


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>GST ONE TAX... ONE MARKET</p> <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20220564WT0000802359

फा.सं./F.No. STC/15-40/OA/2020

आदेश की तारीख/Date of Order :- 18.05-2022

जारी करने की तारीख/Date of Issue :- 18.05-2022

द्वारा पारित/Passed by:-

आर गुलजार बेगम /R Gulzar Begum

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 10/ADC/ GB /2022-23

जिस व्यक्ति(याँ) 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।

(1) उक्त अपील की प्रति।

(2) 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।

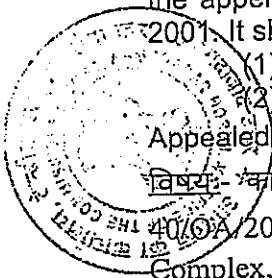
The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

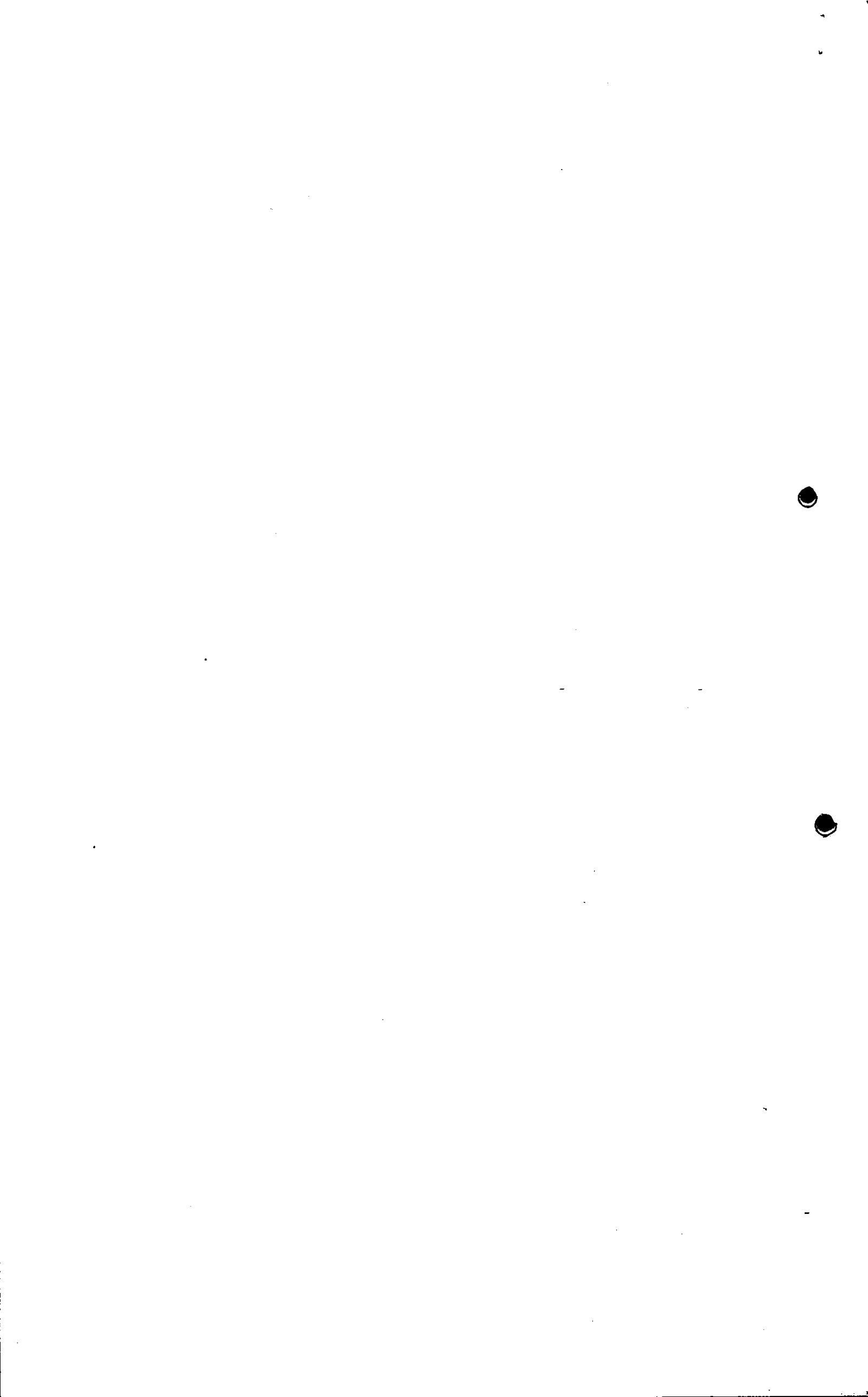
(1) Copy of accompanied Appeal.

(2) 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 Notices F.No.STC/15-40/OA/2020 dated 28.09.2020 issued to M/s Delhi Bombay Roadlines, H.O. No. 8, Dhanraj Complex, Opp. Ambica Petrol Pump, Sarkhej Bavla Road, Sarkhej, Ahmedabad.





BRIEF FACTS OF THE CASE :

M/s DELHI BOMBAY ROADLINES, H.O.NO.8, DHANRAJ COMPLEX, OPP. AMBICA PETROL PUMP, SARKHEJ BAVLA ROAD, SARKHEJ, AHMEDABAD (hereinafter referred to as "the said assessee" for the sake of brevity) is engaged in providing services and for the same was registered with Service Tax Department having Registration (ST-2) No. AZBPS9033PST001.

2. An analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15, and details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the records available with this office, on going through the Third party Data received from CBDT of the said assessee for the Financial Year 2014-15, the Sales/Gross Receipt from Services (Value from ITR) are not tallied with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2014-15. It appears that the said assessee have declared less/not declared any taxable value in their Service Tax Return (ST-3) for the F.Y. 2014-15 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the financial year 2014-15. The details of difference as per CBDT data for the Financial year 2014-15 are as under :

Sr. No.	Financial Year	Amount as per Income Tax Return(ITR)/Form 26AS (in Rs.)	Taxable value as per ST-3 Returns (in Rs.)	Differential amount (Less amount shown in ST-3 Return) (in Rs.)
01	2014-15	58,830,643/-	Not Available	58,830,643/-

Therefore, the said assessee has less discharged their Service Tax liability and thus liable to pay Service tax including Cess @ 12.36% amounting to Rs. 72,71,467/- on the differential value amounting to Rs. 58,830,643/- along with applicable interest and penalty for the F.Y. 2014-15.

4. It was observed that the clarification regarding the above said differential value along with documents were called for from the said assessee for assessment purpose vide Supdt's letter F.No. CGST-06/04-14/TPD/AR-I/2018-19 dated 15.05.2019 followed by Reminders dated 30.05.2019 & 18.09.2020. It also observed that the said assessee has been asked to furnish the reason for the difference between taxable value shown in ST-3 Return vis-à-vis Income Tax Return filed by the said assessee for the Financial year 2014-15 alongwith submission of self-certified documents such as audited balance sheet, Profit & Loss account, ledgers, gross trial balance, ITR, Form 26AS, ST-3 Return and details of all the sales invoices issued during F.Y. 2014-15 but the said assessee has neither produce any documentary evidences of the differential value nor submit any reply.

5. It was observed that the said assessee has neither submitted the documents nor extended the cooperation in the matter although sufficient time was provided. This act of non-cooperation of the said assessee has contravened the provisions of Section 72 of the Finance Act, 1994 and thus rendered themselves liable for penal action under Section 77 of Finance Act, 1994.

6. As per the provisions of Section 72 of the Finance Act, if any person, liable to pay service tax having made a return, fails to assess the tax, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the

value of taxable service to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

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

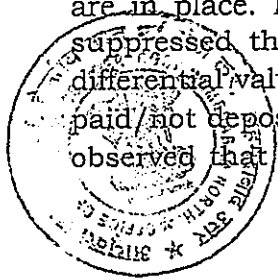
8. As per Rule 6 of the Service tax Rules, 1994, the service tax shall be paid to the credit of the Central Government by 5th day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994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

9. It was also observed that the said assessee have failed to pay/short paid/deposit service tax to the extent of Rs.72,71,467/- on the difference of taxable value during the period 2014-15 by declaring less value in their ST-3 Returns vis-a-s their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services received/provided by them with an intent to evade payment of service tax. Thus, it was observed that the said assessee have failed to discharge the service tax liability of Rs. 72,71,467/- (inclusive of Edu. Cess and S&H Edu. Cess) worked out on value of Rs. 58,830,643/- and therefore, service tax is required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

10. In view of above, it was observed that the said assessee have contravened the provisions of :

- (a) Section 66 of the Finance Act, 1994 in as much as they have failed to collect and pay the service tax as detailed above, to the credit of Central Government.
- (b) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they have not paid the service tax as mentioned above to the credit of the Government of India within the stipulated time limit;
- (c) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, as amended, in as much as they had failed to properly assess their Service Tax liability under Rule 2(1)(d) of Service Tax Rules, 1994 and failed to declare correct value of taxable services as well as exempted services to the department in the prescribed return in Form ST-3.

11. It has been noticed that at no point of time, the said assessee has disclosed full, true and correct information about the value of the services provided by them 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 2014-15. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc., based on mutual trust and confidence are in place. 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. 72,71,467/-. Thus, it was observed that there is a deliberate withholding of essential and material information



from the department about service provided and value realized by them. It appears that all these material information have been concealed from the department deliberately, consciously and purposefully to evade payment of service tax.

12. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (as such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appears that the said assessee has short paid/non-payment of Service Tax of Rs. 72,71,467/- on the actual value received towards taxable services provided which appears to be recoverable under proviso to Section 73(1) of the Finance Act alongwith interest under Section 75 ibid not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee has suppressed the facts to the department and contravened the provisions with an intent to evade payment of Service Tax. The said assessee has not discharged their Service tax liability and hence is liable to pay interest under Section 75 of the Finance Act.

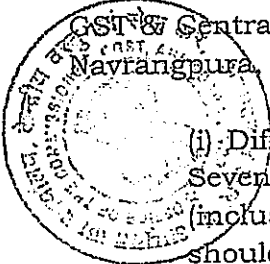
13. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax appears to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of service tax as discussed in the foregoing paras and therefore, the said amount of service tax amounting to Rs. 72,71,467/- (inclusive of Edu. Cess and S&H Edu. Cess) not paid is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

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

15. Moreover, in addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it was observed that the said assessee has willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of service tax rendering themselves liable for penalty under Section 78 of the Finance Act, 1994.

16. Therefore, M/s DELHI BOMBAY ROADLINES, H.O.NO.8, DHANRAJ COMPLEX, OPP. AMBICA PETROL PUMP, SARKHEJ BAVLA ROAD, SARKHEJ, AHMEDABAD called upon to show cause to the Additional Commissioner, Central Excise, Ahmedabad North, having office at 1st Floor, Custom House, Navrangpura, Ashram Road, Ahmedabad, as to why;

(i) Differential amount of Service Tax amounting to Rs. 72,71,467/- (Rupees Seventy two lakhs Seventy one thousand Four hundred Sixty seven only) (inclusive of Edu. Cess and S&H Edu. Cess) short paid/not paid by them, should not be confirmed/demanded under proviso to Section 73(1) of the Finance Act, 1994.



(ii) interest at the appropriate rates should not be recovered from them as prescribed under Section 75 of the Finance Act, 1994 from the due date on which the Service Tax was liable to be paid till the date on which the said Service Tax is paid.

(iii) penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for the failure to make payment of service tax payable by them within prescribed time-limit.

(iv) penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for the failure to assess the correct tax liability.

(vi) penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 as amended for suppressing and not disclosing the value of the said taxable service provided by them before the department with an intent to evade payment of service tax.

DEFENCE REPLY

17. The assessee vide letter dated 04.10.2021 stated that M/s. Delhi Bombay Road lines with Service Tax No. AZBPS9033PST001 on the address is inactive since last 15 years (Approx); that the turnover mentioned in notice of Rs. 5,88,30,643/- is against Service Tax Number AZBPS9033PST003 issued to M/s. Delhi Bangalore Road lines residing office NO. 10, DHANRAJ COMPLEX, OPP. AMBICA PETROL PUMP, SARKHEJ BAVLA ROAD, SARKHEJ, AHMEDABAD; that they have filed all Service Tax and Income Tax returns and attached all ST-2, ST-3, Sample ledger & invoice copy of their consignee, IT returns, copy of 26 AS and copy of GST registration of Service Tax Number AZBPS9033PST003 issued to M/s. Delhi Bangalore Road lines; that liability to pay Service Tax is of Consignor/Consignee & the same is already mentioned in their sale bill, therefore, they are not liable to pay Service Tax; that on the basis of above, there is no outstanding liability of any tax from their end and requested to accept the reply and drop the proceedings.

18. PERSONNEL HEARING :

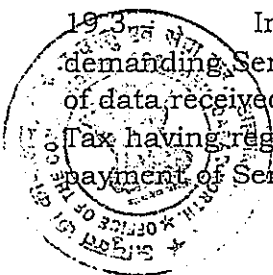
Personnel hearing was granted to the assessee on 08.09.2021, 21.09.2021, 27.09.2021, 05.10.2021, 18.11.2021, 13.12.2021, 22.02.2022, 08.03.2022. However, neither the assessee nor any representative on behalf of assessee appeared for personal hearing nor filed any intimation for their non-appearance.

DISCUSSION AND FINDINGS

19.1 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 further.

19.2 I have carefully gone through the records of the case and as per the facts available on record I have noted that ample opportunity of personal hearing was given to the said assessee however, they have not availed the same to defend their case. Therefore, I am proceeding to decide the case ex-parte based upon the records available with this office.

19.3 In the present case, Show Cause Notice was issued to the noticee demanding Service Tax of Rs. 72,71,467/- for the financial year 2014-15 on the basis of data received from Income Tax authorities. The assessee is registered under Service Tax having registration No. AZBPS9033PST001. 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(1), 77(2) and 78 of the Finance Act, 1994. I find the assessee is engaged in providing transportation of goods by road services.

19.4 I have carefully gone through the records of the case, submission made by the noticee in reply to the show cause notice. I find that the Show Cause Notice has been issued to the assessee M/s DELHI BOMBAY ROADLINES, H.O.NO.8, DHANRAJ COMPLEX, OPP. AMBICA PETROL PUMP, SARKHEJ BAVLA ROAD, SARKHEJ, AHMEDABAD under Service Tax Registration No. AZBPS9033PST001. However, I find that the assessee vide letter dated 04.10.2021 stated that M/s. Delhi Bombay Roadlines with Service Tax No. AZBPS9033PST001 on the address is inactive since last 15 years. I also find that the assessee has stated that turnover mentioned in Show Cause notice of Rs. 5,88,30,643/- is against Service Tax Number AZBPS9033PST003 issued to M/s. Delhi Bangalore Roadlines residing office NO. 10, DHANRAJ COMPLEX, OPP. AMBICA PETROL PUMP, SARKHEJ BAVLA ROAD, SARKHEJ, AHMEDABAD. The assessee has furnished all the documents related to Service Tax Number AZBPS9033PST003 issued to M/s. Delhi Bangalore Road lines i.e Service Tax and Income Tax returns, ST-2, Sample ledger & invoice copy of their consignee, IT returns, copy of 26 AS of Service Tax Number AZBPS9033PST003 issued to M/s. Delhi Bangalore Road lines. I find that the assessee has furnished all the documents related to Service Tax Number AZBPS9033PST003 issued to M/s. Delhi Bangalore Road lines which is not pertaining to the Show Cause Notice as the Show Cause Notice has been issued to M/s DELHI BOMBAY ROADLINES, H.O.NO.8, DHANRAJ COMPLEX, OPP. AMBICA PETROL PUMP, SARKHEJ BAVLA ROAD, SARKHEJ, AHMEDABAD under Service Tax Registration No. AZBPS9033PST001. The assessee in their reply dated 04.10.2021 stated that their Service Tax Registration No. AZBPS9033PST001 is inactive since last 15 years, however, they have not provided surrender certificate with regards to the said Service Tax No. Further, as per the records available with this office, it is observed that the said Service Tax Registration No. is active. Further, the assessee has submitted data with regards to the Delhi Bangalore Roadlines under Service Tax Registration No. AZBPS9033PST003, however, the Service Tax has been demanded in SCN under Service Tax Registration No. AZBPS9033PST001 of Delhi Bombay Roadlines.

19.5 The taxability of service tax on Transportation of goods by road is reproduced as below :

Rule 2(1)(d)(B) 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 thereunder;

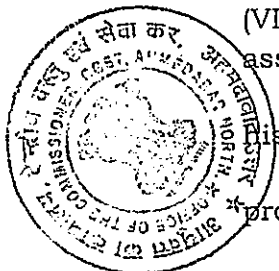
(V) any body corporate established, by or under any law; or

(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.

19.6. 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;

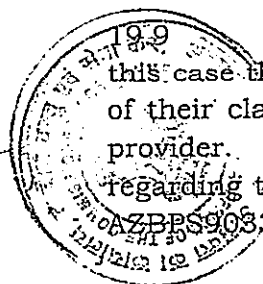
(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :-

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%

19.7 As per provisions contained in Rule 2(d)(B) 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) or a 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.

19.8 The noticee submitted that they are providing services of transportation of goods by road for which they are claiming exemption under Notification No. 30/2012 (as amended) according to which the service recipient is required to pay service tax under RCM as discussed above. However, no information/supporting documents or relied upon documents has been provided by the said assessee. In the absence of ledger accounts or list of the service receivers along with their status which proves that they fall under which of the category mentioned under Noti.30/2012 and accordingly the benefit of Noti.No.30/2012 can be considered. If the service receiver falls under the any one of the category mentioned in the Noti.No.30/2012, then only the liability to pay service tax can be determined. Therefore, I am not in a position to ascertain whether assessee is eligible for any exemption benefit of any notification in absence of relied upon documents.

19.9 The assessee is registered with Service Tax Department. However, in this case the assessee failed to furnish/provide the required documents to in support of their claim to prove that they are not liable to pay service tax being the service provider. The assessee in their reply to Show Cause Notice, no list or details regarding the service receivers have been provided in respect of Service Tax Number AZBPS9033PST001. However, the assessee has provided documents in respect of



Service Tax Number AZBPS9033PST003 issued to M/s. Delhi Bangalore Road lines. Under Service Tax Number AZBPS9033PST003 issued to M/s. Delhi Bangalore Road lines. Under Service Tax Number AZBPS9033PST003 issued to M/s Delhi Bangalore Roadlines. The assessee in their reply dated 04.10.2021 stated that their Service Tax Registration No. AZBPS9033PST001 is inactive since last 15 years, however, they have not provided surrender certificate with regards to the said Service Tax No. Further, as per the records available with this office, it is observed that the said Service Tax Registration No. is active. Further, the assessee has submitted data with regards to the Delhi Bangalore Roadlines under Service Tax Registration No. AZBPS9033PST003, however, the Service Tax has been demanded in SCN under Service Tax Registration No. AZBPS9033PST001 of Delhi Bombay Roadlines.

19.10 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 recipients may not be falls under the category m(a) to (f) mentioned in Notification No.30/2012. In case if the service receiver is not fall under any of the category the full liability to pay service tax is on the assessee himself. To avoid this liability to pay service tax, he may be deliberately supplied the details/documents called for.

19.11 I 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.

19.12 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. Delhi Bombay Road Lines deliberately not declared the services 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. As they have not disclosed the entire fact that they are providing GTA services to others, data provided by CBDT helped to find out the suppression of the assessee and subsequent issuance of Show Cause Notice to recover the remaining service tax from the said assessee. 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.

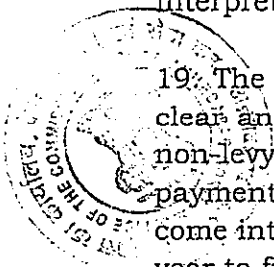
15. To put it differently, the proviso merely provides for a situation where under the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when 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.

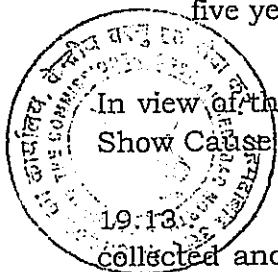
22. The Apex Court in the case of Rajasthan Spinning and Weaving Mills (supra) has held thus :

"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 priori 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

19-13- Further, they had not claimed any abatement for the said charges collected and provisions of the 'taxable services' during the aforesaid period 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 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.

19.14 The constitution Bench of Hon'ble Supreme Court have examined the correctness of the ratio in the case of Sun Export Corporation, Bombay vs Collector of Customs, Bombay (1997)6 SCC 564 in Civil Appeal No. 3327 of 2007 and held that "an exemption notification has to be interpreted strictly and in case of ambiguity or alternate views, the benefit of doubt should go to the Government". Gist of the observations made by the Hon'ble Supreme Court while examining the judgement in the case of Sun Export Corporation, Bombay are as under:-

- (i) Exemption notification should be interpreted strictly; the burden of proof would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
- (ii) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/ assessee and it must be interpreted in favour of the revenue.
- (iii) The ration in Sun Export case (supra) is not correct and all decisions which took similar view as in Sun Export Case (supra) stands overruled.

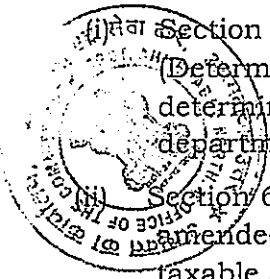
19.15 The Hon'ble Supreme Court's aforesaid order emphatically held that the burden of providing applicability would be on the assessee to show that his case comes within the parameters of exemption clause or exemption notification. When the assessee avails the benefit of such notification, it is their liability to produce all necessary documents to prove the applicability that his case comes within the parameters of exemption notification. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the assessee and it must be interpreted in favour of the revenue.

19.16 I find that merely furnishing Balance Sheet, Consignment Note that they are providing Services of Goods Transportation (G.T.A) to registered persons under Reverse Charge Mechanism in respect of Service Tax Registration not pertaining to Show Cause Notice does not prove that they are eligible for notification benefit. Therefore I find that M/s. Delhi Bombay Road Lines has not produced any evidence to establish that they are eligible for the benefit of notification No. 30/2012. Therefore, the Service Tax amount of Rs. 72,71,467/- is recoverable from the noticee along with Interest as provided in proviso to Section 73(1) of the Finance Act, 1994 read with Section 75 of the Act ibid, as stated in para 24 of the said order.

19.17 I further find that M/s. Delhi Bombay Roadlines has 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 01.04.2014 to 31.03.2015:

(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.

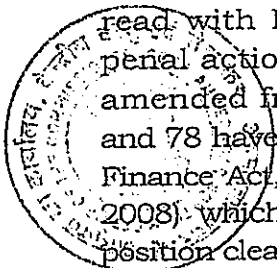


- (iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they, as a service provider, have failed to furnish proper periodical returns in form ST-3 mentioning the particulars of the aforesaid taxable service provided by them, the value of taxable service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

19.18 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;

19.19 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 Finance Act, 1994 as they failed to pay the correct duty with the intent 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.

19.20 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. 22. In the instant SCN penalties under section 76 and 78 have been proposed. However, penalty under Section 76 and Section 78 of the Finance Act, 1994 cannot be imposed simultaneously. The Finance Act, 2008 (18 of 2008) which came into force from 10-5-2008, the Parliament has made the legal position clear by introducing a proviso to Section 78. It reads as under:



"Provided also that if the penalty is payable under this section, the provision of Section 76 shall not be attracted."

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

O R D E R

- (i) I confirm the Service Tax amounting to Rs. 72,71,467/- 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. Delhi Bombay Road Lines to pay up the amount immediately.
- (ii) I order that interest be recovered from M/s. Delhi Bombay Road Lines, on the service tax amount of Rs. 72,71,467/- 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. Delhi Bombay Road Lines, under Section 77 of the Finance Act, 1994.
- (iv) I impose a penalty of Rs. 72,71,467/- on M/s. Delhi Bombay Road Lines, 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. Delhi Bombay Road Lines, 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. Delhi Bombay Road Lines, 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

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

F.No. STC/15-40/OA/2020

Date: 18.05.2022

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

To,
M/s DELHI BOMBAY ROADLINES,
H.O.NO.8, DHANRAJ COMPLEX,
OPP. AMBICA PETROL PUMP,
SARKHEJ BAVLA ROAD,
SARKHEJ, AHMEDABAD



Copy for information to:

1. The Commissioner, CGST & Central Excise, Ahmedabad (N)
2. The Dy./Assistant Commissioner, Division-VI, CGST & CX, Ahmedabad North.
3. The Superintendent, Range- I , Division-VI, CGST & CX, Ahmedabad North
4. The Superintendent Systems , CGST & CX, Ahmedabad North for uploading the order
- ✓ 5. Guard File.