



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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निवन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-143/OA/2020

आदेश की तारीख/Date of Order -16.03.2022

जारी करने की तारीख/Date of Issue :- 16.03.2022

DIN NO: 20220364WT000000F924

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

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 85/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 विरुद्ध अपील (इसकी प्राप्ति से) 60 माह (दिन के अन्दर आयुक्त) अपील (केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केंद्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015) को प्रारूप संख्या ड.ए. (1-A.E) 1-में दाखिल कर सकता है। इस अपील पर रु 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 राये 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 ड.ए. 1-में दो प्रतियों में दाखिल की जानी चाहिए। उम पर केंद्रीय उत्पाद शुल्क) अपील (नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएंगे।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूमेरे 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:

- (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.2.00.

विषय:- कारण वनाओ सूचना/ Show Cause Notice No. STC/15-143/OA/2020 dated 21.10.2020 issued to **M/s. MAHAVIR ROADLINES**, W-19, GHANSHYAM,NAGAR, OPP. RTO, SHUBHASH BRIDGE, GANDHI ASHRAM, AHMEDABAD, GUJARAT,380027.

BRIEF FACTS OF THE CASE :

M/s. MAHAVIR ROADLINES, W-19, GHANSHYAM, NAGAR, OPP. RTO, SHUBHASH, BRIDGE, GANDHI ASHRAM, AHMEDABAD, GUJARAT, 380027 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.-ANYP0908AST001.

2. 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(ST R)	TOTAL VALUE for TDS(including 194C,194Ia,194Ib,194J, 194H)	VALUE DIFFERENCE in ITR and STR	VALUE DIFFERENCE in TDS and STR	HIGHER VALUE(V ALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Resultant Service Tax short paid (including Cess)
1.	2015-16	141121234	3492526	31430318	137628708	27937792	137628708	19956163

4. It was requested 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 vide Letter dated 07.01.2020 issued by the Jurisdiction office 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. Whereas, 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 deposited 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 assessee, M/s. MAHAVIR 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. MAHAVIR 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. 19956163/-(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, M/s. MAHAVIR ROADLINES W-19, GHANSHYAM,NAGAR, OPP. RTO, SHUBHASH, BRIDGE,, GANDHI ASHRAM,AHMEDABAD,GUJARAT,380027 called upon to show cause before the Additional Commissioner, Central Goods and Service Tax, Ahmedabad North having his office situated at 1st Floor, Customs House, Opposite Old High Court, Income Tax Cross Road, Navrangpura, Ahmedabad -380009 as to why :

- (i) The Service Tax to the extent of Rs. 19956163/- 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 27.10.2020 has submitted the reconciliation statement alongwith the profit and loss account for the year 2015-16-. Further vide letter dated 24.01.2022, they provided year wise complete list of parties on whom Service Tax is paid and the list of parties on whom RCM is applicable and tax is paid by the counterpart. They also attached the list of their major customers alongwith copy of random Lorry Receipt.

PERSONNEL HEARING :

15. Personnel Hearing was granted to the assessee on 08.03.2022, wherein Shri Manan Vakil, Chartered Accountant appeared for personnel hearing on behalf of the assessee. He has submitted reconciliation statement and has stated that the Service Tax liability falls on "RCM" basis and hence requested to drop all further proceedings.

DISCUSSION 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 and also during the course of personal hearing, ITR, Profit and loss Account and reconciliation statement alongwith random ledger of their party for the year 2015-16. In the present case, Show Cause Notice has been issued to the assessee demanding Service Tax of Rs. 1,99,56,163/- for the financial year 2015-16 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 76, 77 and 78 of the Finance Act, 1994.

17. In reply to the show cause notice and from the documents available in file, it is observed that the said assessee has provided service of transportation of goods by road which covered under GTA and also covered under Reverse Charge Mechanism hence they are not liable to pay service tax. They furnished list of their service Recipient and bifurcation of turnover of where the assessee is liable to pay service tax as well as value on which service tax has been paid by the service recipient. Now I would like to go through the legal aspects of the taxability of GTA services.

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

- (d) "person liable for paying service tax", -
- (i) (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.

18. 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%

19. As per provisions contained in Rule 2(d)(B)(V) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, service tax on GTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) and dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under is payable in RCM by the service recipient. The said assessee has claimed RCM tax liability under above categories in reconciliation statement furnished by them.

20. On perusal of reconciliation statement, ledger accounts and financial records, I find that the assessee have income of Rs. 13,74,89,720/- from Freight Charges income i.e. GTA services provided to corporate body & partnership firm for the year

2015-16. The Remaining income of Rs. 34,92,526/- is income from the GTA services provided to Individual/HUF on which proportionate Service Tax has been paid after abatement.

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

22. 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 there under is payable in RCM by the service recipient. The Noticee has claimed RCM tax liability under above categories in reconciliation statement certified by the chartered accountant. I find that the status of the service recipient as body corporate and the partnership firm is organizational and has been verified by chartered accountant. Therefore, in the above backdrop I accept bifurcation of GTA service provided by noticee to the body corporate and the GTA service provided by the noticee to above extent are liable to be paid in RCM by the service recipients.

Description	2015-16
Total income as per ITR and SCN	14,11,21,234/-
Less : Total income declared as per ST3	34,92,526/-
Differential value on which service tax demanded	13,76,28,808/-
Less : GTA services provided to body corporate under RCM	13,74,89,720/-
Differential value after Deducting income in ST-3, GTA to body corporate	1,39,088/-
Less : Service Tax paid on income declared above as per ST-3	1,39,988/-
Difference	(-) 900/-

23. On perusal of the records of the case, submissions of the assessee, Audited Balance Sheet, ITR, and the above reconciliation statement for the year 2015-2016, I find that the assessee earned total freight income of Rs. 13,74,89,720/- during the year 2015-16 earned by way of providing services to corporate body and the liability to service tax falls upon the service receiver as per Notification No.30/2012 and therefore the assessee i.e service provider is not required to pay service tax on the said amount. The Remaining income of Rs. 34,92,526/- is income from the GTA services provided to Individual/HUF on which proportionate Service Tax has been paid after abatement. In view of the above, the service tax demand on the differential amount of Rs.

13,76,28,708/- is not sustainable and therefore the demand of service tax of Rs.1,99,56,163/- is liable to be dropped.

24. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, ITR, reconciliation statement, I find that the service tax demand of Rs.1,99,56,163/- for the period 2015-16 is not sustainable and accordingly Show Cause Notice dated 21.10.2020 is liable to be dropped. Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty upon assessee on this count.

Accordingly, I pass the following order;

ORDER

25. I hereby order to drop proceedings initiated against M/s. MAHAVIR ROADLINES, W-19, GHANSHYAM, NAGAR, OPP. RTO, SHUBHASH BRIDGE, GANDHI ASHRAM, AHMEDABAD, GUJARAT, 380027 for recovery of service tax of Rs. 1,99,56,163/- along with interest and penalties vide SCN No. STC/15-143/OA/2020 dated 21.10.2020.



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

By Regd. Post AD./Hand Delivery
F.No.STC/15-143/OA/2020

Date: 16/03/2022

To
M/s. MAHAVIR ROADLINES
W-19, GHANSHYAM, NAGAR, OPP. RTO, SHUBHASH, BRIDGE,,
GANDHI ASHRAM, AHMEDABAD,
GUJARAT, 380027

Copy for information to:

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

