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,
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निबन्धित पावती डाक द्वरा/By R.P.A.D

DIN-20220364WT000083328B

फा.सं./F.No. STC/15-140/OA/2020

आदेश की तारीख़/Date of Order :- 10-03-2022

जारी करने की तारीख़/Date of Issue :- 10-03-2022

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

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 74/ADC/ GB /2021-22

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

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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 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 Notice F.No.STC/15-140/OA/2020 dated 21.10.2020 issued to M/s Rahul Roadlines, 2033/368, Shiv Shakti Nagar, G.I.D.B., Chandkheda, Ahmedabad-382424.

BRIEF FACTS OF THE OFFICE :

M/s. RAHUL ROADLINES,2033/368, SHIV SHAKTI NAGAR, G.H.B., CHANDKHEDA, AHMEDABAD 382424 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.- AAMFR2680RSD001.

2. Whereas, on perusal of the data received from CBDT, it was noticed that the assessee had declared different values in Service Tax Return (ST-3) and Income Tax Return (ITR/Form 22AS) for the Financial year 2015-16.

3. On scrutiny of the above data, it is noticed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2015-2016 as compared to the Service related taxable value declared by them in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

(Amount in Rs.)

Sr No	F. Y.	Sales/Gross Receipts from Services(Value from ITR)	Gross Value of Services provided (STR)	TOTAL VALUE for TDS(including 194C,194Ia,194Ib,194J,194H)	VALUE DIFFERENCE in ITR and STR	VALUE DIFFERENCE in TDS and STR	HIGHER VALUE(VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Resultant Service Tax short paid (including Cess)
1.	2015-16	35517036	206460	12873511	35310576	12667051	35310576	5120034

4. To explain the reasons for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form: 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns for the Financial Year 2015-16, Letters dated 07.01.2020 were issued to the said assessee. However, the said assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner. For this reason, no further verification could be done in this regard by the department.

5. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16, the service tax liability of the service tax assessee has been ascertained on the basis of income mentioned in the ITR returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the Service tax liability under Section 67 of the Finance Act, 1994.

6. No data was forwarded by CBDT, for the period 2016-17 to 2017-18 (upto June-2017) and the assessee has also failed to provide any information regarding rendering of taxable service for this period. Therefore, at 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 2016-17 to 2017-18 (upto June-2017).

7. With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies that:

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

8. From the data received from CBDT, it was observed that the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2016-17 to 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 2016-17 to 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 2016-17 to 2017-18 (upto June-2017)covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

9. The government has from the very beginning placed full trust on the service provider so far service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider, no matter how innocently. From the evidence, it appears that the said assessee had not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider appears to have made deliberate efforts to suppress the value of taxable service to the department and

appears to have not paid the liable service tax in utter disregard to the requirements of law and breach of trust deposed on them. Such outright act in defiance of law, appear to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

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

(i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994;

(ii) Failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994 as discussed above;

(iii) Failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have not paid service tax as worked out in the Table for Financial Year 2015-16.

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

(v) All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appears to be publishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

(vi) The said assessee is also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.

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

11. The above said service tax liabilities of the assessee, M/s RAHUL ROADLINES, has been worked out on the basis of limited data/ information received from the Income tax department for the financial year 2015-16. Thus, the present notice relates exclusively to the information received from the Income Tax Department.

12. It has been noticed that at no point of time, the assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2015-2016. 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. 5120034/-(including Cess). It appears that the above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appears to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

13. Therefore, Show Cause Notice was issued to M/s. RAHUL ROADLINES called upon to show cause as to why :

(i) The Service Tax to the extent of Rs. 5120034/- short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;

(ii) Service Tax liability not paid during the financial year 2016-17 to 2017-18 (upto June-2017), ascertained in future, as per paras no. 9 and 10 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.

(iii) Interest at the appropriate rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;

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

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

DEFENCE REPLY :

14. The assessee vide letter dated 20.12.2021 has furnished their written submission wherein they stated that they are providing Service of Transportation of Goods by Road (GTA); that their main line of Transportation is transport of export/import loaded containers to & from various factories to inland container Deport & Vice Versa; that most of their customers are registered under 7 categories defined for payment of service tax under Reverse Charge Mechanism as per notification No. 35/2004 issued by CBIC; that they are issuing the bills with calculation for payment of Service Tax and also mentioning the person liable to pay service tax; that they attach random copies of invoices; that their books have been audited by Chartered Accountant and no legal liabilities pending; that they attach audit report of their books audited by Chartered Accountant.

14.1 Further vide letter dated 23.11.2021, the assessee has forwarded the ITR for the Financial year 2016-17, 26AS, Balance Sheet and sample copies of Invoices with L.R. and further mentioned that they are providing GTA Services to registered person under Reverse Charge Mechanism as provided in Notification No. 33/2004,34/2004 and 35/2004.

PERSONNEL HEARING :

15 Personnel Hearing was granted to the assessee on 21.01.2022 wherein Shri Chetan. D. Goswami appeared for personnel Hearing. He submitted reconciliation

documents and stated that they have done GTA Services and does not have any service tax liability.

DISCUSSIONS AND FINDINGS :

16. 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. In the present case, Show Cause Notice was issued to the noticee demanding Service Tax of Rs.5120034/- for the financial year 2015-16 on the basis of data received from Income Tax authorities. The assessee is registered under Service Tax having registration No. AAMFR2680RSD001. 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.5120034/-.

16.1. 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.

16.2. 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%

16.3 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.

16.4. 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. In support of their claim, the assesee has provided following Invoices for the year 2015-16;

Sr. No.	Name of the consignee	Bill No.	Date	Amount
01	ITD Cemutation India Ltd	410	31.07.2015	6500
02	Monnet	532	31.08.2015	8756
03	Deccan Fivo Chemicals Pvt. Ltd	617	27.09.2015	21473
04	Simplex Infrastructure Ltd	882	31.11.2015	21660
05	Globelink WW India Pvt. Ltd.	1370	26.03.2016	5100

During the scrutiny of the above invoices, I find that the assessee has not mentioned the Service Tax number of either consigner/consignee in the invoices. Further, while going through the details of invoices, I find that the assessee has tick marked **:Service Tax payable by consigner/consignee both**. Therefore, I find that 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 Notification No. 30/2012. It was also noticed that the reconciliation statement submitted by the assessee is not supported by any documentary evidences. However, no information/supporting documents or relied upon documents have 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.

16.5 On perusal of the records available, I find that 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 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 documentary evidence to prove that the service receivers are falling under any of the category (a)to (f) mentioned under Noti.No.30/2012.

16.6. 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 trying to avoid furnishing the details which may have lead to proof that the service recipients may not be falling under the category (a) to (f) mentioned in Notification No.30/2012. In case if the service receiver is not falling under any of the category, the full liability to pay service tax is on the assessee himself.

16.7 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 as discussed in above para No.16.4. 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.

16.8 In the absence of the any of the supporting documents, I find that the liability to pay service tax on the entire amount falls on the assessee and therefore the unpaid service tax of Rs.51,20,034/- is correctly demanded from the said assessee and required to be recovered from the assessee, the service provider.

17. On perusal of para 6 of the SCN, I find that the levy of service tax for FY 2016-17 and 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. However, I, do not find any charges leveled for the demand for the period 2016-17 and 2017-18 (Up to June 2017) in the charging para of SCN. 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.

18. 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. Rahul Road Lines deliberately not obtained S. Tax registration 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. 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 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

19. Further, they had not claimed any exemption 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 by not declaring the same in their ST 3 returns filed for the relevant period. Consequently, this amounts to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of Service Tax.

20. 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.*

21. 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.

22. I find that merely furnishing such letter that they are providing Services of Goods Transportation (G.T.A) to registered persons under Reverse Charge Mechanism and liable to pay Service Tax under Reverse Charge Mechanism does not prove that they are eligible for notification benefit. Therefore I find that M/s. Rahul Road Lines has not produced any evidence to establish that they are eligible for the benefit of notification No. 33/204, 34/2004 (the amended notification No. 30/2012). Therefore, the Service Tax amount of Rs. 51,20,034/- 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.

23. I further find that M/s. Rahul Road Lines have 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.

24. 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;

25. 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.

26. 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.

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

ORDER

(i) I confirm the Service Tax amounting to Rs. 51,20,034/- (Rs.Fifty One Lakh Twenty Thousand Thirty Four 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. Rahul Road Lines to pay up the amount immediately.

(ii) I order that interest be recovered from M/s. Rahul Road Lines on the service tax amount of Rs. 51,20,034/- 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. Rahul Road Lines under Section 77(1) of the Finance Act, 1994.

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

(v) I impose a penalty of Rs. 51,20,034/ on M/s. Rahul 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. Rahul 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. Rahul 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)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North

By Regd. Post AD./Hand Delivery
F.No.STC/15-140/OA/2020

Date: 16/03/2022

To
M/s. RAHUL ROADLINES
2033/368, SHIV SHAKTI NAGAR, G.H.B.,
CHANDKHEDA, AHMEDABAD 382424

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-V, Division-VII, Central Excise & CGST, Ahmedabad North
4. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
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