आयुक्त का कार्यालय,
केंद्रीय जी. एस. टी. एवं
केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर,
कस्टम हॉउस, प्रथम तल,
नवरंगपुरा ,अहमदाबाद- 380009

OFFICE OF COMMISSIONER
CENTRAL GST & CENTRAL EXCISE,
AHMEDABAD- NORTH
CUSTOM HOUSE, 1ST FLOOR,
NAVRANGPURA, AHMEDABAD-380009

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निबन्धित पावती डाक द्वरा/By R.P.A.D DIN- 20220364WT0000616916

फा.सं./F.No. STC/15-173/OA/2020 आदेश की तारीख़/Date of Order :- 30-03-2022

जारी करने की तारीख़/Date of Issue :- 30-03-2022

द्वारा पारित/Passed by:- आर गुलजार बेगम *IR Gulzar Begum*
अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 114/ADC/ GB /2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील ,इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी ,अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रू. 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 विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5) 00. पांच रूपये (का न्यायालय शुल्क़ 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 Notice F.No.STC/15-173/OA/2020 dated 23.10.2020 issued to M/s Krish Tours and Travels, 7 Shreeji Complex, 109, Sardar Patel Colony, Naranpura, Ahmedabd-380013.

BRIEF FACTS OF THE CASE

M/s. Krish Tours and Travels, 7 Shreeji Complex, 109, Sardar Patel Colony, Naranpura , Ahmedabad 380013 (hereinafter referred to as "the service provider") are engaged in the business of providing taxable services and registered with Service Tax Department holding Service Tax Registration No. AITPP5415DST001.

2. On preliminary verification of Third Party Data received from CBDT of the said service provider, the Sales/Gross Receipts from Services (Value from ITR/TDS, whichever is higher) are not tallied with Gross Value of Services Provided, as declared in ST-3 Returns of the FY 2015-16 and FY 2016-17. Further, it is observed that there is a difference in Value of Services from ITR/TDS and Gross Value of Services provided in ST-3 returns which is to the tune of Rs. 57703244 /-. From this, it appears that the service provider has less discharged their service tax liability of Rs. 8302094 /- on the aforesaid difference amount of Rs. 57703244/- for the FY 2015-16 and FY2016-17, breakup of which is as under:

FY	Difference in value FY1516	Service Tax from 01.04.15 to 31.05.15	Service Tax from 01.06.15 to 31.03.16	Educatio n cess 2% of S Tax from 01.04.15 to 31.05.15	Sec Higher Educatio n Cess 1% of S Tax from 01.04.15 to 31.05.15	Swachh Bharat Cess from 15.11.15 to 31.03.16	Total Duty FY1516
FY 2015-16	31691964	635575	3707525	12711	6355	59910	4422079

FY	Difference in value FY1617	Service Tax from 01.04.16 to to 31.03.17	Swacch Bharat Cess from 01.04.16 to 31.03.17	Krishi Kalyan Cess from 01.06.16 to to 31.03.17	Total Duty FY1617
FY 2016-17	26011280	3641579	130056	108380	3880015

FY	Total Difference Between Value of Services from ITR/TDS and Gross Value in Service Tax Provided, whichever higher	Service Tax	Educatio n cess 2% of S Tax from 01.04.15 to 31.05.15	Sec Higher Educatio n Cess 1% of S Tax from 01.04.15 to 31.05.15	Swachh Bharat Cess from 15.11.15 to 31.03.16	Krishi Kalyan Cess from 01.06.16 to to 31.03.17	GRAND TOTAL ST
FY 2015-16 to FY 2016-17	57703244	7984679	12711	6355	189966	108380	8302094

3. The service provider was requested to clarify the above said differential value by submitting the self-certified documentary evidences such as Audited Balance Sheet, copy of Profit & Loss Account, copy of Ledgers, Gross Trial Balance Sheet, ITR, Form 26AS, ST-3 returns, sample sales invoices along with details of all the sales invoices issued during financial year FY2015-16 and FY2016-17 vide letter/email, but the service provider has neither produced any documentary evidences of the differential value nor submitted any reply.

4. It appeared that the service provider has not discharged their service tax liability on the actual value received towards taxable services provided by them, hence, there was a short payment of Service Tax of Rs. 8302094/- during the material period. Further, it appears 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 to the extent of Rs. 8302094/- as per their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services provided/received by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

5. In view of the above, it appeared that the service provider has short paid/non-payment Service Tax of Rs. 8302094/- on the actual value received towards taxable services provided which appears to be recoverable under proviso to Section 73(1) of the said Act along with interest under Section 75 *ibid* not paid by them under Section 68 of the said Act read with Rule 6 of Service Tax Rules, 1994, inasmuch as the said service provider has suppressed the facts to the department and contravened the provisions with intent to evade payment of service tax.

6. Further, in terms of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, every person providing taxable service to any person is required to pay Service Tax at the rate specified in Section 66 in such manner and within such period as may be prescribed. In the present case, on the basis of Third party Data/information of CBDT for the FY 2015-16 and FY 2016-17 it however appears that the service provider has less discharged their service tax liability on the actual value received towards taxable services provided at the rate prescribed under Section 66 of the said Act. Further, it appears that all these acts of contravention on the part of the service provider is committed by way of suppression of the facts by not declaring/not considering the correct value of taxable services provided by them for payment of service tax to the Central Government for the period in question, with intent to evade payment of Service Tax and therefore the service tax which was not paid at the material time is required to be demanded under the proviso to Section 73(1) along with interest as per provision of Section 75 of the said Act.

7. All the above acts of contravention as discussed in above paras on the part of the service provider appears to be punishable, therefore, they are liable for penalty under Section 76 of the said Act. Further, as per Section 70 of the said Act, the person liable to pay service tax shall himself assess the tax due on the services provided by him and shall furnish a prescribed return as per Rule 7 of the Service Tax Rules, 1994. As they have failed to do so, they appear to be liable to penalty in terms of Section 77 of the said Act. Further, the penalty under Section 78 of the said Act also appears to be invocable in the instant case as they have suppressed the taxable value.

8. The provisions of the repealed Central Excise Act, 1944, the Central Excise Tariff Act, 1985 and amendment of the Finance Act, 1994 have been saved vide Section 174(2) of the CGST Act, 2017, and therefore the provisions of the said repealed/amended Acts and Rules made thereunder are enforced for the purpose of demand of duty, interest, etc. and imposition of penalty under this notice.

9. No data was forwarded by CBDT, for the period FY 2017-18(up to June-2017) and the assessee has also failed to provide any information regarding rendering of taxable service for this period. Therefore, at this stage, at the time of issue of SCN, it is not possible to quantify short

payment of Service Tax, if any, for the period FY 2017-18 (up to June-2017). With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies that:

10. *"2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP). the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient."*

10. From the data received from CBDT, it was noticed that the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)"for the assessment year FY 2017-18 (up to June-2017) has not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. Further, the assessee has also failed to provide the required information even after the issuance of letter from the Department. Therefore, the assessable value for the FY 2017-18 (up to June-2017) is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action will be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period FY 2017-18 (up to June-2017) not covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

11. Accordingly Show Cause Notice was issued to M/s. Krish Tours & Travels called upon to show cause as to why :

a) The demand of Service tax to the extent of Rs. 8302094 /-(Service Tax of Rs. 7984679 /- + Education Cess of Rs. 12711 /- + SHEC of Rs. 6355/- + Swachh Bharat Cess of Rs. 189966 /- + Krishi Kalyan Cess of Rs. 108380) not paid/short paid by them should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;

b) 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.

c) 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.

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

e) 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

12. The assessee vide letter dated 28.01.2021 submitted their reply to Show Cause Notice alongwith with copies of STR, Balance Sheet and TDS certificate etc, wherein they stated that they are proprietary concern engaged in the services of renting of motor vehicle for transportation of passengers and are holding ST Registration of AITPP5415DST001. They prove taxi services to various body corporate and other persons. They paid service tax on

taxable services provided to non body corporate after availing abatement at the rate of 60% on the taxable services as per Noti.No.26/2012 dated 20.06.2012. In case of taxi services provided by the noticee to the body corporate, the recipient of the said service being body corporate are liable to pay service tax under Reverse Charge Mechanism as per Notification No.30/2012-ST dated 20.06.2012. As per Noti.No.30/2012, if the services of renting of motor vehicle designed to carry passengers is provided by an individual to a body corporate, it is covered under RCM and if the service provider is taking benefit of abatement, 100% of the applicable service tax is to be paid by the recipient of service i.e. body corporate also both the party ahs to pay 50% of the service tax each. In respect of non body corporate they have paid service tax at the applicable rate less abatement and disclosed in FORM ST 3 accordingly. While in respect of service provided to the body corporate, since they are availing abatement, the recipient is liable to pay service tax under RCM as per notification No.30/2012 They had disclosed gross receipts in the books of accounts and also paid income tax after considering the receipts from body and non body corporate. The assessee relied upon the following citation in their favour:

- Royal Foodm Stuff P.Ltd Vs.CCEx.Kolhapur (2018(363) ELT 1097 (Tri-Mum)
- Robot Detective & Security Agency VS.CC.Ex 2009(14) STR 689 (Tri)
- C.C.Ex& Cus.Patna Vs Advantage Media Consultant reported in 2008 (10)STR 449(Tri)

13. They further contended that the SCN was issued on 23.10.2020 for the disputed period from April 2015 to March 2017 and therefore demand is barred by limitation and extended period of limitation ought not to have been invoked. They have relied upon following case laws in this regard:

- Pashwa Chemicals p. Ltd Vs CCE Delhi 2005 (189) ELT 257(SC)
- Commissioner Vs Meghmani Dyes & Intermdediates Ltd 2013 (288) ELT 514 (Guj.)
- Simplex Infrastructure Vs Commr. of Service tax , Kolkotta 2016 TOIL-779-HC-KOL-ST

14. The stated that for the reason stated above the entire demand is unsustainable as they have rightly paid service tax on RAC provided to non body corporate and not liable to pay services to body corporate. Hence demand , interest are not sustainable and penalty cannot be imposed and accordingly requested to drop the proceedings. Vide letter dated 22.02.2022, the assessee submitted following reconciliation in support of their claim along with ITR and copy of sales register. The reconciliation statement is furnished as detailed asunder:

Sr.No.	Particulars	2015-16	2016-17
A	Total receipt as per FORM 26AS	49737067	48089749
B	Amount wrongly mentioned in 26AS Details uploaded by Tourism Corporation of Gujarat Ltd i)duplicate under Si.No. 47 & 48	188239	
	ii) Entry not elated to the assessee but inadvertently shown in the 26AS (copy of e-mail to M/s.Tourism Corporation of Gujarat ltd specifying the mistake is enclosed)	3183232	
C	Actual Income as per correct TDS statement(A-B)	46365596	48089749
D	Amt. mentioned in ITR	47633880	52625982
E	Amt. in books of accounts	47633880	52625982
	Under the IT, it is not necessary that all the expenses are liable for TDS. Hence there might be income over and above the amt. disclosed in Form 26AS which is clearly evident white comparing point C and E.		
F	Services to non-body corporate (amt. on which ST paid and disclosed in ST3)	18045104	26614702

G	difference	29588776	26011280
H	Amt. attributable to body corporate who are engaged in the manufacturing or service sector other than rent a cab	21965162	23978762
I	Amt. attributable to the body corporate engaged in the business of tour operators	1623614	2000188
J	Amt attributable to the recipient engaged in the business of RAC services	0	32330

In view of the above, the assessee requested to drop the proceedings.

PERSONNEL HEARING

15. Personnel Hearing was held in this case on 04.03.2022 and Shri Amit Laddha, Senior Advocate attended the P.H. on behalf of the assessee. He has submitted reconciliation statement and has stated that they are willing to furnish further documents to verify service tax liability if applicable.

DISCUSSION AND FINDINGS

16. 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.

17. I have carefully gone through the records of the case, SCN, defence replies, reconciliation statement, audited Balance sheet, copies of Income Tax Returns, copies of ST 3 returns for the FY 2015-16 & 2016-17, Form 26AS as well as oral submissions made by the said assessee during the proceedings. In the instant case, I find that the said assessee is registered with Service Tax Department under Registration No.AITPP5415DST001 and was engaged in providing "Rent a cab scheme operator service". They are also paying service tax and filing ST 3 returns accordingly. On going through the third party CBDT data for the Financial Years 2015-16 & 2016-17, I find that the assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 & 2016-17as compared to the Service related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS. Accordingly SCN was issued to the said assessee to recover the short paid Service Tax of Rs.83,02,094/- for the financial year 2015-16 & 2016-17 on the basis of data received from Income Tax authorities. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

18. M/s.Krish Tours & Travels, vide their letters dated 07.12.2021 & 22.02.2022 submitted their reply to SCN wherein they stated that they are providing services of Rent a Cab to both Corporate and Non Corporate entities. They provide taxi services to various body corporate and other persons. They paid service tax on taxable services provided to non body corporate after availing abatement at the rate of 60% on the taxable services as per Noti.No.26/2012 dated 20.06.2012. In case of taxi services provided by the assessee to the body corporate, the recipient of the said service being body corporate are liable to pay service tax under Reverse Charge Mechanism as per Notification No.30/2012-ST dated 20.06.2012. As per Noti.No.30/2012, if the services of renting of motor vehicle designed to carry passengers is provided by an individual to a body corporate, it is covered under RCM and if the service provider is taking benefit of abatement, 100% of the applicable service tax is to be paid by the recipient of service i.e. body corporate also both the party has to pay 50% of the service tax each. In respect of non body corporate they have paid service tax at the applicable rate less abatement and disclosed in ST 3 accordingly. While in respect of service provided to the body corporate, since they are availing abatement, the recipient is liable to pay service tax under RCM as per notification No.30/2012 They had disclosed gross receipts in the books of accounts and also paid income tax after considering the receipts from body and non body corporate. Further, the said assessee claimed that that they are providing Rent A Cab services to various corporate bodies and availed the

benefit of Notification No.30/2012 dt.20.06.2012 vide which the service recipients are liable to pay 100% service tax under Reverse Charge Mechanism. The relevant portion of the Notification is reproduced as under:

GSR.....(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

I. The taxable services,-

(A) (i) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;

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

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(e) 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;

(iii) provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory;

(iv) provided or agreed to be provided by,-

(A) an arbitral tribunal, or

(B) an individual advocate or a firm of advocates by way of support services, or

(C) Government or local authority by way of support services excluding,-

(1) renting of immovable property, and

(2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994,

to any business entity located in the taxable territory;

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;

***(B)** provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;*

***(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 a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service

1	in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Nil	100%
2	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%
3	in respect of services provided or agreed to be provided by way of sponsorship	Nil	100%
4	in respect of services provided or agreed to be provided by an arbitral tribunal	Nil	100%
5	in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services	Nil	100%
6	in respect of services provided or agreed to be provided by Government or local authority by way of support services excluding,- (1) renting of immovable property, and (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act,1994	Nil	100%
7	**(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business**	**Nil**	**100 %**
	(b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business	60%	40%
8.	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	25%	75 %
9.	in respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%
10	in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%

Explanation-I. - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Explanation-II. - In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

2. This notification shall come into force on the 1st day of July, 2012.

19. In view of the above Notification at Sl. No.7, in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business, the liability to pay service tax falls on the service receiver.

20. I have gone through the reconciliation submitted by the assessee. On perusal of the SCN as well as reconciliation statement, I find that SCN is issued on the basis of differential value between the value shown in 26AS and STR of the corresponding period. I have gone through reply to SCN filed by assessee and other documents submitted and find that they have provided services to various corporate entities such as Alstom Bharat Forge Power Ltd, Brand Aid P. Ltd, Teva Pharm India P. Ltd, Tourism Corporation of Gujarat Ltd and others on which the liability to pay service tax is on these corporate entities. Hence the assessee claimed that they have provided services to above referred corporate bodies and the liability to pay service tax is on the service receivers. For the sake of clarity, I would like to discuss the matter year wise.

FINANCIAL YEAR 2015-16

21. On perusal of the SCN for the period 2015-16, I find that the total receipt as per Form 26AS is Rs.4,97,37,067/- and the assessee has paid service tax on Rs.1,80,45,104/- and the differential value comes to Rs.3,16,91,964/- on which service tax demand of Rs.44,22,079/- demanded. On perusal of reconciliation statement and other related documents submitted by the assessee, I finds that they claimed deduction of Rs.1,88,239/- as the same being duplicate entry at SlNo.47 and Sl.No.48. On perusal of the 26AS, I find that the claim of the assessee is correct as the same is reflected to times in their 26AS, hence I find that the said amount of Rs.1,88,239/- is to be deducted from their total credited amount of Rs.4,97,37,067/-. Further the claim of the assessee that an entry amounting to Rs.31,83,232/- is not related to them but shown against them for which they have mailed the deductor M/s.Tourism Corporation of Gujarat is also found eligible for deduction. Hence the said amount is also deductible from the TDS receipt. After deducting he above wrong credits the actual amount of TDS comes to Rs.4,63,65,596/-. However in the on perusal of Balance Sheet as well as reconciliation statement I find that, the total turnover is shown as Rs.4,76,33,880/- and as the said income is on the higher side, I take the amount of Rs.4,76,33,880/- as their income for the year 2015-16. On perusal of reconciliation statement, ST3 Return and SCN, I find that the assessee provided services to the tune of Rs.1,80,45,104/- to non body corporate and on which service tax has also been paid by them.

22. Further on perusal of reconciliation and sales register for the year 2015-16, I find that an amount of Rs.2,79,65,162/- is shown as amount attributable to the body corporate who are engaged in the manufacturing or service sector other than rent-a-cab services and tour operator. In this connection, I find that the said assessee are not liable to pay service tax on these income as they have provided services to corporate body on which the liability to pay service tax is on the corporate body as prescribed under Notification No.30/2012.

23. On perusal of the reconciliation statement and other documents for the year 2015-16, I find that an amount of Rs.16,23,614/- is declared by the assessee as an amount attributable to the body corporate engaged in the business of tour operator. The assessee in their reply to SCN or during the personnel hearing did not claim any benefit under any Notification/abatement/deduction of this amount from their differential income. In the absence of any reconciliation or clarification, I find that the said income earned by way of providing services to body corporate engaged in the business of tour operator is taxable under service tax. Hence I hold that service tax on the said amount of Rs.16,23,614/- for the year 2015-16 is required to be recovered. The taxability of differential duty for the year 2015-16 is reconciled as under:

Description	2015-16
Total income as per ITR and SCN	49737068
Less: duplicate entry as discussed	188239
Less: Entry not related to the assessee as discussed	3183232
Actual income as per correct TDS	46365596

Actual income as per balance sheet	47633880
Lesss : Total Value shown in the ST3	18045104
Difference	29588776
Amount attributable to body corporate wherein ST is to be paid by service receiver under RCM as discussed	27965162
Difference on which ST is recoverable as discussed	1623614

FINANCIAL YEAR 2016-17

24. On perusal of the SCN and Form 26AS for the period 2016-17, I find that the total receipt is Rs.4,80,89,749/- and the assessee has paid service tax on Rs.2,66,14,072/- and the differential value comes to Rs.2,60,11,280/- on which service tax demand of Rs.38,8,015/- demanded. On perusal of reconciliation statement and other related documents submitted by the assessee, I find that the total receipt under 26AS is Rs.4,80,89,749/-. However on perusal of balance and reconciliation statement , I find that the total turnover is shown as Rs.5,26,25,982/- and as the said income is on the higher side, I take the amount of Rs. 5,26,25,982/- as their income for the year 2016-17. On perusal of reconciliation statement, ST3 Return and SCN, I find that the assessee provided services to the tune of Rs.2,66,14,702/- to non body corporate and on which service tax has also been paid by them.

25. Further on perusal of reconciliation and sales register for the year 2016-17, I find that an amount of Rs.2,39,78,762/- is shown as amount attributable to the body corporate who are engaged in the manufacturing or service sector other than rent-a-cab services and tour operator. In this connection, I find that the said assessee are not liable to pay service tax on these income as they have provided services to corporate body on which the liability to pay service tax is on the corporate body as prescribed under Notification No.30/2012.

26. On perusal of the reconciliation statement and other documents for the year 2016-17, I find that an amount of Rs.20,00,188/- is declared by the assessee as an amount attributable to the body corporate engaged in the business of tour operator. Further an amount of Rs.32,330/- is declared by the assessee as an amount attributable to the recipient engaged in the business of the rent a cab services. The assessee in their reply to SCN or during the personnel hearing did not claim any exemption under any Notification/abatement/deduction of this amount from their differential income. In the absence of any reconciliation or clarification, I find that the said income earned by way of providing services to body corporate engaged in the business of tour operator is taxable under service tax. Hence I hold that service tax on the said amount of Rs.20,32,518/- (Rs.20,00,188/- + Rs.32,330/-) for the year 2015-16 is required to be recovered. The taxability of differential duty for the year 2016-17 is reconciled as under:

Description	2016-17
Total income as per ITR/TDS and SCN	48089749
Actual income as per balance sheet	52625982
Lesss : Total Value shown in the ST3	26614702
Difference	26011280
Amount attributable to body corporate wherein ST is to be paid by service receiver under RCM as discussed	23978762
Difference on which ST is recoverable as discussed	2032518

27. In view of above discussion and findings, I find that the assessee is liable to pay service tax on the taxable value of Rs.36,56,132/- as discussed above and service tax demand on differential value of Rs. 5,40,47,112/- is required to be dropped. Accordingly I confirm the service tax demand of Rs.5,26,026/- and drop the service tax demand of Rs.77,76,068/-

28. Further, on perusal of paras 9, 10 & 11 of SCN, I find that the levy of Service Tax for the financial year 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of subject SCN, if he same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under proviso to Section 73(1) read with master Circular No. 1053/02/2017-CX dated 10.03.2017, the service tax liability was to be recovered from the assessee accordingly, I however, do not find any charges leveled for the demand for the year 2017-18 (Up to June 2017), in charging para of the SCN. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income from GTA . I therefore refrain from discussing the taxability on other income other than GTA income.

29. In view of the above discussion and findings and also on perusal of SCN, audited Balance Sheet for the year 2015-16 & 2016-17, ITR, ST 3 returns, reconciliation statement as well as submissions made by the said assessee, I find that the difference in value of service by comparing the value of services in ITR/TDS and gross value of services provided in ST-3 Returns is due to availment of No.30/2012-ST dated 20.06.2012 .

30. On scrutiny of relevant ST 3 returns filed for the year 2015-16, I find that the said assessee had failed to disclose the above details in their ST-3 Returns during the period under dispute. Thus, they have suppressed the material facts from the Department by not disclosing in their ST-3 Returns, the fact about providing various taxable services. This appears to be done intentionally so as not to bring their activities to the notice of the Department, though they were registered for providing various taxable services, as discussed earlier. 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.Sijcon Consultant P.Ltd deliberately not shown in their ST-3 Returns, the actual service provisions rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but only after going through the CBDT data these facts would have come to light. When the assessee is a registered person and are regularly filing ST 3 return, it is his legal obligation to disclose the full facts and material in their ST 3 returns. As they have not disclosed the entire fact that they are providing Architect services and Consulting Engineering Servicese 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 priory the period for which duty can be demanded gets extended to five years."

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

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

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

33. I further find that M/s.Krish Tours & Travels had contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994, provided by them to their various service receivers during the period from 01.04.2014 to 31.03.2016:

(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.

34. 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 of the Act, ibid, for failing to furnish proper periodical returns in form ST-3 as well as the documents called for to do further verification. Therefore, I hold that the assessee is liable to pay penalty u/s.77 of Finance Act, 1994.

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

36. 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."

Therefore, as per the prevailing provisions of law, penalty can be imposed either under Section 76 or Section 78 of the Finance Act, 1994 w.e.f 10.05.2008 and accordingly I do not impose any penalty u/s.76 of the Finance act, 1994.

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

ORDER

(i) I confirm the Service Tax amounting to Rs. 5,26,026/- (Rupees Five Lakh Twenty Six Thousand Twenty Six only) under Section 73(1) of chapter V of Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST and order M/s. M/s.Krish Tours & Travels to pay up the amount immediately.

(ii) I drop demand of Rs.77,76,068/-(Rupees Seventy Seven Lakh Seventy Six Thousand Sixty Eight only) as discussed above.

(ii) I order that interest be recovered from M/s.Krish Tours & Travels on the service tax on Rs. 5,26,026/- (Rupees Five Lakh Twenty Six Thousand Twenty Six only) 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.Krish Tours & Travels under Section 77 of the Finance Act, 1994.

(iv) I impose a penalty of Rs. 5,26,026/- (Rupees Five Lakh Twenty Six Thousand Twenty Six only) on M/s.Krish Tours & Travels 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. Project Force 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.Krish Tours & Travels 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.

Accordingly Show Cause Notice No.STC/15-173/OA/2020 dt.23.10.2020 is disposed off.

30/3/21

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

F.No. STC/15-173/OA/2020

Date: 30/3/21

To
M/s. Krish Tours and Travels,
7 Shreeji Complex, 109,
Sardar Patel Colony,
Naranpura , Ahmedabad 380013

Copy to:

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