



OFFICE OF THE COMMISSIONER OF C. G. S. T.,
AHMEDABAD – SOUTH.

प्रधान आयुक्त का कार्यालय, के. व. से. क., अहमदाबाद दक्षिण
G. S. T. BHAVAN, AMBAWADI, AHMEDABAD – 380 015
व. से. क. भवन, आम्बावाड़ी, अहमदाबाद – ३८० ०१५

F. No. : STC/4-10/O&A/Amar/21-22
DIN- 20221264WS000042424A

आदेश की तारीख: Date of Order : 30.12.2022

जारी करने की तारीख: Date of Issue : 30.12.2022

द्वारा पारित/ Passed by: **Shri Marut Tripathi, JOINT COMMISSIONER**

मूल आदेश सं./Order-In-Original No.67/CGST/Ahmd-South/JC/MT /22-23

यह प्रति उस व्यक्ति (यों) को, जिसके (जिनके) लिए यह आदेश जारी किया गया है, उसके (उनके) व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है।

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यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त (अपील), केन्द्रीय जीएसटी, केन्द्रीय जीएसटी भवन, आम्बावाड़ी, अहमदाबाद-15 को प्रारूप इ.ए.-1 में अपील कर सकता है। उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए। इसपर रूपए 2.00/- केवल का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this order in Form E.A.1 to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील दो प्रतियों में प्रारूप सं. इ.ए.-1/S.T.-4 में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001 के नियम 3 के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए। इसके साथ निम्नलिखित को संलग्न किया जाए:

The Appeal should be filed in form No. E.A.-1/S.T.-4 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be accompanied with the following:

उक्त अपील की प्रति।

Copy of the aforesaid appeal.

निर्णय की दो प्रतियाँ (उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील की गई है)

अथवा उक्त आदेश की अन्य प्रति जिसपर रु 2.00/- का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

Copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरुद्ध आयुक्त(अपील) में शुल्क के 7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती 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."

संदर्भ/Reference :कारण बताओ सूचना फा.सं. F. No. STC/4-10/O&A/AMAR/21-22, issued to M/s. Amar Roadlines, 11, Transport Nagar, Opp. Watertank, Narol Crossroad, Narol, Ahmedabad-382405.

Brief facts of the Case:-

Whereas, M/s AMAR ROADLINES, 11, TRANSPORT NAGAR, OPP. WATERTANK, NAROL CROSSROAD, NAROL, AHMEDABAD-382405, (hereinafter referred to as the 'Service Provider' for the sake of brevity) is registered under Service Tax having Registration No.-ABBFA9097KSD001.

2. As per the information received from the Income Tax Department, M/s Amar Roadlines had earned substantial service income, however, they have not paid service tax on actual sale of services thereon.

3. Therefore, The clarification along with documents related to service income for the period 2015-16 to June-2017 were called for from the Service Provider for assessment purpose, vide letter dated 27.01.2020 and 28.09.2020 and summon dated 01.04.2021. However, the said Service Provider failed to submit the required details/documents or offer any explanation/clarification regarding income earned by them.

4. Further, the Income Tax Department shared the data for the Financial Year 2015-16 and 2016-17. As per the data provided by the Income Tax Authority, income earned by the said Service Provider is as under:-

Sr. No.	Period (Fin. Year)	Income earned in Rs.	Business description (Service Sector)
1	2015-16	3,95,73,647/-	Service Sector [Transporters]
2	2016-17	3,90,77,280/-	

However, they have been filed the return for the period October-2015 to March-2016 on 23.04.2016.

5. According to Section 70 of the Finance Act, 1994 read with Rule 7(1) of the Service Tax Rules, 1994, *every person liable to pay Service Tax shall himself assess the tax due on the services provided by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all materials facts in ST-3 returns.*

6. As per provision of Section 68 of Finance Act, 1994 read with Rule 6 of Service Tax Rule 1994 as amended, *every person providing taxable service to any person is liable to pay Service Tax at the rate prescribed in Section 66B to Central Government by the 5th of the month/ quarter immediately following the calendar month/ quarter in which the taxable service is deemed to be provided (except for the month of March which is required to be paid on 31st March).*

7. Since the said Service Provider had failed to submit the required details of services provided during the Financial Year 2015-16 to June-2017 till date, the service tax liability of the Service Provider was required to be ascertained on the basis of income mentioned in the ITR returns and Form 26-AS filed by the said Service Provider 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 67A of the Finance Act, 1994 as the said Service Provider failed to determine the correct taxable value.

8. The Service tax payable is calculated on the basis of value of "sales of services under Sales/Gross Receipts from Services (Value from ITR)" as provided by the Income Tax Department for the Financial Year 2015-16 and 2016-17. By considering the said amount as taxable income, and as the said Service Provider failed to submit the required details as per above referred letter, the service tax liability is calculated as under:-

Table-A

F.Y	Taxable Value as per ITR	Value declared in ST-3	TOTAL VALUE for TDS(including 194C,194Ia,194Ib,194J,194H)	HIGHER VALUE(VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Service Tax (at 14.5% for 2015-16 and 15% for 2016-17) payable
2015-16	3,95,73,647/- -	54,94,507/-	3,33,90,578/-	3,40,79,140/-	49,41,475/-
2016-17	3,90,77,280/- -	45,24,809/-	3,78,08,251/-	3,45,52,471/-	51,82,870/-
				Total	1,01,24,345/-

9. It appears that the said Service Provider had neither filed a correct Service Tax ST-3 return for the services provided by them for the period of F.Y. 2015-16 and 2016-17, nor responded to correspondence made with them and concealed the value from the department, declared to the income tax department. Therefore, it appears that the said Service Provider had not paid correct service tax by way of willful suppression of facts to the department in contravention of provision of the Finance Act, 1994 relating to levy and collection of service tax and the Rules made there under, with intent to evade payment of service tax. Therefore, the service tax amounting to Rs. **1,01,24,345/-** is recoverable from them by invoking extended period of five years under first proviso to sub-section (1) of Section 73 of Finance Act, 1994 along with interest at the prescribed rate under Section 75 of the Finance Act, 1994 and also rendered himself liable for penal action under Section 77 and 78 of Finance Act, 1994.

10. Whereas, with respect to issuance of un quantified 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.'

11. From the data received from CBDT, it appears that the **“Total Amount Paid/Credited Under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts From Services (From ITR)”** for the Financial year 2017-18 (upto June-2017) has not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. Further, the service provider has also failed to provide the required information even after the issuance of letters/summon from the Department. Therefore, the assessable value for the year 2017-18 (upto June-2017) is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said service provider, action will be initiated against the said

service provider 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 2015-16, 2016-17 and 2017-18 (upto June-2017) not covered under this Show Cause Notice, will be recoverable from the service provider accordingly.**

12. It further appears that on account of all the above narrated acts of commission and omissions on the part of the said service provider, they have rendered themselves liable to penalty under the following proviso of the Finance Act, 1994 and Rules framed there under:-

- Section 70 and Section 77 of the Finance Act, 1994 as amended in as much as they failed to correctly self assess the tax due on the services provided and have not filed/not filed correct ST-3 return and contravened the provisions of Service Tax laws and did not comply to the letter issued by the Department and did not provide the required information/documents.
- Section 78 of the Finance Act, 1994, in as much as they have suppressed the material facts from the department about service provided and value realized by them with intent to evade payment of service tax.

13. Section 70 of the Finance Act, 1994 stipulates that every person liable to pay the Service Tax shall himself assess the tax due. The Government has introduced self-assessment system under a trust based regime which casts the onus of proper assessment and discharging of the Service Tax on the Service Provider. The definition of "assessment" available in Rule 2(b) of Service Tax Rules, 1994 is reproduced as under:-

"Assessment" includes self assessment of service tax by the assessee, re-assessment, provisional assessment, best judgment assessment and any order of assessment in which the tax assessed is nil; determination of the interest on the tax assessed or re-assessed."

14. In view of discussion in the fore going paras, it appears that all the above acts of suppression of facts, misstatement and contravention, omissions and commissions are on the part of said service provider that they have willfully suppressed the facts, nature and value of service provided by them by not assessing and paying due Service Tax liability, therefore, the above said amounts of Service Tax of Rs. **1,01,24,345/-** (Non-payment of Service Tax for the period 2015-16 and 2016-17 on Income from taxable service provided by them), and Late fee (Non filing of Service Tax returns) for the above period is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years for the reasons stated herein foregoing paras. In view of the facts discussed in foregoing paras and material evidence available on record, it appears that the said service provider have contravened the provisions of Section 66B of the Finance Act, 1994, Section 68 of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules, 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as that they failed to determine; collect and pay Service Tax amounting to Rs. **1,01,24,345/-** (including EC, SHEC, SBC & KKC) for the period 2015-16 and 2016-17 as detailed above and they have failed to declare value of taxable service to the department and thus suppressed the amount of charges received by them for providing taxable services as detailed above.

15. Therefore, M/s AMAR ROADLINES, 11, TRANSPORT NAGAR, OPP. WATERTANK, NAROL CROSSROAD, NAROL, AHMEDABAD-382405, were called upon vide Show Cause Notice F.No.: STC/4-10/O&A/AMAR/21-22 dated 21.04.2021, to show cause to the Joint Commissioner, Central GST, Ahmedabad South having his office situated at 7th Floor, GST Bhavan, Revenue Road, Ambawadi, Ahmedabad-380015 as to why:-

- i) Service Tax of **Rs. 1,01,24,345/-** which was not paid for the F.Y.2015-16 and 2016-17 as per Table-A in para-8 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994;
- ii) Interest at the prescribed rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at above under Section 75 of the Finance Act,1994;
- iii) Prescribed late fee, should not be recovered from them for each S.T.-3 return filed late, for the relevant period, under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 and
- iv) Penalty should not be imposed under Section 77 of the Finance Act,1994.
- v) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994, for non-payment of Service Tax by willfully suppressing the facts from the department with intent to evade the payment of Service Tax as explained herein above.

Defence submission:-

16. The said service provider submitted their defence submission vide letter dated 07.12.2022 and the same is as under:-

“ In reference to Show Cause Notice bearing STC/04-10/O&A/Amar dated 21/04/2021 issued by Joint Commissioner Ahmedabad South. We personally hearing as on 06/12/2022 with Shri Marut Tripathi, Joint Commissioner, CGST Ahmedabad South.

In the event of physical hearing, we discussed and explained the facts before him. Also, we have inform that Service Tax Audit for the period 2015-16 to 2016-17 have been conducted by Service Department. In the year 2020-21 we submit Service Tax Audit Report dated 21/04/2021 by us with reference no. CE/ST-1146/2020-21.

In this personal hearing Joint Commissioner Sir ask further documents with we have submitted today as per below list:-

1. 26AS copy for Financial Year 2015-16;
2. 26AS copy for Financial Year 2016-17;
3. Sales Ledger with PAN No. for the Financial year 2015-16;
4. Sales Ledger with PAN No. for the Financial year 2016-17
5. Service Tax Audit Report No. CE/ST-1146/2020-21.”

Record of Personal Hearing :-

17 Shri Palak Shah, Chartered Accountant along with Sh. Tapas Patel, partner of the service provider appeared on 06.12.2022 for personal hearing and stated that audit has been conducted for period from F.Y. 2015-16 to June 2017 and has submitted copy of Final Audit Report. He has also mentioned that Form 26AS, sales Ledger will be submitted by them.

Discussion and Findings:-

18.1 I have carefully gone through the case record, submission made by the service provider, documents submitted by the service provider and records of personal hearing.

18.2 In the instant case I find that on the basis of information/data received from the Income Tax Department, a Show Cause Notice bearing No. STC/04-10/O&A/Amar/21-22 dated 21.04.2021 was issued to the service provider alleging that the service provider had failed to pay service tax amounting to Rs. 49,41,475/- on taxable value of Rs. 3,40,79,140/- and Rs. 51,82,870/- on taxable value of Rs. 3,45,52,471/- for the Financial year 2015-16 and 2016-17 respectively. Therefore, in the said Show Cause Notice a demand and recovery of service tax amount of Rs. 1,01,24,345/- had been proposed under sub-section (1) of Section 73 of the Finance Act, 1994; demand of interest under Section 75 of the Finance Act, 1994 had been proposed; Penalty under Section 77 and 78 of the Finance Act, 1994 has been proposed; late fee under Rule 7C of the Service Tax Rules, 2002 read with Section 70 of the Finance Act, 1994 for delay submission of Service Tax Returns had been proposed.

18.2.1 I also find that the service provider in their defence submission and during personal hearing has submitted that audit has already been conducted by the officers of Central GST for the period in question.

18.3 In view of Para 18.2 and 18.2.1 above, I have to decide whether (i) the service provider is liable to pay service tax or otherwise

18.4 Now I would like to go through the legal aspects of the taxability of GTA services.

18.4.1 The relevant extract of the Rule 2(d)(i)(B) of the Service Tax Rules, 1994 provided that;

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

(i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,

(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 there under;

(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.

18.4.2 The relevant extract of second proviso of Rule 4A and Rule 4B of Service Tax Rules, 1994 as amended is reproduced below:-

Second proviso of Rule 4A

[Provided further that in case the provider of taxable service is a goods transport agency, providing service to any person, in relation to transport of goods by road in a goods carriage, an invoice, a bill or, as the case may be, a challan shall include any document, by whatever name called, which shall contain the details of the consignment note number and date, gross weight of the consignment and also contain other information as required under this subrule.

Rule 4B

4B. Issue of consignment note.- Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the recipient of service:

Provided that where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note [to the recipient of service].

Explanation.- For the purposes of this rule and the second proviso to rule 4A, "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.

18.4.3 The relevant extract of Notification No. 25/2012-Service Tax dated 20.06.2012 is reproduced below:-

21. Services provided by a goods transport agency by way of transportation of –

(a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;

(b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or

(c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

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;

18.4.4 The relevant extract of Notification No. 30/2012-Service Tax dated 20.06.2012 is reproduced below:-

(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

02	<i>in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road</i>	NIL	100%
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18.4.5 The relevant extract of Sr. No. 21(c) of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 is reproduced below:-

21. Services provided by a goods transport agency by way of transportation of –

(c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

18.4.6 The relevant extract of sub section 44, 51 of Section 65B, Section 66B of the Finance Act, 1994, as amended from time to time, is reproduced below:-

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(51) "taxable service" means any service on which service tax is leviable under section 66B;

SECTION 66B. Charge of service tax on and after Finance Act, 2012.— There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

18.4.7 The relevant extract of Section 68, and Section 70 of the Finance Act, 1994, as amended from time to time, is reproduced below:-

SECTION 68. Payment of service tax. — (1) Every person providing taxable service to any person shall pay service tax at the rate specified in section [66B] in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in respect of [such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section [66B] and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.

18.5 In view of foregoing para 18.4.1 & 18.4.2, I find that the person who is liable to pay freight will be liable to pay service tax and therefore establishment for liability of payment of freight to ascertain the liability of payment of service tax is mandatory in terms of Rule

2(d)(i)(B) of the Service Tax Rules, 1994. However, I find that in the instant case the service provider has not substantiated with documentary evidence like agreement, consignment note or lorry receipt etc. at any point of time to establish that by whom freight had been paid. Therefore, the benefit of the exemption notification for the services provided to body corporate and partnership firms by the service provider cannot be extended without fulfillment of legal requirements, without undertaking necessary verification, without appreciation of requirements and fulfillment of legal provisions.

18.6 Moreover, I have gone through the defence submission of the service provider wherein they have mentioned that service tax audit has already been conducted and concluded by the Central GST officers. The service provider has submitted copy of the Final Audit Report No. CE/ST-1146/2020-21 dated 21.04.2021 issued by the Assistant Commissioner, Central GST Audit, Ahmedabad under F.No. VI/I(b)/216/C-II/Audit/AP-13/2020-21.

18.6.1 I have carefully gone through the Final Audit Report No. CE/ST-1146/2020-21 dated 21.04.2021 issued by the Assistant Commissioner, Central GST Audit, Ahmedabad issued under F.No. VI/I(b)/216/C-II/Audit/AP-13/2020-21 and find that the audit of the said service provider had been conducted by the officers of Central GST Audit, Ahmedabad under EA-2000 for period covering from October 2015 to June-2017 only and the said Final Audit Report does not cover the period from April 2015 to September 2015.

18.6.2 On going through the Final Audit Report I find that the auditors of Central GST Ahmedabad had raised two objections and issued Revenue paras and the same are reproduced below:-

“Revenue Para 1 :- Reconciliation of Ledger and Short Payment of Service Tax on Goods Transport Agency Service in the F.Y. 2016-17.

On scrutiny of Income account from their balance sheet/Trial balance, it was noticed that the assessee has shown freight income of Rs. 39077280/- as direct income and outward freight income Rs. 868300/-under the head of ‘Other Income’. The total freight income for F.Y. 2016-17 comes to Rs. 39945580/- and liable to pay service tax on it. On reconciliation of income it is found that assessee has short paid service tax on their outward freight income shown as ‘Other Income’ Rs. 868300/-during F.Y. 2016-17. Since the assessee is registered under GTA category falling in the specified category of person liable to pay service tax as provider of taxable service in terms of clause (d) of sub-rule (1) of Rule 2 of the Service Tax Rules, 1994, it was obligatory on the part of the assessee to discharge service tax liability under the category of Transport of Goods by Road (GTA) services on the 30% of the Gross Amount. Therefore, service tax of Rs. 37355/- is required to be recovered under Rule 6(1) of Service Tax Rules, 1994 read with Section 68 (1) and 73 of the Finance Act, 1994 and applicable interest under Section 75 and Penalty under Section 73 of the Finance Act, 1994.

On being pointed out, the assessee agreed with the audit objection and paid the Service Tax involving Rs. 37355/- alongwith interest of Rs. 24654/- and Penalty- Rs. 5603/- vide DRC No. DC2403210031452 dated 08.03.2021.

Revenue Para 2:- Non payment of late fee on late filling of ST-3:-

As per Rule 7C of the Service Tax Rules, 1994, ‘where the return prescribed under Rule 7 is furnished after the date prescribed for submission of such return the person liable to furnish the said return shall pay to the credit of Central Government for the period of delay of-

- (i) Fifteen days from the date prescribed for submission of such return an amount of five hundred rupees;*
- (ii) Beyond fifteen days but not later than thirty days from the date prescribed for submission of such return, an amount of one thousand rupees; and*

- (iii) *Beyond thirty days from the date prescribed for submission of such return an amount of one thousand rupees plus one hundred rupees for every day from the first day till the date of furnishing the said return;
Provided that the total amount payable in terms of this rule, for delayed submission of return, shall not exceed the amount specified in section 70 of the Act.*

During the course of audit, while scrutinizing the ST-3s filed by the said assessee, it was observed that the ST-3 returns for the period from 2017-18 (upto June) has been late filed by 8 days, hence the assessee were asked to pay up the late fees to the tune of Rs. 500/-.

On being pointed out, the assessee agreed with the audit objection and paid the late fees involving Rs.500/- DRC No. DC2403210031452 dated 08.03.2021.”

18.6.3 I find that in the instant show cause notice a demand of service tax not paid/short paid has been raised on the strength of the difference made between financial records and ST-3 returns on the basis of information/ data received from the Income Tax Department covering period from April 2015 to March 2017, however, from the foregoing paras i.e. Para 18.6.1 and Para 18.6.2, I find that audit of the financial records along with ST-3 returns has been concluded by the officers of Central GST, Ahmedabad for the period covering from October 2015 to June 2017 wherein they had observed the discrepancies in reconciliation and scrutiny of financial records with Service Tax Returns and the same had been accepted & paid by the service provider along with interest and penalty. Therefore, I find that demand of service tax not paid/short paid for the period from October 2015 to March 2017 as demanded in the Show Cause Notice is not sustainable in view of Final Audit Report No. CE/ST-1146/2020-21 dated 21.04.2021 as the issue involved in the Show Cause Notice as already been taken up during audit.

18.7 I also find that since the audit of financial records had been concluded by the officers of Central GST Audit, Ahmedabad for period from October 2015 to June 2017, however they have not audited the records pertains to period from April 2015 to September 2015, therefore, during adjudication proceedings I have taken up the matter for the period from April 2015 to September 2015 only to ascertain the tax liability incurred on the shoulder of the service provider.

18.7.1 On going through the ST-3 returns for period April-September' 2015-16, I find that the service provider had disclosed the Gross value of Rs. 24,54,428/-. I have also examined the freight ledger provided by the service provider vide their letter dated 07.12.2022 and on examination of the same I find that they have submitted the ledgers amounting to Rs. 3,77,78,466/- for the Financial Year 2015-16, out of which it involves the amounting to Rs. 2,03,48,973/- for the period from April 2015 to September 2015. I also find that the Profit & Loss Account for the Financial Year 2015-16 reveals the sales Income of Rs. 3,95,73,647/- and Other Income of Rs. 54,214/- (total of Rs. 3,96,27,861/-) and thus the Service provider has failed to produce any ledger of differential amounting to Rs. 18,49,395/- (Rs. 3,96,27,861/- - Rs. 3,77,78,466/-). I also find that in some instances the service provider has also collected freight less than Rs. 750 for a single consignee and hence in terms of Sr. No. 21(c) of Notification No. 25/2012-ST dated 20.06.2012 such freights are exempted from the ambit of service tax. Since the service provider has failed to produce any documentary evidence like consignment note, agreement, Lorry receipt etc to establish that the burden of payment of service tax was on the shoulder of consigner or consignee as prescribed in the Notification No. 30/2012-ST dated 20.06.2022, therefore I find that entire liability of payment of service tax should be on shoulder of the service provider for period from April 2015 to September 2015.

18.7.2 Therefore, I find that the service tax liability on freight receipt value of Rs. 2,03,48,973/- except the single consignment of less than Rs. 750/- for period April 2015 to September 2015 comes on the shoulder of the service provider in accordance with the provisions of Finance Act, 1994 and rules framed there under, however they have paid service tax liability only on receipt value of Rs. 24,54,428/- and has failed to pay service tax on receipt value of Rs.1,78,87,549/-. I also find that the service provider has failed to produce any documents viz. freight ledger,

consignment note, lorry receipt, agreement in respect of receipt value of Rs. 18,49,395/- as discussed above in para 18.7.1 to establish that they have incurred such income through freight charge or any other exempted service, therefore, I have considered such income as taxable value and it comes within the ambit of Service tax and the benefit of freight income has not been provided on such income.

19. Further, I also find that the service provider had not provided any sales ledger/register for the period of 2015-16 and 2016-17 to the investigating authority hence demand of service tax was calculated by the Show Cause Notice issuing authority at rate of 14.5% and 15% for the F.Y. 2015-16 and 2016-17 that arrived to Rs.1,01,24,345/-. However, during the adjudication proceedings, the service provider has provided freight receipt register for the F.Y. 2015-16 and F.Y. 2016-17 and Final Audit Report No. CE/ST-1146/2020-21 dated 21.04.2021 issued by the Assistant Commissioner, CGST Audit, Ahmedabad. Therefore, liability of Service Tax has been re-calculated as in light of discussion held in Para 18 above and that arrived to Rs. 9,77,421 (Rs. 91,46,924/- less than the demand made in Show Cause Notice). The service tax liability is worked out as under:

Financial Year 2015-16 (upto September 2015)

Period	Value as per Freight ledger	Freight less than Rs. 750/-	Difference	Taxable value @30% (Notification on 8/2015-ST dated 01.03.2015)	Taxable Value shown in ST-3 returns	Differential Taxable Value
1	2	3	4 (2-3)	5	6	7 (5-6)
01.04.2015 to 31.05.2015	74,65,140/-	4,488/-	74,60,652/-	22,38,196/-	2,39,915/-	19,98,281/-
01.06.2015 to 30.09.2015	1,28,83,833/-	2,508/-	1,28,81,325/-	38,64,398/-	4,96,413/-	33,67,985/-

Period	Differential Taxable Value	Rate of Tax	Service Tax not paid/short paid
1	2	3	4
01.04.2015 to 31.05.2015	19,98,281/-	12.36%	2,46,987/-
01.06.2015 to 30.09.2015	33,67,985/-	14%	4,71,518/-
Total	53,66,266/-		7,18,505/-
Value not shown in freight ledger	18,49,395/-	14%	2,58,915/-
Sub Total	72,15,661/-		9,77,420/-

20. It is on record that from the data received from CBDT, it appears that the "Total Amount Paid/Credited Under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts From Services (From ITR)" for the Financial year 2017-18 (upto June-2017) has not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. Further, the service provider has also failed to provide the required information even after the issuance of letters/summon from the Department. Therefore, the assessable value for the year 2017-18 (upto June-2017) is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said service provider, action will be initiated against the said service provider 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 2015-16, 2016-17 and 2017-18 (upto June-2017) not**

covered under this Show Cause Notice, will be recoverable from the service provider accordingly.

21. Further, I find that the said Service Provider had neither filed a correct Service Tax ST-3 return for the services provided by them for the period of F.Y. 2015-16 nor responded to correspondence made with them and concealed the value from the department, declared to the income tax department. Therefore, the said Service Provider had not paid correct service tax by way of wilful suppression of facts to the department in contravention of provision of the Finance Act, 1994 relating to levy and collection of service tax and the Rules made there under, with intent to evade payment of service tax. Therefore, the demand of service tax amounting to Rs.9,77,420/- from them by invoking extended period of five years under first proviso to sub-section (1) of Section 73 of Finance Act, 1994 along with interest at the prescribed rate under Section 75 of the Finance Act, 1994 is legal and sustainable. I also find that demand of service tax not paid/short paid for the period from October 2015 to March 2017 as demanded in the Show Cause Notice is not sustainable in view of Final Audit Report No. CE/ST-1146/2020-21 dated 21.04.2021 as the issue involved in the Show Cause Notice as already been taken up during audit

22. Further, I find that all the acts of suppression of facts i.e not showing correct value of service provided by them in their Service Tax Returns or non providing of correct information at any point of time, omission and commission committed on the part of the service provider with intent to evade payment of service tax to the tune of Rs. 9,77,420/- on taxable value of Rs. 72,15,661/- for Financial Year 2015-16 rendered themselves liable for penal action under Section 78 of the Finance Act, 1994. Therefore, I find that the penal action proposed under Section 78 of the Finance Act, 1994 in show cause notice is legal and sustainable. Moreover, I also find that the service provider has contravened the provisions of Section 66B, 67 and 68 of the Finance Act, 1994, in as much as they had failed to correctly self assess their service tax liability and had failed to pay the correct service tax to the Government rendered themselves liable for penal action under Section 77 of the Finance Act, 1994. Therefore, I find that the penal action proposed under Section 77 of the Finance Act, 1994 in the show cause notice is legal and sustainable.

23. I find that in the Show Cause Notice late fees prescribed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 was proposed, however I find that the service provider had filed their ST-3 returns for period in question well before due date of filling of returns. Therefore, I find that the demand of late fee proposed in show cause notice is not sustainable.

24. In view of above discussion, I pass the following order.

ORDER

- i) I order to recover Service Tax amounting to Rs.9,77,420/- (**Rupees Nine Lacs Seventy Seven Thousands Four hundred Twenty only**) which was not paid for the F.Y.2015-16 (upto September 2015) from M/s AMAR ROADLINES, 11, TRANSPORT NAGAR, OPP. WATERTANK, NAROL CROSSROAD, NAROL, AHMEDABAD-382405 under proviso to Sub-section (1) of Section 73 of Finance Act, 1994 and drop the demand of Rs. 91,46,925/- (Rs. Ninety Four Lacs Forty Six Thousands Nine Hundred and Twenty Five only) in as much as the reason elaborated at Para 18 above;
- ii) I order to recover interest at the prescribed rate from M/s AMAR ROADLINES, 11, TRANSPORT NAGAR, OPP. WATERTANK, NAROL CROSSROAD, NAROL, AHMEDABAD-382405 for the period of delay of payment of service tax mentioned above at Sr. (i) under Section 75 of the Finance Act, 1994;
- iii) I Impose a penalty of Rs. 2,09,000/- (Rupees Two Lacs Nine Thousands only) on from M/s AMAR ROADLINES, 11, TRANSPORT NAGAR, OPP. WATERTANK, NAROL

CROSSROAD, NAROL, AHMEDABAD-382405 under Section 77(1) of the Finance Act, 1994, in as much as they have failed to produce information/documents as asked by the department through letter dated 27.01.2020, 28.09.2020 and summons dated 01.04.2021 as well as failed to correctly self assess their service tax liability.

- iv) I drop the proposal of late fee proposed under Section 70 of the Finance Act, 1994 read with Rule 7C of Service Tax Rules, 1994, in as much as the service provider has filed their ST-3 returns within prescribed time frame.
- v) I impose a penalty Rs.9,77,420/- (**Rupees Nine Lacs Seventy Seven Thousands Four hundred Twenty only**) which was not paid for the F.Y.2015-16 (upto September 2015), from M/s AMAR ROADLINES, 11, TRANSPORT NAGAR, OPP. WATERTANK, NAROL CROSSROAD, NAROL, AHMEDABAD-382405 under Section 78 of the Finance Act, 1994 for non payment of service tax by wilful suppressing the facts from the department with intent to evade the payment of service tax explained hereinabove.


(MARUT TRIPATHI)

Joint Commissioner,
CGST & Excise, Ahmedabad South,
Ahmedabad.

BY SPEED POST AD/HAND DELIVERY

F.No. STC/4-10/O&A/Amar/21-22

Date: 30.12.2022

To,
M/s AMAR ROADLINES, 11, TRANSPORT NAGAR,
OPP. WATERTANK, NAROL CROSSROAD,
NAROL, AHMEDABAD-382405

Copy to:

- 1) The Principal Commissioner, CGST, Ahmedabad South.
- 2) The Deputy Commissioner, Central GST, Div-IV, Ahmedabad South.
- 3) The Assistant Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South
- 4) The Superintendent, Range-IV, CGST, Div-IV, Ahmedabad South.
- 5) The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website.
- 6) Guard file.