



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर  
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH  
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-108/OA/2020

आदेश की तारीख/Date of Order: -14.12.2021

जारी करने की तारीख/Date of Issue :-20.12.2021

DIN NO: 20211264WT000000F932

द्वारा पारित/Passed by:-

मुकेश राठौर/ MUKESH RATHORE

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 30/JC/MR/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 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-380015को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

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

(3)

उक्त अपील की प्रति।

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

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

(3) Copy of accompanied Appeal.

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

विषय:- कारण बताओ सूचना/ Show Cause Notice F. No. **STC/15-108/OA/2020** dated 14.10.2020 issued to **M/s Samrat Logistics (Prop. Narendra Kumar Chaoudhary)** situated at B-502, Sukhshanti Apartment, Changodar, Ahmedabad-382213.



2015-16	2227014	16057139	0	2227014	16057139	16057139	2328285
2016-17	5281962	21879542	0	5281962	21879542	21879542	3281931
						TOTAL	5610216

5. From the above, it is noticed that the noticee has contravened the provisions of

(i) Section 67 of the Finance Act, 1994 in as much as they have failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the period 2015-16 & 2016-17;

(ii) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as-much-as they failed to make payment of service tax during the period 2015-16 & 2016-17, to the credit of the Government account within the stipulated time limit;

(iii) Section 70 of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value and to file correct ST-3 returns during the period 2015-16 & 2016-17.

(iv) Section 77 of the Finance Act, 1994 as much as they did not provide required data / documents, as called for from them.

6. 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 noticee has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said service tax not paid is required to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years along with applicable interest. All these acts of contravention of the provisions of Section 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 on part of noticee appears to have rendered them for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time.

7. Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issue by the CBEC, New Delhi clarified that:

*'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the 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.'*

8. From the above facts, it is also noticed that the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2017-18 (upto 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 letters and summons from the Department. Therefore, the assessable value for the year 2017-18 (upto June-2017) is not ascertainable at the time of issuance of 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 2017-18 (April-June 2017) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

9. In this regard, the noticee was offered an opportunity to give explanation/clarification as Pre-SCN Consultancy on 14.10.2020. The assessee did not appear to attend the Pre-SCN Consultancy nor submitted any written submissions. Therefore, Show Cause Notice dated 14.10.2021 was issued to M/s.Samrat Logistics called upon to show cause as to why:-

- (i) The said differential amount should not be considered as taxable value and the Service tax involved in the said amount to the extent of Rs. 5610216/- short paid /not paid by them, should not be recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Service Tax liability not paid during the financial year 2017-18 (upto June-2017), ascertained in future, as per paras no. 11 and 12 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (iii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iv) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (v) Penalty should not be imposed upon them under the provisions of 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.
- (vi) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them 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;

#### DEFENCE REPLY

10. Vide letter dated Nil received by this office on 04.11.2020, the said noticee submitted that their business was of transportation of goods by road in FY 2015-16 & 2016-17 and continue with his business. He further stated that he was not liable to collect and pay service tax in the year mentioned in the SCN. They have provided service to those persons on which the service recipient is liable to pay service tax. As per entry No.A(ii) of N/No.30/2012, reverse charge is applicable only when taxable service provided or agreed to be provided by a Good 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;

11. He has provided the services out of the above mentioned person, so he was not liable to collect and pay service tax. Sometimes they have also provided the exempted transportation services which were not liable for service tax like transportation of exempted items like cotton, ginned etc per notification Sr.No.21 of Notification 25/2012. They have furnished acknowledgement copies of relevant years, 26AS of 3 years, P&L Account and Balance Sheet, sample LR copies and bank statement. They further stated that in any case they were not liable for collection and payment of service tax, so please not consider the demand.

## PERSONNEL HEARING

12. Personnel Hearing was granted to the said noticee on 17.11.2021. Shri L.H.Jain, C.A., duly authorised representative, attended on behalf of the said assessee. He reiterated the submissions made vide letter dated 04.11.2021. He also requested that additional information will be submitted within 15 days. However, so far, no additional submissions made by the said party. In view of the above I proceed to adjudicate the matter on the basis of available records and submissions.

## DISCUSSIONS AND FINDINGS

13. I have carefully gone through the records of the case, submission made by the noticee in reply to the show cause notice, Form 26AS, Balance sheet for the year 2015-16 & 2016-17. In the present case, Show Cause Notice was issued to the noticee demanding Service Tax of Rs.56,10,216/- for the financial year 2015-16 & 2016-17 on the basis of data received from Income Tax authorities and finding that the noticee had obtained Service Tax registration and also filed the ST-3 Returns as stipulated in the Finance Act, 1994 and rules made thereunder. 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. The assessee submitted that they are providing transportation of goods by road and submitted that they are provided service to those person on which the service recipient is liable to pay service tax. Based on the details received from Income tax department and comparing the receipt shown in Form 26AS with ST-3 returns filed by the them, the show cause notice alleges that they have short paid service tax of Rs.56,10,216/- have issued SCN.

14. The taxability of service tax on Trzsnportztion 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.

15. Para 1(A)(ii) and Para II of Notification No. 30/2012-ST dated 20.06.2012 as amended provided that service tax payable on services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is:—

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

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

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

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

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

(f) any partnership firm whether registered or not under any law including association of persons;

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

TABLE

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

16. 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.

17. The noticee submitted that they are providing services of transportation of goods by road for which they are claiming exemption under Notification 30/2012 according to which the service recipient is required to pay service tax under RCM as discussed above. However the said assessee failed to provide any details in support of their claim that the service receiver is fall under the category (a) to (f) mentioned in the category of Notification 30/2012. During the course of Personnel Hearing, the assessee agreed to provide additional submission in this regard. 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.

18. An assessee registered with Service Tax Department is required to provide information/documents to the department as and when required. However, in this case the assessee failed to furnish/provide the required documents to in support of their claim to prove that they are not liable to service tax being the service tax provider. The assessee in their reply to Show Cause Notice, no list or details regarding the service receivers have been provided. Even during the course of personnel hearing also the assessee failed to submit any documents proving that the service receivers are fall under any of the category (a) to (f) mentioned under Noti.No.30/2012. They have also not furnished any bifurcation of the service receivers specified under the said Notification.

19. 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 recipient s 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.

Further, I find that the said assessee have produced a few LR as supporting documents. On perusal of the said LR, I could not ascertain the person on whom the liability to pay service tax falls. To ascertain the correct and legal obligation for payment of service tax verification of ledger accounts or invoices, LR etc are inevitable. In the absence of such documents, the tax liability cannot be ascertained.

20. In the absence of the any of the supporting documents, I find that the liability to pay service tax on the entire amount falls on the assessee and therefore the unpaid service tax of Rs.56,10,216/- is correctly demanded from the said assessee and required to be recovered from the assessee, the service provider.

21. On scrutiny, I further observed and find that the assessee has not declared the service value of Rs. 3,79,36,681/- for the year 2015-16 & 2016-17 in their ST-3 returns and therefore they are liable to pay Service Tax of Rs.56,10,2016/- on the Services Provided by them in respect of GTA Services on the value as stated above as the same is not declared in their ST-3 returns. The same is required to be recovered from them under the provisions of Section 73 of the Finance Act, 1994;

22. On perusal of para 13 of the SCN, I find that the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. As the same is not discussed in the Charging Para of the Show Cause Notice. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income from sale of services. I therefore refrain from discussing the taxability on other income other than the sale of service.

23. 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. Samrat Logistics deliberately not supplied their ST-3 Returns and other documents, the actual service provisions rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but only after going through the CBDT data these facts would have come to light. The said assessee himself admits in their reply to SCN dated 04.11.2020 that they were transportation of goods by road and not paid any service tax. 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 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

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

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

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

- (ii) Section 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they did not pay the appropriate Service Tax on the taxable services provided by them.
- (iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they, as a service provider, have failed to furnish proper periodical returns in form ST-3 mentioning the particulars of the aforesaid taxable service provided by them, the value of taxable service determinable and other particulars in the manner as provided therein and incorporating the required information to the jurisdictional Superintendent of Service Tax.

26. 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;


27. 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.

28. 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.

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

**ORDER**

- (i) I confirm the Service Tax amounting to Rs. 56,10,216/- (Rupees Fifty Six Lakhs Ten Thousand Two Hundred Sixteen only) under Section 73(1) of chapter V of Finance Act, 1994 read with section 174 of CGST Act,2017 as amended and order M/s. Samrat Logistics to pay up the amount immediately.
- (ii) I order that interest be recovered from M/s. Samrat Logistics on the service tax amount of Rs. 56,10,216/- 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. Samrat Logistics under Section 77(1) of the Finance Act, 1994.
- (iv) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. Samrat Logistics under Section 77(2) of the Finance Act, 1994.
- (v) I impose a penalty of Rs.56,10,216/- (Rupees Fifty Six Lakhs Ten Thousand Two Hundred Sixteen only) on M/s. Samrat Logistics 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. Samrat Logistics 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. Samrat Logistics 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.

  
 (MUKESH RATHORE)  
 Joint Commissioner  
 Central Excise &CGST,  
 Ahmedabad North

By Regd. Post AD./Hand Delivery  
 F.No.STC/15-108/OA/2020-21

Date: 14/12/2021

To  
 Samrat Logistiscs  
 (Prop.Narendra Kumar Chaoudhary),  
 B-502, Sukhshanti Apartment,  
 Changodar, Ahmedabad -382213

Copy for information to:

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