



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर  
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-217/OA/2020

आदेश की तारीख/Date of Order: - 13.01.2022

जारी करने की तारीख/Date of Issue :- 13.01.2022

DIN NO: 20220164WT000000D7C9

द्वारा पारित/Passed by:-

मुकेश राठौर/ *MUKESH RATHORE*  
अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 44/ADC/MR/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 साठ (दिन के अन्दर आयुक्त) अपील, (केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केंद्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015) को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-में दो प्रतियों में दाखिल की जानी चाहिए। उस पर 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 जाएं।

(1) उक्त अपील की प्रति।

## BRIEF FACTS OF THE CASE :

M/s. SAUMYA DEVELOPERS (PAN-ACFFS1880B), SUR. No. 418/SHARNAM VILLA SCHEME, NR.GHODAGADI STAND,KANETI ROAD,SANAND, AHMEDABAD-382110(hereinafter referred to as the 'said service provider' for the sake of brevity) is un-registered in Service Tax despite being providing service during the year 2015-16 and 16-17 and 17-18(Upto June-2017).

2. Ongoing through the data received from Income Tax department (CBDT data) for the Financial Year 2015-2016, 2016-17 and 2017-18 for un-registered service provider, it has been observed that the said service provider has shown 'Gross receipt from Service 'in their Income Tax Return, however, the said service provider has neither obtained valid service tax registration nor paid Service Tax. The details of the value shown in Income Tax return for F.Y 15-16 and 16-17 and 17-18 is as per table mentioned below: -

F.Y.	basic value as per ITR/P&L account (Rs)	resultant Service tax not paid (Rs.)
2015-16	1,16,79,664/-	S.T-16,35,153/- E.C-32703/- SHEC-16301/- SBC-8175/- Total-Rs.16,92,332/-
2016-17	3,54,20,948/-	S.T-49,58,933/- E.C-99178/- SHEC-49589/- SBC-24794/- KKC-24794/- Total-Rs.51,57,288/-
2017-18 (upto June-2017)	1,20,01,904/-	S.T-16,80,266/- SBC-8401/- KKC-8401/- Total-Rs.16,97,068/-

3. Letters/e-mail dated 22.01.2021, 28.01.2021, 09.02.2021 and summon dated 15.02.2021 were issued requesting clarification regarding the service turnover for the F.Y for 2015-16, 2016-17 and 2017-18 (Upto June-2017) as mentioned in the above table with certified documentary evidences, but the service provider has not submitted the certified documentary evidence till issuance of this show cause notice, hence the data available with this office has been considered for computing the service tax liability.

4. As per Section 69 of the Finance Act, 1994 .— "(1) Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.

(2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed

It is observed that the said service provider has failed to obtain Service Tax registration and thereby violated the provisions of Section 69 of the Finance Act, 1994.

5. Further, as per Section 68 of the Finance Act, 1994 "(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. "

The said service provider has failed to pay the service tax on the taxable services provided by them and thereby contravened the provisions of Section 68 of the Finance Act, 1994.

6. In view of above, it appears that the said service provider has contravened the provisions of, (1) Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 and (2) Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994 in as much as they failed to take service tax registration and pay Service Tax to the extent of Rs.85,46,688/- (S.T-Rs.82,74,352/- + E.cess-Rs.1,31,881/- + SHEC-Rs. 65,890/-+ SBC-Rs. 41,370/- + KKC-Rs.33,195/-) as per the Income Tax Return.

7. It has been noticed that at no point of time, the said service provider has disclosed or intimated to the Department regarding receipt/providing of Service, which has come to the notice of the Department only after going through the CBDT Data generated for the Financial Year 2015-2016 and 2016-17 and 2017-18. The Government has, from the very beginning, placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it appears that the said service provider has knowingly suppressed the facts regarding receipt of/providing of services by them. It appears that the above act of omission on the part of the said service provider 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 of the Finance Act, 1994 by invoking proviso under sub-section (1) of Section 73 along with Interest thereof, at appropriate rate, under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the said service provider constitute offence of the nature specified under Section 68 & Section 69 of the Finance Act, 1994, it appears that the said service provider has rendered themselves liable for penalty under Section 77 (1) (a) & Section 78 of the Finance Act, 1994.

8. Therefore, Show Cause Notice No.F.No.STC/15-217/OA/2020 dated was issued to M/s Saumya Developers to show-cause as to why:

- a) The demand for Service Tax to the extent of Rs. 85,46,688/- (S.T-Rs.82,74,352/- + E.cess-Rs. 1,31,881/- + SHEC-Rs. 65,890/- + SBC-Rs. 41,370/- + KKC-Rs.33,195/-) not paid by them, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;

- b). Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- c) Penalty should not be imposed upon them under the provisions of Section 77 (1) (a) of the Finance Act 1994, for failure to take Service Tax Registration;
- d) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994, for non-payment of service tax by knowingly suppressing the facts from the department with intent to evade the payment of service tax

#### **DEFENCE REPLY :**

09. The service Provider vide letter dated 05.04.2021 has submitted their reply wherein they stated that their firm is engaged in real estate business; that the nature of business were reported to CBDT; that they are eligible to avail abatements applicable to them vide various notification from time to time under the finance Act, 1994; that after considering the same they calculated their service tax liability at prevailing service tax; that they attached working sheet for the said liability; that they tried to approach at the time of pre-consultation but due to traffic issue, they were not able to reach the office in time and therefore preconsultation could not be done; that they stated that they already applied for GST registration on 16.03.2021 (before the issuance of Pre-consultation letter dated 18.03.2021) to pay the service tax liability, however, the GST number has not been granted to them till date; that the issuance of GST number is pending with SGST department and hence payment can not be made; that their partners are from small village and started the business hence they are not aware about the payment of service tax.

#### **PERSONNEL HEARING :**

10. Personnel hearing were granted to the assessee on 22.11.2021. Shri Hardik Devpura, Chartered Accountant appeared before me for personnel hearing on behalf of M/s. Saumya Developers. He reiterated the written submission made on 05.04.2021 at the time of personnel hearing and he requested to drop the scn proceeding.

#### **DISCUSSION AND FINDINGS:**

11 I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 05.04.2021, alongwith documents submitted by the assessee.

11.1 On going through the SCN, I find that data of Sales /Gross receipt from services as per ITR were shared by the CBDT with CBIC for FY 2015-16 to 2017-18 (Up to June 17), which has been provided by the tax payer. The difference in value of service provided to the extent of Rs.05,91,02,516/- was noticed and therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the differential value of Rs. 05,91,02,516/- under proviso to section 73(1) of Finance Act, 1944 or not.

11.2 On going through the records available in the file and defense reply furnished by the service provider, I find that the Service Provider is engaged in real estate business i.e. construction and developing of residential units and has not

obtained the Service Tax registration thereby not registered with the Service Tax department and not filing the Service Tax returns. The service Provider vide letter dated 05.04.2021 has submitted their reply wherein they stated that their firm is engaged in real estate business. They have also stated that they have not obtained registration at the time of issuance of Show Cause Notice. They have contended that they are liable to pay Service Tax for the year 2015-16 to 2017-18 (Up to June 2017). They have also requested to grant them abatements applicable to them vide various notification from time to time under the finance Act, 1994.

11.3 I have gone through the details of Basic value as per ITR/PL account as shown in the Show Cause Notice and accordingly Service Tax demanded on the value shown in ITR/P & L account;

F.Y.	basic value as per ITR/P&L account (Rs)
2015-16	1,16,79,664/-
2016-17	3,54,20,948/-
2017-18 (upto June-2017)	1,20,01,904/-

The service provider has submitted the copies of Balance Sheet, Profit and Loss Account, for Year 2015-16 to 2017-18 as detailed below;

F.Y.	basic value as per ITR/P&L account (Rs)
2015-16	1,16,79,664/-
2016-17	3,54,20,948/-
2017-18 Sales value for full year)	1,20,01,904/-

11.4 On going through their financial records i.e. Profit and Loss Account and Balance sheet for the year 2015-16 to 2017-18 i.e Sales as per ITR, I find that while proposing the Show Cause Notice, the Basic Value as per ITR/P& L account for the year 2017-18, has been considered for full financial year, however, after implementation of GST w.e.f. 01.07.2017, the demand for Service tax for the period from July 2017 to march 2018 can not be demanded, as provided under Section 142(11) of **CGST Act, 2017**, I reproduce herewith the relevant text ;

*(a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;*

*(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;*

*(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value*

added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

Accordingly I consider, the Sales value for the year 2017-18' as detailed below as furnished by the service provider.

F.Y.	Basic value as per ITR/P&L account (Rs)
2015-16	1,16,79,664/-
2016-17	3,54,20,948/-
2017-18	87,68,824/-
Total	5,58,69,436/-

11.5 From the above, I find that the correct value as per ITR/ P & L account for the year 2017-18 for the determination of taxability is Rs. 87,68,824/- instead of Rs.1,20,01,904/-, as proposed in the show cause notice and therefore I consider the correct value for determination of Service Tax is Rs. 87,68,824/-.

11.6 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.

11.7 I find that the assessee has provided "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994 and declared Services as defined under Section 66E of the Finance Act, 1994 i.e the Service Provider is engaged in real estate business i.e. construction and developing of residential units and has not obtained the Service Tax registration thereby not registered with the Service Tax department and not filing the Service Tax returns.

11.8 I also find that with effect from 01.07.2012, certain activities have been made chargeable to Service Tax, as 'declared services' by virtue of Section 66E of the Finance Act, 1994. One of such declared services is Construction Services and the relevant text of the statute reads as under:

" Section 66E: The following shall constitute declared services, namely :

a) -----

b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, **except where the entire consideration is received after issuance of completion-certificate by the competent authority.**

**Explanation.** — For the purposes of this clause, —

(I).....

(II) ..... "

11.9 Hence, I find that the Services provided by the assessee for a consideration are squarely covered under " Section 66E" i.e declared services. The assessee in his reply dated 05.04.2021 has also informed that they are engaged in providing real estate business and construction of residential complex.

12 In view of the above facts, it is proved that the assessee may not have the data of the service receivers or they might have been trying to avoid furnishing the details at the time of providing services by not obtaining Service Tax Registration which may have lead to proof that the service recipient may not be falls under the category of any exemption notification. In case if the service receiver is not fall under any of the category, the full liability to pay service tax is on the assessee himself. To avoid this liability to pay service tax, he has not deliberately registration and thereby not filed the ST-3 returns.

13. On scrutiny, I find that the assessee has not obtained any registration nor they filed any Service Tax Returns and therefore they are liable to pay Service Tax of Rs. 80,89,530/- on the Services Provided by them in respect of Services on the value as stated above for the year 2015-16,2016-17 and 2017-18 (Up to June 2017). The same is required to be recovered from them under the provisions of Section 73 of the Finance Act, 1994;

14. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behavior. M/s. Saumya Developers deliberately

not supplied any legal documents, the actual service rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but only after going through the CBDT data these facts would have come to light. When the assessee is Providing taxable Service, it is in the obligation of the Service Provider to obtain Registration and Filed returns disclosing the tax liability. As they have not disclosed the entire full facts and material in their ST 3 returns. The suppression of tax liable to pay fact, data provided by CBDT helped to find out the issuance of Show Cause Notice to recover the service tax from the said assessee.

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

16. I further find that M/s. Saumya Developers had contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994, provided by them to their various service receivers during the period from 01.04.2015 to 30.06.2017.

- (i) Section 67 of the Finance Act, 1994 read with Rule 2A(ii)(B)(ii) of Service Tax (Determination of Value) Rules, 2006, in as much as they have failed to determine the net taxable value of taxable service and declared the same to the department.
- (ii) Section 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they did not pay the appropriate Service Tax on the taxable services provided by them.
- (iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they, as a service provider, have failed to furnish proper periodical returns in form ST-3 mentioning the particulars of the aforesaid taxable service provided by them, the value of taxable service determinable and other particulars in the manner as provided therein and incorporating the required information to the jurisdictional Superintendent of Service Tax.



17. Section 78 of the Finance Act, 1994 for non-payment of service tax by knowingly suppressing the facts from the department with intent to evade the payment of service tax. All above acts of contravention constitute an offence of the nature as described under the provision of Section 78 of the Act, rendering themselves liable to penalty under Section 78 of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 78 of the Service Tax Rules, 1994. They are also liable for penalty under Rule 7 of the Service Tax Rules, 1994;


18. 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 obtained Service Tax registration and thereby not filing the 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.

19. 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.

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

**ORDER**

- (i) I confirm the Service Tax amounting to Rs.80,89,530 (after correct calculation of service provided for the year 2017-18 which was wrongly ascertained at the time of Show Cause Notice) 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 SAUMYA DEVELOPERS to pay up the amount immediately.
- (ii) I drop the Service Tax amount of Rs. 4,57,158/- for the year 2017-18 as the same covering GST demand for the period July 2017 to March 2018.
- (ii) I order that interest be recovered at the appropriate rate from M/s. Saumya Developers on the service tax amount of Rs. 80,89,530/-under the provisions of Section 75 of chapter V of the Finance Act, 1994.
- (iii) I impose penalty of Rs.50,000) on Saumya Developers under Rule 7 of Service Tax Rules, 1994 read with Finance Act 1994, for non filing returns for the year 2015-16, 2016-17 and for 2017-18 (Up to June 2017)
- (iv) I impose a penalty of Rs. 80,89,530 /- on M/s. Saumya Developers 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. Saumya Developers 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. Saumya Developers shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

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

By Regd. Post AD./Hand Delivery  
 F.No.STC/15-217/OA/2020

Date:13.01.2022

To  
 M/s. SAUMYA DEVELOPERS (PAN-ACFFS1880B),  
 SUR. No. 418/SHARNAM VILLA SCHEME,  
 NR.GHODAGADI STAND,  
 KANETI ROAD,SANAND, AHMEDABAD-382110.

Copy for information to:

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