



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

DIN- 20220364WT000011501C

फा.सं./F.No. STC/15-122/OA/2020

आदेश की तारीख/Date of Order :- 22-03-2022

जारी करने की तारीख/Date of Issue :- 22-03-2022

द्वारा पारित/Passed by:-

आर गुलजार बेगम *IR Gulzar Begum*

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 96-97/ADC/ GB /2021-22

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

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner (Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

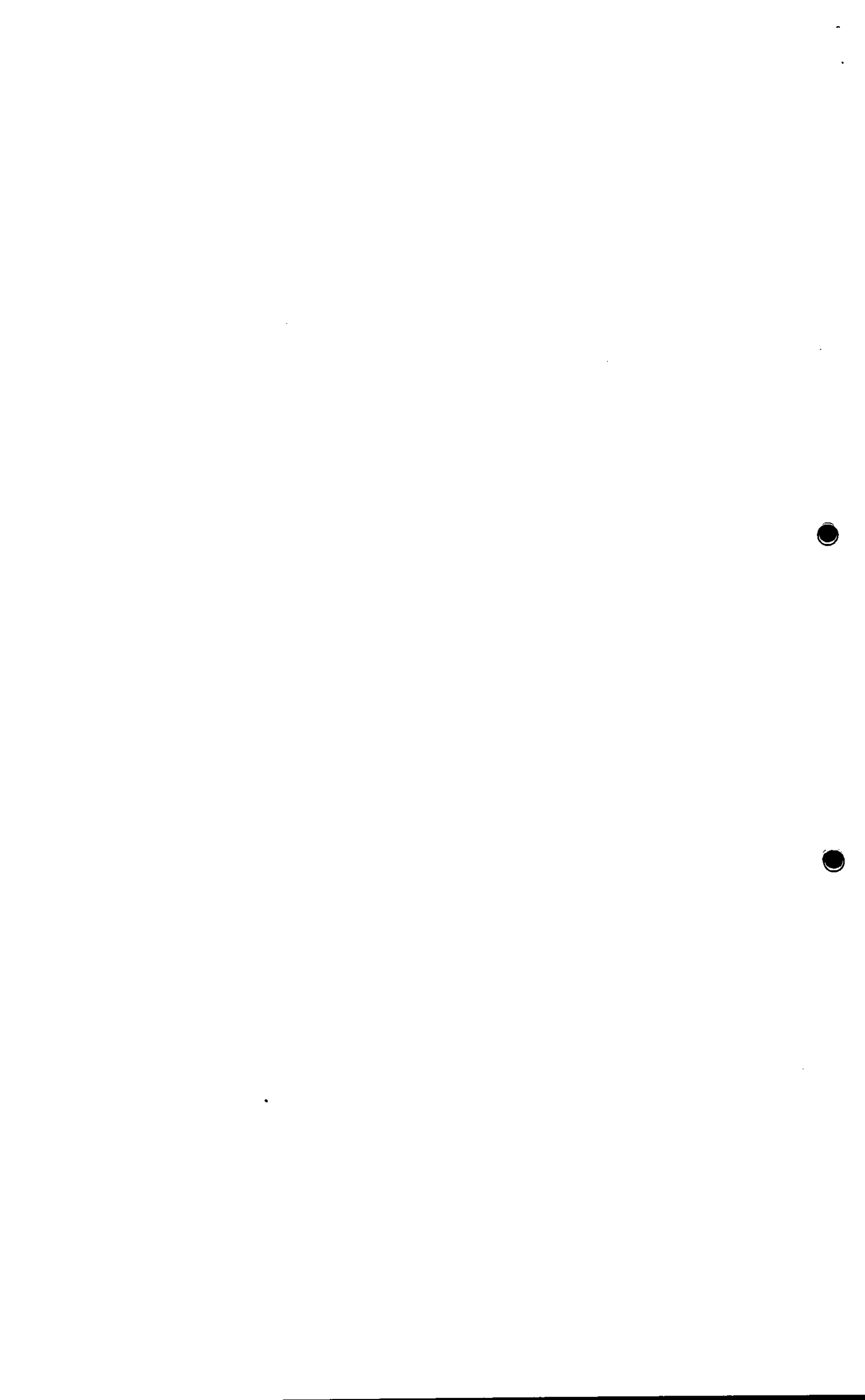
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No.STC/15-122/OA/2020 dated 29.09.2020 issued to M/s Tak Bus Services, 11/12, Sona Mahal, Modh Campaner Society, Usmanpura, Ahmedabad, Gujarat-380013.



BRIEF FACTS OF THE CASE

M/s. Tak Bus Services, 11/12, Sona Mahal, Modh Champaner Society, Usmanpura, Ahmedabad, Gujarat-380013 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.-AAEFT2219GST001& are engaged in the business of Providing Taxable Services under the category of taxable services.

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 & 2016-17. 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.2015-16 & 2016-17 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.	Taxable value as per ST 3 returns (in Rs.)	Gross receipts from services (Value from ITR/26AS (in Rs.)	Difference between value of services from ITR/26AS and Gross Value in Service tax provided (in Rs.)	Resultant Service Tax short paid (including Cess)
1	2015-16	0/-	87035998/-	87035998/-	12620220/-
2	2016-17	0/-	0/-	0/-	0/-

3. 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 & 2016-17, letter dated 07.10.2020 was 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.

4. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16 & 2016-17, the service tax liability of the service tax assessee has been ascertained on the basis of income mentioned in the Income Tax 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.

5. As no data was forwarded by CBDT, for the period 2016-17 to 2017-18 (upto June-2017) 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 the time of issue of SCN, it was not possible to quantify short payment of Service Tax for the period 2016-17 to 2017-18 (upto June-2017). With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies that:

"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."

6. From the data received from CBDT, it was found 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 and 2017-18 (upto June-2017) was 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) not covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

7. The government has from the very beginning placed full trust on the service provider so far as 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 by the service provider, no matter how innocently. From the evidence on record, 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 the trust deposited in them. Such outright act in defiance of law, appears 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.

8. In light of the facts discussed here-in-above and the material evidences available on records, it was revealed that the noticee, M/s.TAK BUS SERVICE, 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 to 2017-18 (upto June-2017).

- (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.

9. The above said service tax liabilities of the assessee, M/s.TAK BUS SERVICE, 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.

10. 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 2015-16. 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. 1,26,20,220/-(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. Therefore two Show Cause Notices were issued to the assessee for the year 2015 - 16 which are reproduced as under:

11. Show Cause Notice dated 23.04.2021 was issued to M/s.Tak Bus Services called upon to show cause as to why :

- (i) The Service Tax to the extent of Rs. 12620220/- 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 and 2017-18 (upto June-2017),ascertained in future, as per paras no. 7 and 8 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.

12. Show Cause Notice dated 22.10.2020 was issued to M/s.Tak Bus Services called upon to show cause as to why:

- (i) The Service Tax to the extent of Rs.6310110/- 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 and 2017-18 (upto June-2017),ascertained in future, as per paras no. 7 and 8 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.

As the period covered under both the SCNs are 2015-16, I intend to adjudicate both the Show Causes simultaneously.

DEFENCE REPLY

13. The assessee vide letter dated 10.05.2021 submitted their reply to SCN wherein they stated that they are into the business of running the commercial buses on hire to the Ahmedabad Municipal Transport Service an entity under the Ahmedabad Municipal Corporation for commuting passengers within the city limits of the municipal corporation. They further stated that they were registered under service head "rent a cab service" since the year 2008. However after introduction of negative list based taxation with effect from 01.07.2012 their service was classified under entry no.22 of the exempted list of services which reads as under:

22.Services by way of giving on hire

(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers.

14. They further informed that all their buses are running on hire with the municipal corporation have capacity more than twelve passengers. In the light of the above they do not fall under the ambit of service tax and not filed ST 3 returns..

15. Vide their letter dated 18.02.2022 they further submitted that in the Show Cause Notice Para mentioned in table as per 26AS/income tax return fro gross receipt the SCN put the services value as Rs.8,70,35,998/- for F.Y 2015-16 & Rs.0/- for FY 2016-17 was not matching with their data. They provided copy financial statements and 26AS with reconciliation statement as per their data. They have also furnished audited balance sheet for 2 years, ITR copy 2 years, AMTS contract coy, 26AS for 2 years, ledger copy of AMTS etc and requested to drop the proceedings.

PERSONNEL HEARING

16. In this case personnel hearing was granted on 11.03.2022. Shri Milap Sureshkumar Dalwadi, duly authorised representative attended the personnel hearing

on behalf of the assessee. He has submitted reconciliation statement and has stated that he will produce service tax registration cancellation copy within 3 days to consider the case on merits. Accordingly they have provided registration cancellation copy on 14.03.2022 and requested to drop the [proceedings

DISCUSSION AND FINDINGS

17. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding further.

18. I have carefully gone through the records of the case, submission made by the noticee, Audited Balance Sheet, Form 26AS for 2015-16. In the instant case, two Show Cause Notice were issued to the assessee demanding Service Tax of Rs. 1,26,20,220/- & Rs.63,10,110/- 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 77 and 78 of the Finance Act, 1994. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 1,26,20,220/ & Rs.63,10,110 on the differential taxable value for the financial year 2015-16 under proviso to section 73(1) of Finance Act, 1944 or not.

19. On perusal of No.STC/15-122/OA/2021 dated 22.10.2020, I find that in the SCN the total value for TDS is mentioned as Rs.4,35,17,999/- and accordingly service tax of Rs.63,10,110/- is demanded for the year 2015-16. However in the SCN No.STC/15-15/OA/2020 DT.23.04.2021 the gross receipts from 26AS is shown as Rs.8,70,35,998/- which results demand of service tax of Rs.1,26,20,220/- for the year 2015-16. In this connection, I have carefully gone through both the Show Cause Notice as well as the Form 26AS for the year 2015-16. On perusal of 26 AS for the year 2015-16, I find that total amount paid/credited to the assessee's account is Rs.4,35,17,999/- wherein the Ahmedabad Municipal Transport Service deducted the TDS of Rs.8,70,360/-. Hence I find that the correct amount paid/credited to the assessee's account is Rs.4,35,17,999/- and accordingly I proceed to adjudicate the same by considering Rs.4,35,17,999/- as the total value for TDS instead of Rs.8,70,35,998/- as mentioned in the SCN dated 22.10.2020. According to which the point is to decide is whether the service tax demand of Rs.63,10,110/- recoverable or not.

20. On perusal of the reply to SCN, I find that the assessee is providing services by way of running commercial buses on hire to the Ahmedabad Municipal Transport Service an entity under Ahmedabad Municipal Corporation for commuting passengers within the city limits of the municipal corporation. After introduction of negative list with effect from 01.07.2012 their services was classified under entry No.22 of the exempted list of services. For the sake of clarity I refer the Entry No.22 of Notification 25/2012 dated 20.06.2012.

Notification No. 25/2012-Service Tax dated- 20th June, 2012, as amended. Incorporating changes made till issuance of notification no 10/2017-Service Tax dated 8-3-2017 G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

22) Services by way of giving on hire –

(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or

(b) to a goods transport agency, a means of transportation of goods;

Further "State transport undertaking" has been defined as (zg)"state transport undertaking" has the meaning assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

21. On perusal of reply to SCN filed by the assessee and points discussed during the Personnel Hearing, I find that the assessee have claimed that the service provided to Ahmedabad Municipal Corporation is exempted vide Point No.22 of Notification No.25/2012 dt.20.06.2012 and therefore they are not liable to pay any service tax in this regard. The assessee furnished documents such as audited balance sheet, copy of Form 26 AS, ITR and ledger accounts in support of their claim. However they have not produced any documentary evidence to prove that they have provided services to an organization or service receiver which falls under the definition of "State Transport Undertaking". It is amply clear that to avail the benefit of exemption from payment of service tax by way of any Notification, the assessee is required to submit documentary evidence/proof that they are falling under the exemption notification and also have fulfilled the conditions of availing any exemption notification as provided under Notification.

22. In the instant 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. Even during the course of personnel hearing also the assessee failed to submit any documentary evidence to prove that the service receiver i.e.Ahmedabad Municipal Transport Corporation is covered under the definition of "State transport undertaking" as detailed under point No.22 mentioned under Noti.No.25/2012 wherein it was described that Services by way of giving on hire to a state transport undertaking is exempted from payment of service tax. Further during the course of personnel hearing the assessee stated that they will produce service tax registration cancellation copy within three days. However they e failed to produce the same as agreed which also proves that they have intentionally not paid the service tax and also not filed any ST 3 returns for the period under reference.

23. In view of the above facts, it is proved that the assessee may not have any proof or they might have been try to avoid furnishing the details which may have lead to proof that the service recipient i.e. AMTS may fall under the category 22 in Notification No.25/2012. In case if the service receiver is not fall under the said definition the full liability to pay service tax is on the assessee himself. To avoid this liability to pay service tax, he may be deliberately not supplied the details/documents called for. 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.63,10,110/- is correctly demanded from the said assessee and required to be recovered from the assessee. Therefore, the Service Tax amount of Rs.63,10,110/- is recoverable from the assessee along with interest as provided in proviso to Section 73(1) of the Finance Act, 1994 read with Section 75 of the Act ibid.

24. On perusal of SCN, I find that the levy of service tax for FY 2016-17 & 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 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.

25. 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. 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 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

26. 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.

27. 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 ratio in Sun Export case (supra) is not correct and all decisions which took similar view as in Sun Export Case (supra) stands overruled.*

28. 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.

29. I further find that M/s. Tak Bus Service 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 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994; as the assessee 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) Section 67 of the Finance Act, 1994 as the assessee failed to determine the correct value of taxable service provided by them under as discussed above;
- (iii) Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 as they 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 in as much as they have not paid service tax as worked out in the Table for Financial Year 2015-16.

30. 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;

31. 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.

32. 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.

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

ORDER

- (i) I confirm the Service Tax amounting to Rs. 63,10,110/- (Rs.Sixty Three Lakh Ten Thousand One Hundred and Ten 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. Bus Tak Services to pay up the amount immediately.
- (ii) I drop the Service Tax amounting to Rs. 1,26,20,220/- (Rs.One Crore Twenty Six Lakh Twenty Thousand Two Hundred Twenty only) under Section 73(1) of chapter V of Finance Act, 1994 read with section 174 of CGST Act,2017 as amended as discussed in Para 17.
- (iii) I order that interest be recovered from M/s. Bus Tak Services on the service tax amount of Rs. 63,10,110/- (Rs.Sixty Three Lakh Ten Thousand One Hundred and Ten only) under the provisions of Section 75 of chapter V of the Finance Act, 1994.

- (iv) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. Bus Tak Services under Section 77(1)(c) of the Finance Act, 1994.
- (v) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. Bus Tak Services under Section 77(2) of the Finance Act, 1994.
- (vi) I impose a penalty of Rs. 63,10,110/- (Rs.Sixty Three Lakh Ten Thousand One Hundred and Ten only) on M/s. Bus Tak Services 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. Bus Tak Services 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. Bus Tak Services 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
21/3/22

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

By Regd. Post AD./Hand Delivery

F.No.STC/15-122/OA/2020

To

M/s. Tak Bus Services,
11/12, Sona Mahal, Modh Champaner Society,
Usmanpura, Ahmedabad ,
Gujarat-380013

Date: 21/03.2022

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

Recd.
(Ry)
24-03-22
Insp(Sis)

