



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. **STC/15-153/OA/2020**

आदेश की तारीख/Date of Order:- 13.01.2022

जारी करने की तारीख/Date of Issue :- 13.01.2022

DIN NO: 20220164WT0000510867

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

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 46/ADC/GB/2021-22

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

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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से) 60 साठ (दिन के अन्दर आयुक्त) अपील, (केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाडी, 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 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।

BRIEF FACTS OF THE CASE

M/s. ADI TRADELINK, GROUND FLOOR, GROUND FLOOR, HERITAGE, ASHRAM ROAD, USMANPURA, AHMEDABAD, Gujarat- 380014, (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.- AARFA6739RSD001 & are engaged in the business of Providing Taxable Services. 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 as detailed as under:

(Amount in Rs.)								
Sr No	F. Y.	Total Sale of Service as per ITR	TOTAL GROSS VALUE PROVIDED (STR)	TOTAL VALUE for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	VALUE DIFFERENCE in ITR and STR	VALUE DIFFERENCE in TDS and STR	HIGHER VALUE (VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	DUTY @ 14.5%
1	2015-16	41353815	15623338	50896455	25730477	35273117	35273117	5114601

2. 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, Letter dated 06.10.2020 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. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16, the service tax liability of the service tax assessee has been ascertained on the basis of income mentioned in the 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.

3. No data was forwarded by CBDT, for the period 2016-2017 and 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, if any, for the period 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."

4. 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 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 from the Department. Therefore, the assessable value for the year 2016-17 and 2017-18 (upto June-2017) is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action will be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period 2016-17 to 2017-18 (upto-June 2017) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

5. 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.

6. In light of the facts discussed here-in-above and the material evidences available on records, it was revealed that the noticee, M/s. ADI TRADELINK, 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 punishable 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.

7. The above said service tax liabilities of the assessee, M/s. ADI TRADELINK, 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 notice relates exclusively to the information received from the Income Tax Department.

8. It was also 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. 51,14,601/-(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.

9. Accordingly Show Cause Notice dated 22.10.2020 was issued to M/s. ADI TRADELINK, to show cause as to why :

- (i) The Service Tax to the extent of Rs. 51,14,601/- 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.

DEFENCE REPLY

10. Vide letter dated 09.11.2020, the said assessee submitted that the difference in turnover amounting to Rs.2,57,30,477/- is on account of GTA services provided by the assessee where the liability to discharge the service tax on the service recipient and not the service provider. They have extracted ledger account of GTA income earned by service provider. From the above fact it is pretty clear that the turnover disclosed in service tax return and income tax return is true and correct and with this reconciliation there is no liability which is payable by the assessee. They have reconciled the difference between the turnover disclosed in STR and 26AS

Sr.No.	Particulars	Amount
1	Turnover as per the TDS statement 26AS	5,08,96,455
2	Turn over as per the gross value of service provider STR	1,56,23,338
3	Difference	3,52,73,117

11. The difference in amount aggregating to Rs.3,52,73,117 is on account of the following reasons:

Sr.No.	Particulars	Amount
1	Turnover of the assessee as per GTA income a a service provider where the liability is on service recipient (as per table above)	2,57,30,477
2	Turnover disclosed in Financial Year 2014-15 however TDS is deducted in financial year 2015-16 in case of M/s.Anil Ltd and Mandhana Industreis Ltd	95,42,640.
	Total	3,52,73,117

12. From the above it is clear that there is no difference in the turnover disclosed as per 26AS and as per STR filed by the assessee firm. As there is no difference in the taxable value and there is no liability , which is accrued/arised because of the above mentioned difference the question of any liability / duty in this case does not arise. They also requested to accept the submission and clear the notice.

PERSONNEL HEARING

13. Personnel Hearing was granted to the assessee on 16.12.2021. Shri Ankit Parikh CA, duly authorised representative , attended P.H on behalf of the assessee and

reiterated the written submission and has stated that they have done GTA services and service tax liability is on RCM basis.

DISCUSSION AND FINDINGS

14. I have carefully gone through the records of the case, reply to the show cause notice, Audited Balance Sheet, 26 AS, ITR, copies of ledger accounts and submissions made during the course of personal hearing for the year 2015-16. In the present case, Show Cause Notice has been issued to the assessee demanding Service Tax of Rs.51,14,601/- 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.

15. In reply to the show cause notice, the assessee has stated that submitted that the difference in turnover amounting to Rs.2,57,30,477/- is on account of GTA services provided by the assessee where the liability to discharge the service tax on the service recipient and not the service provider. They have extracted ledger account of GTA income earned by service provider. From the above fact it is pretty clear that the turnover disclosed in service tax return and income tax return is true and correct and with this reconciliation there is no liability which is payable by the assessee. They have reconciled the difference between the turnover disclosed in STR and 26AS. Now I would like to go through the legal aspects of the taxability of GTA services.

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

- (d) "person liable for paying service tax", -
- (i) (B) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—
- (I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (III) any co-operative society established by or under any law;
- (IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- (V) any body corporate established, by or under any law; or
- (VI) any partnership firm whether registered or not under any law including association of persons; any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage : Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

16. Para 1(A)(ii) and Para II of Notification No. 30/2012-ST dated 20.06.2012 as amended provided that service tax payable on services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (c) any co-operative society established by or under any law;
- (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- (e) any body corporate established, by or under any law; or

- (f) any partnership firm whether registered or not under any law including association of persons;
- (II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :-

TABLE

Sl. No.	Description of Service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving service
01	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	NIL	100%

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

18. On perusal of reconciliation statement, ledger accounts and financial records, I find that the assessee has income of Rs. 1,56,23,338/- from GTA services provided to proprietary concerns and Rs. 2,57,30,477/- provided to other than proprietary concern i.e. corporate body (Pvt. Ltd Co & Ltd Co) for the year 2015-16.

19. As per provisions contained in Rule 2(d)(B) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, service tax on GTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) or a dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder is payable in RCM by the service recipient. The Noticee has claimed RCM tax liability under above categories in reconciliation statement. I find that the status of the service recipient as body corporate and the partnership firm is organizational and has been verified by chartered accountant and also supported by details in separate sheet indicating party wise service provided to body corporate and the partnership firms and total of such separate sheet matches with value taken in reconciliation statement. Therefore, in the above backdrop I accept bifurcation of GTA service provided by noticee to the body corporate and the partnership firms and the GTA service provided by the noticee to above extent are liable to be paid in RCM by the service recipients.

Description	2015-16
Total income as per 26AS and SCN	50896455
Total income declared as per ST3	15623228
Differential value on which service tax demanded	35273117
GTA services provided to body corporate under RCM	25730477
Difference	9542640
Turnover disclosed in Financial Year 2014-15 however TDS is deducted in financial year 2015-16 in case of M/s.Anil Ltd and Mandhana Industreis Ltd	9542640
Difference	0

20. On perusal of the records of the case, submissions of the assessee, Audited Balance Sheet, 26 AS, ITR, copies of ledger accounts and the above reconciliation statement for the year 2015 & 16, I find that the assessee earned total freight income of Rs.4,13,53,705/- during the year 2015-16 and out of which Rs.2,57,30,477/- is the income earned by way of providing services to corporate body and the liability to service tax falls upon the service receiver as per Notification No.30/2012 and therefore the assessee i.e service provider is not required to pay service tax on the said amount. They are liable to pay service tax on the freight income of Rs.1,56,63,228/- earned by providing services to proprietary firms only. They have paid the service tax on Rs. 1,56,63,228/- and also filed ST 3 return accordingly. They have also turnover of Rs.95,42,640/- disclosed in Financial Year 2014-15 however TDS is deducted in financial year 2015-16 in case of M/s.Anil Ltd and Mandhana Industreis Ltd, hence the same is not a taxable income during the year. In view of the above the service tax demand on the differential amount of Rs.3,52,73,117/- is not sustainable and therefore the service tax demand of Rs.51,14,601/- is liable to be dropped.

21. On perusal of para 6 of the 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. I however, do not find any charges levelled for demand for FY 2016-17 & 2017-18 (upto June 2017) in charging part of the SCN. On perusal of SCN, I further 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.

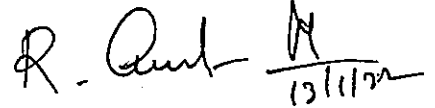
22. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, ITR, reconciliation statement, I find

that the service tax demand of Rs.51,14,601/- for the period 2015-16 is not sustainable and accordingly Show Cause Notice dated 29.09.2020 is liable to be dropped. Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty upon noticee on this count.

Accordingly, I pass the following order;

ORDER

23. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 51,14,601/- along with interest and penalties vide SCN No. STC/15-153/OA/2020 dated 22.10.2020.


13/1/22

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

F.No. STC/15-153/OA/2020

Dated.13.01.2022

To

M/s ADI TRADELINK,
GROUND FLOOR, HERITAGE, USMANPURA
ASHRAM ROAD, , AHMEDABAD, Gujarat-
380014

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