payment of service tax - (1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66B in such manner and within such period as may be prescribed.

As per Section 66B(26) defines "Goods Transport Agency" which means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;



10.8 As per **Rule 4B of Service Tax Rules, 1994-** Issue of consignment note- Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the recipient of service:

"Provided that where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note to the recipient of service."

Explanation.- For the purposes of this rule and the second proviso to rule 4A, "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.

10.9 Vide Notification No. 26/2012-Service Tax, dated 20-06-2012:- the Central Government has exempted 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, unless specified otherwise, subject to the relevant conditions specified in the corresponding entry in column (4) of the said Table, namely;-

Table

SI.No.	Description of taxable service	Percentage	Conditions
(1)	(2)	(3)	(4)
7.	Services of goods transport agency in relation to transportation of goods.	25/30 (w.e.f. 1-4-2015)	CENVAT credit on inputs, capital goods and inputs services, used for providing the taxable services, has not been taken by the service provider under the provision of the Cenvat Credit Rules, 2004

11. It was observed that the assessee has provided declared service of "transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods" as defined under Sub-Section (22) of Section 65 read with Clause (f) of Section 66E of Finance Act, 1994 to various clients by way of supplying vehicles for the purpose of transportation of the goods and charged as well as collected consideration as money from them. From combined reading of provision of Section 66D, Section 65B(51) and Clause (f) of Section 66E, it was observed that the assessee has provided "declared services as transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;" and the said services provided by them did not fall in Negative List, as defined in Section 66D of Finance Act, 1994, hence the said services were 'taxable services' and they were

liable to pay appropriate service tax leviable on Consideration as money received from the various clients,

11.1 Ongoing through the collective reading of the abovementioned provisions, it was observed that the assessee has misclarified their services as "GTA Service" instead of "Supply of tangible goods" under section 66E(f) of the Finance Act, 1994 and has wrongly taken the benefit of GTA services and not paid any Service Tax considering the payment to be made by service receiver under RCM. Further, it was observed that the assessee has received Gross Consideration thereon from their service of providing taxable services viz. "transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods" during the subject period.

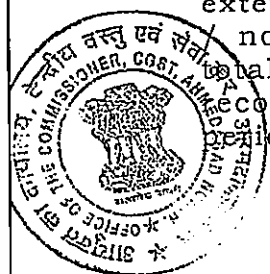
11.2 As per Table-III, it was observed that there is difference in Freight Income shown in balance sheet and the amount of GTA service shown in ST-3, Ongoing through the financial record submitted by the assessee and table - III, it was observed that the assessee has short-paid service tax worked out as above.

11.3 It was observed that the service provider has not declared full value of taxable services in their ST-3 returns and thus short-paid service tax. Further, it was observed that the service provider has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994, inasmuch as they failed to pay Service Tax in such manner and within such period prescribed in respect of taxable services provided/received by them.

11.4 The assessee has failed to make proper assessment and thus contravened the provisions of Section 70 of Finance Act, 1994 read with Rule 7 of the Service Tax Rule, 1994. Therefore, the assessee is liable to penalty under Section 77(2) of the Finance Act, 1994 in as much as they had failed to assess their actual Service Tax liability and also failed to file their correct ST-3 Returns from time to time, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

11.5 Non-assessment of tax liability at their own and non-payment of Service Tax and non-disclosure of the same in the Service Tax Returns appears to be intentional one on the part of the assessee. Thus, it appears that the assessee was fully aware of their legal obligations and non-payment of Service Tax, which they did not fulfill with the mala fide intention of evading payment of Service Tax.

12. The material information and value of taxable services had been concealed from the department by the assessee deliberately and consciously to evade payment of service tax. Also the assessee purposefully had not declared the amount received against the services rendered. From all the above acts of contravention on the part of the service provider have been committed with an intention to evade the payment of Service Tax by suppressing the facts and to commit fraud. Therefore, service tax is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994, along with interest under Section 75 of the Finance Act, 1994 by invoking extended period of five years time as the service provider has suppressed. The assessee has not declared the nature and value of the taxable services. Thus, the total amount of Service Tax, as discussed hereinabove was required to be covered along with interest from the assessee by applying the extended period of five years time.



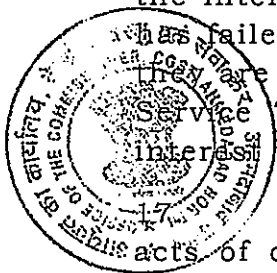
13. In the present regime of liberalization, self-assessment and filing of ST-3 returns online, no documents whatsoever are submitted by the said assessee to the department and therefore the department would come to know about such short-payment of service tax only during audit or preventive/other checks. As the assessee has short-paid service tax in contravention of the provisions of the Finance Act, 1994 and the rules framed thereunder, by resorting to suppression and misrepresentation, the same is required to be recovered under the proviso to Section 73(1) of the Finance Act, 1994, by invoking extended period. In the case of *M/s. Lalit Enterprises* [2010 (17) STR 370 (Tri Chennai)], it was held that "*in the light of the fact that verification of the records resulted in the Department coming to know that the assessee did not disclose receipt of service charges, therefore, five years period has been correctly invoked and applied against the assessee as the case falls within the proviso to Section 73(1) of the Finance Act, 1994 and the demand is not barred by limitation. In the case of M/s Mahavir Plastics* [2010 (255) ELT 241(Tri Mumbai)], it has been held that *if facts are gathered by department in subsequent investigation, it is not correct to say that the relevant facts were known to the department during the period of dispute, in such a situation, the decisions of the Apex Court cited by the ld. Counsel would not be of any avail to the assessee*".

14. The government has from the very beginning placed full trust on the service tax assessee so far service tax is concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of the service tax assessee; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service tax assessee, no matter how innocently. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts. Therefore, the said assessee had not paid service tax as worked out as above for the period from October, 2015 to June, 2017, is required to be demanded and recovered from them under proviso to sub-section (1) of Section 73 of Finance Act, 1994 by invoking extended period of five years read with Section 174 of CGST Act 2017.

15. The period involved is from October, 2015, onwards and the assessee has filed the ST-3 return for the period from October, 2015 to March, 2016, on **06.08.2016**. Accordingly, as per sub-section (1) read with clause (i)(a) under sub-section (6) of Section 73 of the Finance Act, 1994, the relevant date comes to be **06.08.2016**. Therefore, the five year period ends on **05.08.2021**.

16. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

It further observed that on account of all the above narrated acts of commission and omissions on the part of the service provider, they have rendered themselves liable to penalty under the provisions of the Section 78 Finance Act, 1994, as amended in as much as they have, not paid the correct amount of Service Tax leviable on such amount.



18. In this era of self-assessment, the assessee, being a big business house, cannot be said to be unaware of their liability with respect to payment of service tax and eligibility of exemption or abatement in respect of assessable value. Every provision of service should pass the above discussed tests, to be eligible for exemption or abatement as claimed by the assessee. Further, the onus to prove eligibility of exemption lies with the assessee, who claims exemption from payment of tax and he has to ensure as to whether the particular provision of service is proved to be eligible for exemption. The assessee is required to himself assess the service tax liability in respect of provision made by him and the facts have to be recorded in the service tax returns filed with the department, by the authorized signatory, in the self-assessment memorandum that he thereby declares that the particulars given in the Return are **in accordance with the records and books maintained by them and are correctly stated** and they have assessed and paid the service tax (within the specified time limit and in case of delay, they have deposited the interest leviable thereon) and/or availed and distributed CENVAT credit correctly as per the provisions of the Finance Act, 1994 and the rules made thereunder and that he is authorized to sign on behalf of the assessee. In the case of **M/s Mysore Metal Industries**[1988 (36) ELT 369 (SC)], Hon'ble Supreme Court of India, has held that **the burden is on the party who claims exemption**, to prove the facts that entitled him to exemption. The relevant text is reproduced here:

[2. We find that the Tribunal arrived at its finding on an examination of all the relevant and legal materials including the chemical test report. The burden is on the party who claims exemption, to prove the facts that entitled him to exemption. The appellant has failed to discharge the onus. As the Tribunal arrived at its conclusion based on the relevant facts and circumstances, there is no scope or ground for interference with the order of the Tribunal. In this premises this appeal is rejected.]

19. In a similar case of **M/s Rajasthan Spinning & Weaving Mills Ltd.** [1995 (77) ELT 474 (SC)], Hon'ble Supreme Court of India, held that there is no question of any liberal construction to extend the term and the scope of the exemption notification. The relevant text is reproduced here:

*[16. Lastly, it is for the assessee to establish that the goods manufactured by him come within the ambit of the exemption notification. Since it is a case of exemption from duty, there is no question of any liberal construction to extend the term and the scope of the exemption notification. Such exemption notification must be strictly construed and the assessee should bring himself squarely within the ambit of the notification. **No extended meaning can be given to the exempted item to enlarge the scope of exemption granted by the notification.**]*

20. Once the assessee avails abatement or exemption, **without entitlement**, it amounts to contravention of the rules with the intention of evading payment and the extended period of limitation would be available to the Revenue, as held by Hon'ble High Court of Judicature for Andhra Pradesh at Hyderabad, in the case of **M/s Sree Rayalseema Hi-Strength Hypo Ltd.** [2012 (278)ELT 167(AP)], reproduced as under:-

[9. The contention of the learned counsel for the assessee that the extended period of limitation of five years for recovery of the duty under the proviso to Section 11A(1) of the Central Excise Act, 1944 would not be available to the Revenue in this case, as the penalty proposed to be levied was dropped, does not hold water. The extended period of five years for recovery of duties either levied or short-levied arises under various situations such as fraud, collusion, willful mis-statement,



suppression of facts or contravention of the provisions of the Act or the Rules made thereunder with intention to evade payment of duty. It is no doubt true that the conditions that would extend the normal period of one year to five years would also attract the imposition of penalty [Union of India v. Rajasthan Spinning and Weaving Mills - (2009) 13 SCC 448 = 2009 (238) E.L.T. 3 (S.C.)]. But merely because the ingredients for both are the same, it would not mean that in case penalty is not imposed, the duty also cannot be recovered. Once the assessee availed credit under Rule 2(k) of the Rules of 2004 without entitlement it amounts to contravention of the rule with the intention of evading payment and the extended period of limitation would be available to the Revenue, notwithstanding the decision not to propose penalty upon the assessee.]

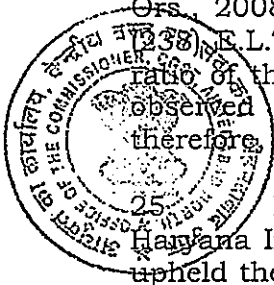
21. Therefore, there is intention to evade payment of Service Tax and they have contravened the provisions of Finance Act, 1994 and the rules framed thereunder and important facts have been suppressed, therefore, the amount of service tax short-paid is liable to be recovered by invoking extended period of five years under proviso to Section 73(1) of the Finance Act, 1994. The assessee was providing taxable services but they had failed to obtain ST registration and failed to file the ST-3 Returns and failed to pay the service tax payable thereon. Thus, they have suppressed their taxable income and contravened the various provisions of Finance Act 1994 and rules made there under. These facts came into notice of the Revenue only when the enquiry was initiated against them. Therefore, the said Service Tax not paid/short paid for the period under question is required to be demanded and recovered along with interest from them under the proviso to **Section 73(1)** of the Finance Act, 1994 by invoking extended period of five years.

22. 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 assessee 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 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 along with applicable interest. All these acts of contravention of the provisions of Section 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 on part of the assessee appears to have rendered them for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time.

23. It was also observed that Shri Rajendra Kataria, Director of the said assessee is the person responsible for business activities of the company relating to services provided and liability to pay service tax and for the act of omission and commission by their company which resulted in evasion and non-payment of service tax as explained in above paras. For the above acts of contravention of various provisions of the Finance Act, 1994, and rules made thereunder, it observed that Shri Rajendra Kataria, Director of the said company is liability for penalty under section 78A of the Finance Act, 1994.

24. The issue of imposing penalty is no more *res integra* in view of the judgments of the Supreme Court in the case of Dharamendra Textile Processors and Ors. 2008 (231) E.L.T. 3 (S.C.) and Rajasthan Spinning and Weaving Mills - 2009 (238) E.L.T. 3 (S.C.). The Apex Court has held that penalty is civil liability and the ratio of the same is applicable in all case of tax evasion. In the present case, it is observed that the assessee has deliberately evaded payment of service tax and, therefore, they are liable for penalty under Section 78 of the Finance Act 1994.

Further Hon'ble High Court of Punjab & Haryana, in the case of CCE Vs Haryana Industrial Security Services reported at 2011 (21) STR 210 (P&H), has also upheld the penalty equal to service tax imposed under Section 78 of the Finance Act.



1994. Hon'ble Karnataka High Court has also taken similar view in the case of CCE. Mangalore Vs K Vijaya C Rai reported at 2011 (21) STR 224 (Kar).

26. 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 assessee 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 (MR), 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.'

27. The said assessee was earlier registered under the Jurisdiction of the Commissioner of Service Tax, Ahmedabad. Consequent to the issue of the Notification No.12/2017-Central Excise (NT) to 14/2017-Central Excise (NT) all dated 09.06.2017, appointing the officers of various ranks as Central Excise officers & reallocating the jurisdiction of the Central Excise Officers and Trade Notice No. 001/2017 dated 16.06.2017 issued by the Chief Commissioner, Central Excise & Service Tax, Ahmedabad Zone, the said assessee is now registered under the Jurisdiction of the Commissioner, Central Goods and Service Tax, Ahmedabad South.

28. Further, the then effective provisions of the Central Excise Act, 1944 and the Central Excise Tariff Act, 1985, as repealed vide Section 174(1) of the CGST Act, 2017 and the then effective provisions of the Chapter V of the Finance Act, 1994, as omitted vide Section 173 of the CGST Act, 2017, and the then effective provisions of the Cenvat Credit Rules, 2004, as superseded vide notification no.20/2017-CE (NT) dated 30.06.2017, have been saved vide Section 174(2) of the CGST Act, 2017 and notification no. 20/2017-CE (NT) dated 30.06.2017. Therefore, the provisions of the said repealed/amended Acts and Rules made there under are rightly enforceable for the purpose of demand of duty, interest, etc. and imposition of penalty under this notice.

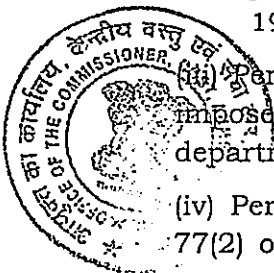
28.1 As per Section 142(8)(a) of the CGST Act, 2017, where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act.

29. Therefore, Show Cause Notice was issued to M/s. K Log Global Pvt. Ltd., , are called upon to show cause as to why :

- (i) The value of services, amounting to **Rs.12,88,99,366/-**, as described in Annexure-1, attached herewith NOT be considered as taxable value of taxable services provided by the assessee to their respective clients;
- (ii) The demand for Service Tax to the extent of **Rs.1,90,45,050/- (Rupees One Crore, Ninety Lakh, Forty Five Thousand&Fifty only)** short paid/not paid by them, as described hereinabove, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Section 174(2) of CGST Act, 2017, by invoking extended period of five years, under the proviso to sub-section (1) of Section 73 of the Finance Act, 1994, as amended;

(iii) Penalty under section 78 of the Finance Act, 1994, as amended, should not be imposed on them for suppressing the taxable value and material facts before the department resulting into non-payment of Service Tax including cesses;

(iv) Penalty should not be imposed upon them under the provisions of Section 77(2) of the Finance Act, 1994, for failure to self-assess the Service Tax on the

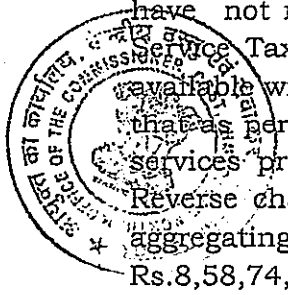


taxable value and to file correct ST-3 returns during the period from October, 2015 to June, 2017.

30. Shri Rajendra Kataria, Director of the said assessee is also called upon to show cause as to why Personal Penalty should not be imposed upon him under Section 78A of the Finance Act, 1994.

DEFENCE REPLY :

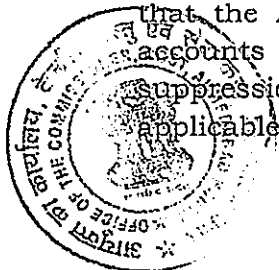
31. M/s. KLog Global Pvt. Ltd. vide letter dated 11.04.2022 has submitted their written submission in which they stated that they are registered with Service Tax Department vide its Registration No. AACCK6627NSD001 under the Category of Transport of goods by road/goods transport agency service, Supply of Tangible Goods Service, Business auxiliary service, Rent-a-cab scheme operator Service; that the alleged Show Cause Notice given is for the period commencing from October 2015 to June 2017; that they had provided Audited Financial Statement for the Financial Year 2015-16 & 2016-17 along with Income Ledger from April 2017 to June 2017, Form 26AS for FY 2015-16 and FY 2016-17 and Copy of ST-3 return from October 2015 to June 2017; that vide reply dated 17.2.2021, they have clearly stated that the Freight Income is provided to a Body Corporate/partnership firms/ Business Entity whereby the liability to pay Service Tax would be under reverse charge mechanism vide Notification No.30/2012 dated 20.06.2012 and Income by way of Hiring of Vehicle would fall under Exemption/Criteria/Category under Sr. No.22 (b) of Notification No.25/2012 dated 20.6.2012; that they were unable to provide the data to the office; that they submitted that there is no dispute / doubt with regards to the fact that the services which were provide by the Assessee were either GTA Service Exempt vide Notification No.30/2012 or Services by way of giving on hire, to GTA, a means of transportation of goods exempt vide Notification No. 25/2012 Entry No.22 (b); that they were unable to submit the data/records/evidence was due to water leakage in its storage room / godown due to which all the documents were destroyed due to such water leakage's and the situation was very bad and beyond the control of Assessee Company; that they attached photographs of the storage department which was destroyed to water leakage; that they are able to submit the data / details which evidence which are recovered by the Accounts team from various emails/ letters / communications done with it customers and clients.; that the reply is given after almost 12 months to enable the Assessee to compile the documents / dates from its server / e-mails / Communications done during 2015-16, 2016-17 and 2017-18 (upto June 2017); that the entire list of Annexure-1 which is given in the Show Cause Notice is divided into two parts; that; **PART -A is Freight Income liable for Reverse Charge** : Services of Freight Income is exempt by Notification No.30/2012 liable for Reverse Charge by the Recipient of services; that they also avails the benefit of 70% abatement of the gross taxable value of services provided vide Notification No.26/2012 dated 20.6.2012 available to GTA providing freight services; that the list of Customers as per Annexure-1 of SCN, the amount of services provided to corporates by them are different; that the amount mentioned in the table is that the amount which is derived by the Department in the alleged Show Cause Notice is not known to the Assessee. In many cases the amount (a)Either matches with the Ledger Account (b)Does not match with the Ledger Account or (c) Even does not match with form 26AS available with the Assessee. Therefore in order to avoid confusion, they have not relied upon the numbers / figures / values which are self-derived by the Service Tax Department instead they have purely relied upon the Actual Amount available with them in their Audited Books of Accounts (maintained by the company); that as per the above mentioned table the Total Value of Services falling under GTA services provided by the Assessee Company to body corporates (which is liable for Reverse charge vide NotificationNo.30/2012) as mentioned in Show Cause Notice is aggregating to Rs.6,16,36,372/-while as per the Assesses aggregating to Rs.8,58,74,001/-; that they have Extract copy of Ledger Accounts of the above mentioned parties / customers / Body Corporates alongwith Sample Copy of Invoices



and Sample Copy of LR/CN; that the amount disclosed in the Ledger Account will be Rs.8,58,74,001/- as shown in Column d of the above table referred in Point No.2 of Part A of their Submissions; that the facts narrated above, it is very clear that the Assessee has provided Freight Services/GTA Service to its Body Corporate and has also issued mandatory Consignment Note against the same; that the necessary conditions to prove that the service fall under the category of GTA services and liable for Reverse Charge is completely fulfilled by them; that these services are provided to Body Corporate in the nature of Transportation / GTA/ Freight Services it will fall under the exemption criteria of Notification No. 30/2012 dated 20.6.2012; that there is no dispute with regards to the Nature of Service being GTA services on the list which are in Annexure-1, but the dispute was only on account of non-submission/non availability of data; that as mentioned earlier due to water leakage in the storage/warehouse, the data was wiped off it could not be submitted during the earlier notice given to the Assessee /Company; that the situation beyond the control of Assessee which prevented the company to submit the date and there was no Malafide intention behind any non-submission of data; that they requested to consider the Ledger account, Invoices and LR/Consignment Note copies as proof justification about GTA service and remove the said amount aggregate to Rs.6,16,36,372/- as per Show Cause Notice from the Total Value of Service whose data was not provided; that they are genuine Transporter Company in the industry catering services to lot of MNC's/Large corporates and therefore the nature of Service being a GTA is a question of no dispute.

PART-B : Income from Services by way of giving on Hire, to GTA, a means of Transportation of Goods

The assessee has submitted that all the list of Clients / Customers mentioned in Annexure-1 of the Show Cause Notice other than the list of parties falls under the Category of Income from Services by way of giving on hire, to GTA, a means of transportation of goods which is also Exempt vide Notification No.25/2012 entry No.22 (b) dated 20.6.2012; that they have provided the list of the parties to whom the Services have been provided; that the total amount provide to GTA to GTA is Rs. 6,82,28,213/-, the show cause Notice reflects the total amount of Rs. 6,72,62,994/-; that the actual Value of Services provided to the respective clients and customers are enclosed by them; that they provided the copy of Ledger Accounts alongwith Sample Copy of Invoices fall under Category -Services by way of giving on hire, to GTA, a means of transportation of goods; that the amount disclosed in the Ledger Account will be Rs. 6,82,28,213/- ; that at the time when the Mega Exemption Notification was issued vide Notification No.25/2012 dated 20.6.2012, it was a exhaustive list which was given with an intention to either give Tax Exemption to Actual Service Provider which are benefiting general public in large i.e Health Care Services OR the exemption was given to avoid Double Taxation on the same transaction like **GTA to GTA; that** in the present case i.e in Income from services by way of giving on hire, to GTA, a means of transportation of goods, a transport vehicle is given to another GTA for Transportation of Goods; that the Services provided are GTA Parties/Companies (for Eg: Name includes Roadlines, Carrier, Logistics, Transporters etc. providing transportation services to its Client and customers; that the ultimate liability to discharge service tax would be either on the Client of Assessee Company i.e. another GTA Company or its customers under reverse charge; that there is no dispute in the Nature of Services the Assessee should be given the benefit of exemption vide Notification No.25/2012 dated 25.06.2012 vide entry no 22(b),i.eno service tax liability should be levied in this regard; that they requested to consider the written submission; that Extended period of limitation is not invokable in the present case; that the Assessee have filed returns from time to time and maintained books of accounts as required under the provisions of Finance Act, 1994. Therefore, suppression cannot be alleged by the Department; that No penalty under Section 78 is applicable; that Interest is not recoverable from the Assessee.



PERSONNEL HEARING :

32. Personnel Hearing was granted to the assessee on 25.04.2022 wherein Shri Ankit Parikh (C.A) appeared before me for Personnel Hearing on behalf of the assessee. He has submitted his written submission earlier and re-iterated the same at the time of Personnel Hearing. Further, he requested that the SCN may please be dropped.

DISCUSSION AND FINDING :

33 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.

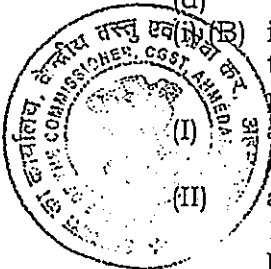
33.1 I have carefully gone through the records of the case, submission made by the assessee in reply to the show cause notice and also during the course of personal hearing. In the present case, Show Cause Notice has been issued to the assessee demanding Service Tax of Rs.1,90,45,050/- for the financial year 2015-16 and 2016-17 on the basis of data received from Income Tax authorities. In the present case said Service Tax demand has been issued for an amount of Rs. 12,88,99,366/- with regards to non payment of Service Tax. 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. The Show Cause Notice also propose the personnel penalty under Section 78A of the Finance Act, 1994 against Director of the said assessee.

33.2 In reply to the show cause notice, the said assessee submitted their written submission on 19.04.2022 and enclosed all the relevant documents. I find from the Show Cause Notice that the assessee has income from GTA Services and income from Hiring of Vehicles. I also find from the show cause Notice that the assessee has declared the income received from hiring of vehicles and declared the same in their ST_3 returns. I find that the assessee has not provided the documents in respect of Freight Income at the time of Show Cause Notice and accordingly show cause notice has been issued. I also find from the assessee written submission that the assessee could not produce the data due to water leakage in their storage room and that all the documents were destroyed. I find that the data has been recovered by their account team through various correspondence with their customers almost after 12 months. I also find that the assessee has provided the details of Freight Income to their various clients in CATEGORY "A" and Income from Services by way of giving Hire to GTA, a means of transportation of goods in their written submission alongwith the consignment note, ledger etc.. Now the question is that the assessee is liable to pay Service tax on Freight Income received for providing Services to body corporate and Services to GTA to GTA to their customers.

33.3 Now I would like to go through the legal aspects of the taxability of GTA services.

Rule 2(d)(B)(V) of the Service Tax Rules, 1994 provided that;

- (d) "person liable for paying service tax", -
 (B) in relation to service 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,—
 (I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
 (II) 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;



- (III) any co-operative society established by or under any law;
- (IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under;
- (V) any body corporate established, by or under any law; or
- (VI) any partnership firm whether registered or not under any law including association of persons; any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage : Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

33.4 Para 1(A)(ii) and Para II of Notification No. 30/2012-ST dated 20.06.2012 as amended provided that service tax payable on services 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) any body 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 the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :-

TABLE

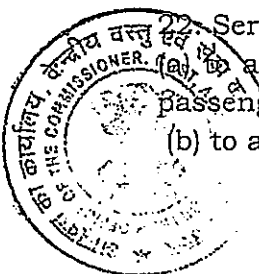
Sl. No.	Description of Service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving service
01	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	NIL	100%

33.5 I also produced herewith the relevant portion of notification No. 25/2012-ST dated 20.06.2012.

Notification No. 25/2012-Service Tax dated- 20th June, 2012, as amended. Incorporating changes made till issuance of notification no 10/2017-Service Tax dated 8-3-2017 G.S.R. 467(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 12/2012- 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. 210 (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 following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

Services by way of giving on hire –

- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
- (b) to a goods transport agency, a means of transportation of goods;



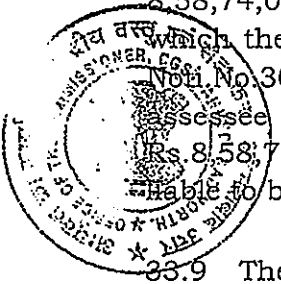
23. Transport of passengers, with or without accompanied belongings, by - (a) air, embarking from or terminating in an airport located in the state of A

33.6. As per provisions contained in Rule 2(d)(B)(V) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, service tax on GTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) and dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder is payable in RCM by the service recipient. Similarly as provided in condition No. 22 (b) of the Notification No. 25/2012-ST dated 20.06.2012, Services by way of giving hire to a goods transport agency is also exempted from payment of Service Tax.

33.7 In this connection, on perusal of Show Cause Notice, I find Show Cause Notice has been issued to the assessee demanding service tax of Rs.1,90,45,050/- on differential amount of Rs.12,88,99,366/- as the assessee failed to submit the documents/invoices or other evidences to prove that (i) they have provided transportation related services to various clients as GTA service provider, where service provider were not liable for payment of service tax, in view of notification no. 30/2012-ST dated 20.06.2012; OR (ii) they have provided the services by way of giving on hire, to a GTA, a means of transportation of goods, where exemption is available under serial no. 22(b) of Notification No.25/2012-ST dated 20.06.2012. In the instant case the SCN is issued to demand service tax on differential value of Rs.12,88,99,366/-, which consists of Rs.6,16,36,372/- pertains to services provided to body corporate wherein the liability to pay service tax falls on them under RCM as per Noti.No.30/2012 and Rs.6,72,62,994/- pertains to services provided to other GTA which is exempted from services tax as per 22(b) of Noti.No.25/2012. However the assessee has submitted that the amount mentioned in the SCN is less than the correct income which comes to Rs.15,41,02,214/-. In support of their claim they have provided copies of ledger accounts alongwith invoices of all the service receivers as mentioned in Annexure A attached to SCN. On perusal of the said ledgers and invoices, I find that the total value arrives at Rs.15,41,02,214/- and as this value is on the higher side and also on the basis of ledgers and invoices, I take Rs.15,41,02,214/- for adjudication as the correct value as for the year 2015-16, 2016-17 & 2017-18 (upto June 2017).

33.8 The assessee further claimed that the Total Value of Services falling under GTA services provided by the Assessee Company to body corporate (which is liable for Reverse charge vide NotificationNo.30/2012) as mentioned in Show Cause Notice is Rs. 8,58,74,001/- and they have provided copy of Ledger Accounts of the above mentioned parties / customers / Body Corporate along with Sample Copy of Invoices and Sample Copy of LR/CN. I also find that the amount disclosed in the Ledger Account is Rs.8,58,74,001/-as per table they submitted. They requested to consider the Ledger account, Invoices and LR/Consignment Note copies as proof justification about GTA service and remove the said amount of Rs.6,16,36,372/-, which is mentioned in the Annexure to SCN. Therefore I consider, an amount of Rs. 8,58,74,001/- for adjudication in respect of Services provided to Body Corporate on which the liability to pay service tax falls on the service receiver under RCM as per Noti No.30/2012 for the period 2015-16 to 2017-18 (Up to June 2017). Therefore the assessee is not liable to pay service tax on the said differential value of Rs.8,58,74,001/- and accordingly the service tax demand against the said amount is liable to be dropped.

33.9 The assessee further claimed that the Total Value of Services falling under GTA services provided by the Assessee Company to other GTA (which is exempted vide

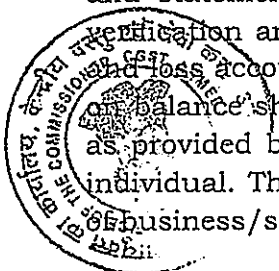


Notification Sr. No. 22 (b) of the Notification No. 25/2012-ST dated 20.06.2012 as mentioned in Show Cause Notice is Rs. 6,82,28,213/- and they have provided copy of Ledger Accounts of the above mentioned parties / customers / Body Corporate along with Sample Copy of Invoices and Sample Copy of LR/CN. I also find that the amount disclosed in the Ledger Account is Rs.6,82,28,213/- as per table they submitted. They requested to consider the Ledger account, Invoices and LR/Consignment Note copies as proof justification about GTA service and remove the said amount of Rs.6,72,62,994/-, which is mentioned in the Annexure to SCN. Therefore I consider, an amount of Rs.6,82,28,213/- for adjudication in respect of Services provided to other GTA for the year 2015-16 to 2017-18 (Up to June 2017). The assessee is not liable to pay service tax on the said differential value of Rs. 6,82,28,213/- as the same is exempted from payment of service tax as per Sr. No. 22 (b) of the Notification No. 25/2012-ST dated 20.06.2012 and accordingly the service tax demand against the said amount is liable to be dropped.

33.10 On perusal of the records of the case, submissions of the assessee, Audited Balance Sheet, 26 AS, ITR, copies of ledger accounts and the above reconciliation statement for the year 2015-16 to 2017-18(Up to June 2017), I find that the assessee earned total income of Rs. 15,41,02,214. Out of which the income of Rs. 8,58,74,001/- is derived from services provided to corporate body and the liability to service tax falls upon the service receiver as per Notification No.30/2012-St dated 20.06.2012. Further the remaining amount of Rs.6,82,28,213/- is derived from the services provided to other GTA and as per condition No. 22 (b) of the Notification No. 25/2012-ST dated 20.06.2012 which provides exemption from payment of Service Tax. In view of the above facts, the service tax demand is not sustainable and therefore the demand of service tax of Rs. 1,90,45,050/- is liable to be dropped. For the sake of clarity I reconcile the value as under:

Description	Rs. In actual
Total differential income as discussed above for the year 2015-16 to 2017-18 (UP to June 2017)	15,41,02,214/-
Less : Services Provided to Body Corporates claim RCM under Notification No. 30/2012-ST dated 20.06.2012	8,58,74,001/-
Less : Services provided GTA to GTA exempted condition No. 22 (b) of the Notification No. 25/2012-ST dated 20.06.2012.	6,82,28,213/-
Difference	0

33.11 The financial and other records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company/ individual during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs of the company/ individual. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.



33.12. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, ITR, reconciliation statement, I find that the service tax demand of Rs. 1,90,45,050/- for the period 2015-16 to 2017-18 (Up to June 2017) is not sustainable and accordingly Show Cause Notice dated 23.04.2021 is liable to be dropped. Accordingly, I do not consider it necessary to delve on the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise for imposing penalty. In view of the above, I am also not entering into discussions on the imposing penalty on Shri Rajendra Kataria proposed under Section 78A of Finance Act, 1994 in the show cause notice.

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

: ORDER :

35. I drop the demand of Rs. 1,90,45,050/- and proceedings initiated against M/s. K Log Global Pvt. Ltd., c/o Kataria Automobile Limited, Near K. S. Lokhandwala Complex, O/s Dariapur Darwaza, Dariapur, Ahmedabad and accordingly Show Cause Notice F.No. STC/15-211/OA/2021-22 dated 23.04.2021 is hereby disposed off.



(Mukesh Rathore)
Additional Commissioner
Central Excise & CGST,
Ahmedabad North

F.No.STC/15-211/OA/2021-22

Dated: 11.05.2022

BY REGD. POST A.D./SPEED POST/Hand Delivery

To,
M/s.K Log Global Pvt. Ltd.,
c/o Kataria Automobile Limited,
Near K. S. Lokhandwala Complex,
O/s Dariapur Darwaza, Dariapur,
Ahmedabad

Copy for information to:

1. The Commissioner, CGST & CX, Ahmedabad North.
- 2.. The Dy. /Assistant Commissioner, DIV-II, CGST & CX, Ahmedabad North.
3. The Superintendent, Range-I, Division-II, CGST & CX, Ahmedabad North.
4. The Superintendent, Systems, CGST & CX, Ahmedabad North.
5. Guard File.

