


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods &amp; Services Tax &amp; Central Excise, Ahmedabad North, Custom House(1<sup>st</sup> Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>		

**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा .सं/. STC/15-163/OA/2020

DIN : 20211064WT00000037E7

आदेश की तारीख /

Date of Order : 28.10.2021

जारी करने की तारीख /

Date of Issue : 28.10.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव /

UPENDRA SINGH YADAV

आयुक्त /

COMMISSIONER

मूल आदेश संख्या /

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-27/2021-22**

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 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 Tribunal 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.

(Amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा



## BRIEF FACTS OF THE CASE:

M/s. TCVS-Research & Trial (A Unit of TCVS Pvt Ltd), Apex Heart Institute, Block G-K, Mondeal Business Park, Nr. Gurudwara, S.G.Highway, Ahmedabad-380054 (hereinafter referred to as "the service provider") are engaged in the business of providing taxable services and are holding Service Tax Registration No. AACCT4148HSD001.

2. On preliminary verification of Third Party Data received from CBDT, the Sales/Gross Receipt from Services (Value from ITR) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16. It was observed that there was difference in Value of Services in ITR/TDS and Gross Value of Services provided in ST-3 returns which was to the tune of Rs. 44,50,11,438/-. It therefore appeared that the service provider had less/not discharged their service tax liability of Rs. 6,20,93,848/- on the aforesaid differential amount of Rs. 44,50,11,438/- for the F.Y. 2015-16.

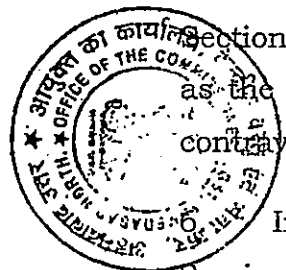
3. The service provider was requested to clarify the above said differential value by submitting the self-certified documentary evidences such as Audited Balance Sheet, copy of Profit & Loss Account, copy of Ledgers, Gross Trial Balance Sheet, ITR, Form 26AS, ST-3 returns, sample sales invoices along with details of all the sales invoices issued from F.Y. 2015-16 to F.Y. 2017-18 (up to June'2017) vide letter/email, but the service provider has neither produced any documentary evidences of the differential value nor submitted any reply.

4. The service provider appeared to have not discharged their service tax liability on the actual value received towards taxable services provided by them, hence, there appeared to be a short payment of Service Tax of Rs. 6,20,93,848/- during the material period. Further, the service provider has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994, inasmuch as they failed to pay Service Tax to the extent of Rs. 6,20,93,848/- as per their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services provided/received by them; Section 70 of Finance Act 1994 inasmuch they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

5. In view of the above, the service provider appeared to have short paid/not paid Service Tax of Rs. 6,20,93,848/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the said Act along with interest under Section 75 *ibid* not paid by them under

Section 68 of the said Act read with Rule 6 of Service Tax Rules, 1994, inasmuch as the said service provider had suppressed the facts from the department and contravened the provisions with intent to evade payment of service tax.

In terms of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, every person providing taxable service to any person is



required to pay Service Tax at the rate specified in Section 66 in such manner and within such period as may be prescribed. In the present case, on the basis of Third party Data/information of CBDT for the F.Y. 2015-16, the service provider has less discharged their service tax liability on the actual value received towards taxable services provided at the rate prescribed under Section 66 of the said Act. All these acts of contravention on the part of the service provider have been committed by way of suppression of the facts by not declaring/not considering the correct value of taxable services provided by them for payment of Service Tax to the Central Government for the period in question, with intent to evade payment of Service Tax and therefore the service tax which was not paid at the material time is required to be demanded under the proviso to Section 73(1) along with interest as per provision of Section 75 of the said Act.

7. All the above acts of contravention as discussed in aforementioned paras on the part of the service provider appeared to be punishable, therefore, they are liable for penalty under Section 76 of the said Act. Further, as per Section 70 of the said Act, the person liable to pay Service Tax shall himself assess the tax due on the services provided by him and shall furnish a prescribed return as per Rule 7 of the Service Tax Rules, 1994. As they have failed to do so, they appeared to be liable to penalty in terms of Section 77 of the said Act. The penalty under Section 78 of the said Act also appeared to be invocable in the instant case as they had suppressed the taxable value.

8. The provisions of the repealed Central Excise Act, 1944, the Central Excise Tariff Act, 1985 and amendment of the Finance Act, 1994 have been saved vide Section 174 (2) of the CGST Act, 2017, and therefore the provisions of the said repealed/amended Acts and Rules made thereunder are enforced for the purpose of demand of duty, interest, etc. and imposition of penalty under Show Cause Notice.

**9. Further, Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified as under :**

'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 would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the notice are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI, 1982 (OIO) 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.'

10. From the facts and circumstances as narrated above, it appeared that the "Total Amount Paid/Credited under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts from Services (From ITR)" for the **F.Y. 2016-17 to FY2017-**

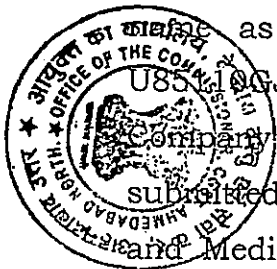
18 (up to June'2017) had not been disclosed thereof by the Income Tax Department, nor the reason for the non-disclosure was made known to this department. The said assessee had also failed to provide the required information even after the issuance of letters from the Department. Therefore, the assessable value for the year **F.Y.2016-17 to F.Y. 2017-18 (up to June'2017)** was not ascertainable at the time of issuance of Show Cause Notice. Consequently, if any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action was to be initiated against them 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 F.Y. 2016-17 to F.Y. 2017-18 (up to June'2017)** covered under this Show Cause Notice, was to be recoverable from the said assessee accordingly.

11. Therefore, a Show Cause Notice No.STC/15-163/OA/2020 dated 23.10.2020 was issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North to M/s. TCVS-Research & Trial (A Unit of TCVS Pvt Ltd), Apex Heart Institute, Block G-K, Mondeal Business Park, Nr. Gurudwara, S.G.Highway, Ahmedabad-380054, asking them as to why :

- a) The demand of Service tax to the extent of Rs. 6,20,93,848/- (Service Tax of Rs. 6,09,84,854/- + Education Cess of Rs. 1,78,492/- + SHEC of Rs. 89,246/-) not paid/short 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 76 of the Finance Act, 1994, for failure to assess Service Tax as required under Section 70 of the Finance Act, 1994 and make the payment of Service Tax within the period and in the manner prescribed under Section 68 of the Finance Act, 1994 read with rule 6 of the Service Tax Rules;
- d) Penalty should not be imposed upon them under the provisions of Section 77 of the Finance Act, 1994.
- e) Penalty should not be imposed upon them under the provisions of 78 of the Finance Act, 1994.

## 12. DEFENCE REPLY:

The assessee vide letter dated 16.11.2020 received on 20.10.2020 submitted their written submission. They stated that they are running a **CARDIOVASCULAR HOSPITAL** in the form of private limited company with legal name as **Total Cardio Vascular Solutions Private Limited** with CIN U85100GJ2006PTC047694 since February 2006. They submitted the company's MOA & AOA describing the nature of company's business. They submitted that company was engaged into business of rendering Healthcare and Medical Services providing state of the art facilities to Heart patients.



Company had FOUR units (part) which were a separate divisions but all were operating under one roof, under one PAN. They stated that financials are prepared and ITR is filed on consolidated basis considering all units as one only, for operational efficiencies, separate units are created and registration under Indirect Taxation is taken for such units as per requirement. These units are as under:

a) **TCVS (Apex Heart Institute)** : It is primarily a hospital referred to as Clinical Establishment in terms of notification 25/2012 dated 20<sup>th</sup> June, 2012, 2(j), engaged into rendering various health care & diagnostic services in terms of 2(t) as defined in the said notification. The Company had generated Rs. 49,67,51,951/- as Revenue from Operations for F.Y. 15-16 out of which Apex Heart Institute had contributed Rs, 44,49,14,772/- (89.56% of total revenue) which includes income from pathology, Health Checkup, Indoor Patient etc. Since this unit is engaged in rendering purely Exempted Services in terms of Mega Exemption Notification No. 25/2012 dated 20<sup>th</sup> June, 2012, Entry no. 2 & 2A the same is not taxable. They have not obtained registration for the said unit and accordingly they are not liable to pay and had not paid service tax on such services.

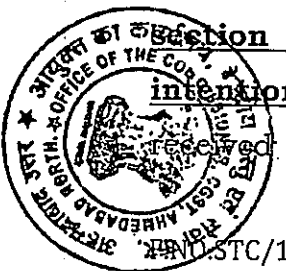
b) **TCVS (Research & Trial)** : They submitted that, it is basically engaged into research activities related to health care services. It had contributed Rs. 32,17,531/- to total revenue from operations (0.65%). Since only this unit renders taxable services, they had obtained registration under Service Tax as of Single Premise with taxable service of Technical Testing and Analysis Services. They had obtained service tax registration No.AACCT4148HSD001.

c) **TCVS (Apex Pharmacy)**: This unit provides various pharmacy products and ancillary items both to in-patients and out-patients as per need. It deals in goods, accordingly separate VAT registration was taken to discharge appropriate VAT liability (Registration No.24074302509). This unit had contributed Rs. 4,86,19,648/- to total revenue from operations (9.79%). They submitted the annual VAT Return for FY 2015-16 under the Gujarat Value Added Tax,2003.

d) **TVS (Trico)** : This is a 4<sup>th</sup> unit of TCVS, it had not earned any income during year under consideration except Interest on Bank FDR Rs. 49,854/- and Miscellaneous Income of Rs. 4,040/- only.

12.1 They submitted the Financial documents pertaining to the business as on 31.03.2016 alongwith ITR and Form 26AS for F.Y.2015-16. They submitted that, they strongly object to action of issuing notice under

**Section 73(1) of Finance Act, 1994** considering it a case of **malafide intention**, issuance of show cause notice was purely on basis of information received from third party and not any other cogent evidence in possession



indicating that they were engaged in supply of **TAXABLE SERVICES** only and not paid requisite service tax on rendering such taxable services. Although amount was reflecting in form 26AS under section 194C, 194J etc, in ITR & financials also **but it does not indicate nature of service in terms of Finance Act,1994 whether it was Taxable Service or Exempt Service. Further, it was not requirement of Income Tax Act, 1961 that TDS was applicable only on TAXABLE supplies under Service Tax and not on any exempt supplies.** The assessee submitted that Applicability or deduction of TDS under Income Tax is itself not a deciding criterion to determine taxability of service under Service Tax, **it could be exempt supply as well.** Fact of case is also similar i.e. **although amount is reflecting in form 26AS under sections194C/194J but it is on account of supply of Health Care service which is covered under Mega Exemption Notification No. 25/2012 dated 20<sup>th</sup> June 2012 rendered by professionals (Doctors) to the persons who are liable to deduct TDS under Income Tax Act, 1961.** Further, only one of their unit (TCVS Research & Trial) is engaged in rendering taxable supply of service, for which separate registration had been obtained, Service Tax was discharged appropriately and returns were also filed regularly for such service. They have also submitted the copy of ST3 for the F.Y.2015-2016.

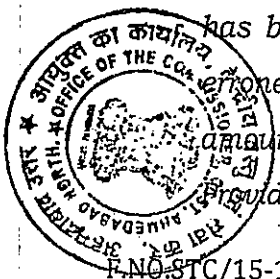
12.2 They further submitted that there was no malafide intention to deliberately hide facts from department or not paying applicable service tax on services rendered wherever applicable; rather they were rendering exempt services (Health Care Services) majorly upto 99%, covered under Mega Exemption notification No. 25/2012 dated 20<sup>th</sup> June, 2012 and accordingly they were not liable to pay service tax on such services and consequently not liable to take registration for such unit.

12.3 They submitted that, one of their unit (TCVS - Research & Trial) was engaged into rendering Taxable Services, for which registration was also obtained and Service Tax had been paid and returns were also filed appropriately, hence there was no non compliance at their end.

12.4 They submitted that provision of section 73(1) of Finance Act, 1994 read as under;

*Where any service tax **has not been levied or paid** or has been short-levied or short-paid or erroneously refunded, Central Excise officer may, within **thirty months from the relevant date, serve notice on the person chargeable with the service tax** which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has been erroneously made, requiring him to show cause why he should not pay the amount specified in the notice.*

*provided that where any service tax has not been levied or paid or has been short-*



levied or short- paid or erroneously refunded by  
reason of

(a) fraud; or

(b) Collusion ; or

(C) willful mis-statement ; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade pament of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words, "thirty months" in the words "five years" had been substituted.

Provision of section 73(6) of Finance Act, 1994 define "**relevant date**" which is reproduced as below;

(i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid -

(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed.

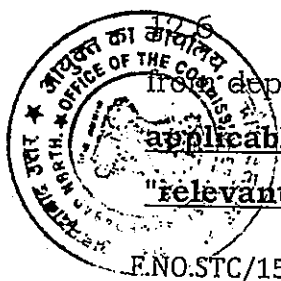
(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;

They submitted that from the above provision, it was clear that time limit to serve notice to such a person is **30 months from "relevant date"** in bonafide case and five years in case of fraud, willful misstatement etc.

12.5 They submitted that, since in their case, they were rendering taxable services on which applicable Service Tax was already discharged and on Exempt supply of Services (Health Care Services - Fully Exempt & Pharmacy sale which was supply of goods and not a supply of service on which applicable VAT under Gujarat VAT Laws was also paid) they are not at all required to pay service tax. Further, notice issued by department is also replied with in time limit as mentioned supra, hence, there was no such non compliances at their end.

They submitted that, there was no malafide intention to hide facts from department, **this was clearly a case of bonafide intention only, hence applicable time limit in their case would be 30 months only from "relevant date"**. Relevant date would be Actual date/due date of filing of

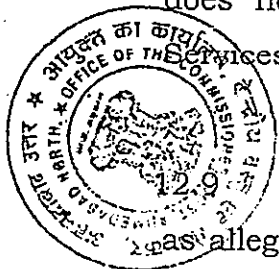


return of Service Tax for period under consideration which would be 26<sup>th</sup> / 25<sup>th</sup> April, 2016 under 73(6)(i)(a)/(b). Even if provision of section 73 (6)(i)(c) is considered, relevant date will be due date of payment of Service Tax which would be 31<sup>st</sup> March, 2016. Hence, 30 months time limit was already over in Oct' 2018 and effectively first notice in this case is issued on 22/10/2020 which seems to be time barred and hence it's not a valid notice.

12.7 They further submitted that as mentioned supra, TCVS - Research & Trial (A unit of TCVS Pvt. Ltd.) is merely one of unit of TCVS Pvt. Ltd., operating under same PAN No. Return under Income Tax and Financials of company were prepared comprising of all such units including Research & Trial. Turnover reflecting in books is consolidated turnover. From name of unit itself, which is registered under Service Tax, it is clear that it is a unit of TCVS Pvt. Ltd., however financials & ITR is filed of TCVS Pvt. Ltd., which comprises this unit as well. However, since this unit is only unit rendering taxable services, registration under service tax was obtained for this unit only as a registration of single premise.

12.8 They submitted that, all units are not a separate legal entity, rather a part of one company only, Financials are prepared and ITR is filed on consolidated basis, **but this does not automatically leads to conclusion that company is engaged into rendering wholly TAXABLE Services.** ITR & Financials do not indicate/provide bifurcation of operations as per requirement of Finance Act, 1994. Further as they are rendering professional nature services (doctors) wherein they provide health care and diagnostic services to various Corporate as well and TPA services to Insurance Companies who ultimately while making payment to them, deduct TDS under applicable Laws of Income Tax Act, 1961, **but this does not establish the fact that they had rendered TAXABLE nature of Services but yes they had rendered professional nature of services which are wholly exempt and not Taxable under Finance Act, 1994.** TDS under Income Tax Act is to be deducted in case of receiving services, it does not bifurcate nature of service in terms of Finance Act, 1994. It may or may not be TAXABLE Service under Finance Act, 1994, but it should be a service. Hence, merely because amount is reflecting in form 26AS under various sections of 194J, 194C etc., does not mean that all such amount is credited for rendering Taxable Services under Finance Act, 1994.

They further submitted that , as received from IT Department and as alleged in SCN there is difference in value of services as per ST-3 and as





per details of ITR/26AS received from IT Department to the tune of Rs. 44,50,11,438/- on which applicable Service Tax of Rs. 6,20,93,848/- is not paid. However, in this regard, they would like to submit that first of all they are not aware as how the department had arrived at this figure of Rs. 44,50,11,438/- and at what rate amount of Rs. 6,20,93,848/- was calculated as no details were shared with them in this regard. Financials, ITR and Form 26AS of company is already attached herewith for FY 15-16. However based on their own calculation, they had come to conclusion that total revenue from operations from healthcare services was Rs. 44,49,14,772/- and from other services (research & trial) was Rs. 32,17,531/- totaling Rs. 44,81,32,303/- and amount as shown in ST-3 Return was Rs. 31,20,865/-, so difference of Rs. 44,50,11,438/- appeared to arise on which Service Tax of Rs. 6,20,93,848/- was demanded, **but it is to be appreciated that this was purely on assumption and presumption basis that whole such amount was of taxable service on which Service Tax was not paid which was payable.** Rather no Service Tax liability arises on Rs. 44,50,11,438/-. It comprises two type of amount/income, first - Ethics Committee Fees under TCVS -- Research & Trial Unit Rs. 96,666/- and health care services under TCVS- Apex Heart Institute Rs. 44,49,14,772/- Second (SIC).

12.10 As far as Ethic committee fees of Rs. 96,666/- is concerned, it is basically collected purely in the nature of reimbursement collected on actual basis only, without any element of profit in it, which is distributed between members of such committee. Hence service tax is not applicable on such income. Further income earned through rendering Health Care Services is exempt service in terms of Mega Exemption Notification No. 25/2012, dated 20.06.2020 Entry No. 2 & 2A on which Service Tax is not applicable. Also health care services & Clinical Establishments are well defined in 2(t) & 2(j) definitions respectively annexed to such notification. Further MOA of company is also attached herewith, which describes objectives of company.

12.11 Bifurcation of amount of Rs. 44,49,14,772/- is mentioned as below;

Sr.No.	Particulars	Amount
1	Health Checkup Income	192500/-
2	Indoor Patient Income	415625416/-
3	OPD Exc. Income	5101/-
	OPD Income	23114007/-
	Other Charges Income	237078/-
	Pathology Income	5712670/-

7	Training Income	28000/-
TOTAL		444914772/-

It clearly indicate that such services are related to Health Care Services which are covered under Mega Exemption Notification. Hence, it is concluded that Health Care Services as rendered by Apex Heart Institute (A unit of TCVS Pvt. Ltd.) are fully exempt.

12.12 They further submitted that pharmacy unit is engaged in dealing in goods, (pharmacy and allied products) and not rendering any service, VAT under Gujarat VAT Act is filed for same and submitted the Annual Return in this regard.

12.13 They further submitted that on the remaining part i.e. Research & Trial, they had already obtained registration under Service Tax, paid Service Tax without availing any credit i.e. fully in cash and filed returns. **They submitted the copy of** Service Tax Returns in form ST-3 for H1 & H2 F.Y. 15-16 along with paid challans.

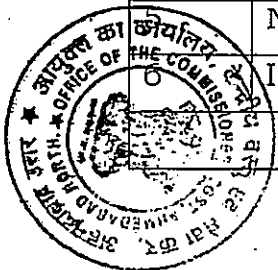
They submitted the reconciliations of Revenue as per Books and ST3 as under:

Details of revenue from operations as per Note NO.18 of Notes to B/s; Table No.1.

Sr.No.	Particulars	Amount
1	Revenue from Healthcare Services	444914772/-
2	Revenue from Pharmacy	48619648/-
3	Revenue from Other Services- Research & Trial	3217531/-
TOTAL		496751951/-

Details of other income as per Note NO.19 of Notes to B/s; Table No.2.

Sr.No.	Particulars	Amount
1	Share in Profit/Loss in TRICO Cardiovascular LLP	2866263/-
2	Excess provision for Bonus written back	23312/-
3	Other Income	77437/-
4	Dividend Income-Non current investment	59854/-
	Net Gain/(loss) on sale of investments	-745434/-
	Interest income	386399/-
TOTAL		2667831/-



Details of Taxable Value of Services and Service Tax paid in Service Tax returns for F.Y. 2015-16; Table No.3

Sr.No.	Period	Taxable Amount	Service Tax paid
1	April 2015 to Sept,2015	675439/-	94561/-
2	Oct,2015 to March,2016	2445426/-	342360/-
	TOTAL	3120865/-	436921/-

They submitted that , Table No. 1 clearly shows that revenue from operations consisted of Healthcare, Pharmacy Income which is totally exempt from service Tax and it also consist of Revenue from Research & Trial Unit amounting to Rs. 32,17,531/- on which applicable service Tax is discharged through ST-3 as shown in Table No. 3. Difference between amount of revenue from operations from Research & Trial Unit and corresponding amount in ST-3 is on account of income received for Ethics Committee of Rs. 96,666/- which is collected as a reimbursement without any element of profit in it & it is distributed to its member. Hence on such amount, no service tax is payable as mentioned in above para also.

Table No. 2 shows other income bifurcation ; however such income is also exempts from service tax as no Taxable Service is rendered as such to earn such income and hence ultimately such income is also exempted from levy of GST.

**Amount of Service Tax as shown in Table No. 3 is discharged by cash only and no ITC is availed to discharge such liability and they submitted the copy of challans.**

12.14 They submitted that, hence, applicable service tax on taxable services is discharged appropriately and shown in returns filed therein. **There are similar facts for FY 16-17 & 17-18 as well wherein they had discharged all applicable service tax liability.** Hence on basis of such submission along with relevant attachments, it is submitted that they had discharged service tax liability wherever applicable and had filed returns and there is exempt supply of service majorly on which no service tax liability existed. Hence, they are not liable to pay any additional amount of service tax on accoun of non compliance of any provision of Finance Act, 1994 & consequent interest and penal liability also does not arise in their case and accordingly not recoverable.

### **13.PERSONAL HEARING:**

The assessee was granted personal hearing on 13.10.2021 to present their case. Shri Saurabh Shah, Chartered Accountant appeared on behalf of the party for hearing. He referred to the written submissions made by them vide their letter dated 20.11.2020. He submitted that majority of the



income of the party is on account of healthcare services thus exempt, only a miniscule portion of the income is on account of other services/work. He requested to decide the case on merit.

### DISCUSSION & FINDINGS:

14. 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 20.11.2020 and documents submitted by the assessee.

14.1 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, which was then compared with the gross value declared in ST-3 Returns filed for FY 2015-16 by the assessee. The difference in value of service to the extent of Rs. 44,50,11,438/- (Rs.96,666/- for Ethics Committee Fees under TCVS research & trial unit + Rs.44,49,14,772/- for Health Care Services under TCVS Apex Heart Institute) was noticed and therefore, the subject SCN for recovery of Service Tax of Rs.6,20,93,848/- was issued. Apart from the aforementioned difference noticed, no other documentary evidence was adduced by the department to substantiate the allegations. 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. 44,50,11,438/- under proviso to section 73(1) of Finance Act, 1944 or not.

15. Thus, first and foremost to understand the liability or otherwise of the noticee for paying Service Tax. I feel it necessary to understand the activities being carried out by the assessee. I observe that after introduction of new system of taxation of services in negative list regime, any services for a consideration is taxable except those services specified in the negative or exempt list by virtue of mega exemption.

16. I discern that the assessee in his defence reply dated 20.11.2020 has stated that they have rendered service of Health Care Service and Medical Services providing state of the art facilities to Heart Patients. They have four units which are functioning as separate divisions but all are operating under one roof, under one PAN; financials are prepared and ITR is filed on consolidated basis considering all units as one only. The 4 units are as under i) TCVS (Apex Heart Institute) ii)TCVS (Research & Trial) iii) TCVS (Apex Pharmacy) iv) TCVS (Trico). They have contended that TCVS (Apex Heart Institute) is primarily a hospital referred to as a Clinical Establishment under provisions 2(j) of Notification No.25/2012-ST dated 20.06.2012 and also



engaged in to rendering various health care & diagnostic services as per definitions 2(t) of Notification No.25/2012-ST dated 20.06.2012. In view of the submissions made by the noticee the activities being carried out by the TCVS (Apex Heart Institute) for a consideration appear to be squarely covered under the definition of "Service" as defined under Section 65B (44) of the Act and I also find that there is no dispute in this regard.

Further, I find TCVS (Research & Trial ) is related to research activities to health care service, this unit renders taxable services and the assessee had obtained Service Tax Registration No. AACCT4148HSD001 for the taxable services "Technical testing and analysis service". The assessee had filed the ST3 returns for the period April to September,2015-16 for taxable value of Rs. 675439/- and October to March,2015-16 for taxable value of Rs.2445426/- and paid the Service Tax of Rs.94561/- and Rs.344853/- respectively on technical testing and analysis service.

Further, I find TCVS (Apex Pharmacy) is providing various pharmacy products and ancillary items for in-patients and out-patients, since, the same is dealing in goods, the assessee have get themselves registered with the Gujarat Value Added Tax,2003 with Registration No.24074302509 and had filed the Annual Return in Form 205 for the year 2015 to 2016. The trading of goods falls under the Negative List of Services and are exempted from payment of Service Tax under Section 66D (e) of Finance Act, 1994.

Further, I find that TCVS (Trico) had not earned any taxable income during the F.Y.2015-16 except interest on Bank FDR Rs.48,854/- and miscellaneous income of Rs.4040/- .

17. In order to comprehend the actual nature of service, I would like to take support of the following documents which have been submitted along with their aforementioned defence reply dated 20.11.2020. I would also like to discuss and reproduce the relevant excerpt of the documents.

17.1 The assessee is a registered company incorporated under the Company Act. The assessee has submitted the copy of Memorandum of Association of the Company. The main object of forming of the company as appearing in the Memorandum of Association is reproduced as under:

"To establish, construct, erect, maintain, run, manage, develop, own, acquire, purchase, undertake, improve, equip, promote, initiate, encourage, subsidise and organise, hospitals, dispensaries, clinics, diagnostic centres, polyclinics, pathology laboratories, research centres, operation theaters, chemist shops, blood banks, eye banks, kidney banks, nursing homes, physiotherapy centres, investigation centres and other similar establishments for providing treatment and medical relief in all branches by all available means to public at large on suitable fees, concessional fees or on free of charge basis/ and to provide, supply,

*maintain and operate for the benefit of any individuals, firm, society, trust, company and/or body corporates and/or person services, facilities and the like including medical and health services.*

*To act as Consultant and Advisers providing technical know-how, technical services and allied service for the establishment, operation and improvement and Nursing Homes, Hospitals, Clinics, Medical Institutions, Medical Centers, Diagnostic Centers and Laboratories in India and abroad and providing and appointing doctors".*

17.2 The assessee has also submitted the Independent Auditors' Reports for F.Y. 2015-16, 2016-17 and 2017-18. I find that the Independent Auditor is appointed by the Company under Section 139 of the Company Act. The auditor has to make a report, in accordance with Section 143 of Company Act, to the members of the company on the accounts examined by him and on every financial statements which are required by this Act to be laid before the company in general meeting. The report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under section 143(11) and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

Further, the Profit and Loss Accounts for FY 2015-16, 2016-17 and 2017-18 recognises main Revenue as "Revenue from Healthcare Services", "Revenue from Pharmacy" and "Revenue from other Services".

17.3 The assessee has also submitted the copies of Income Tax Returns in Form ITR-6 for Assessment Year 2016-17 filed with Income Tax Department as required under Section 11 of the Income Tax Act, 1962. On perusing these return, I observe that the information about "the nature of company and its business" provided in the returns is shown as "Specialty Hospitals" and "Trading-others".

17.4 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 during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in 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 the auditor is also empowered to call additional information required for verification to arrive at a 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. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

17.5. Now, I consider it necessary to look into the definition of "Health Care Service" provided under the Act as the assessee has claimed their service to be Health Care Service. I find that the definition of "Health Care Service" is provided under the Notification No. 25/2012-ST dated 20.06.2012 at Sr. No. (t), the same is reproduced for better comprehension/appreciation:

*"health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;"*

I also consider it necessary to look into the definition of "Clinical Establishment" provided under the Act as the assessee has claimed their service to be Clinical Establishment. I find that the definition of "Clinical Establishment" is provided under the Notification No. 25/2012-ST dated 20.06.2012 at Sr. No. (j), the same is reproduced for better comprehension/appreciation:

*"clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;"*

17.6 Having considered above facts and the aforementioned discussion, I am of the considered view that the service provided by the assessee is appropriately classifiable under the Health Care Service and Clinical Establishment Service.

I find that the SCN shows the difference in value to the tune of Rs. 11,438/- for F.Y. 2015-16 when value of sales/gross receipt as per ITR



are compared with gross value declared in ST-3 as mentioned in forgoing paras. Further para 4 of the SCN states that the levy of service tax for FY 2016-17 and FY 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 and FY 2017-18 (upto June 2017) in charging part of the SCN. On going through the ST3 returns for the F.Y.2015-16, it is noticed that the assessee has declared service tax liability to be discharged under RCM and Technical Testing and Analysis Service. As per ITRs filed by the assessee, Revenue from Operations for F.Y. 2015-16, 2016-17 and 2017-18 booked is as under.

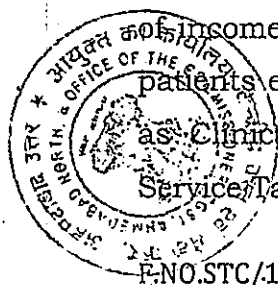
Revenue from operations (Rs.)			
	FY 2015-16	FY 2016-17	FY 2017-18
Revenue from Healthcare Services	44,49,14,772/-	45,96,42,251/-	44,97,25,204/-
Revenue from Pharmacy	4,86,19,648/-	3,47,33,830/-	3,25,88,079/-
Revenue from Other Services	32,17,531	13,90,545/-	26,46,000

From the SCN, I find that the SCN has not questioned the taxability on any income other than the income from sale of services. I therefore refrain from discussing the taxability on other income other than the sale of service.

19. I find that the Notification No. 25/2012 -ST dated 20.06.2012 issued under Section 93(1) of the Act, grants exemption to the taxable services enlisted therein from whole of Service Tax leviable under section 66B of the Act. I find that the assessee has contested the demand of service tax on services rendered by them being Clinical Establishment and the same has been exempted by Sr.No.2 (i) of the Notification No.25/2012. I therefore would like to reproduce the said 2(i) ibid herein under:

2(i) *Healthcare services by a clinical establishment, an authorized medical practitioner or para-medics;*

I find that the noticee is engaged in the business of rendering Healthcare and Medical Services providing state of the art facilities to Heart Patients. 89.56% of the income earned by the noticee is from the pathology, Health Checkup, In-door patients etc. The TCVS (Apex Heart Institute) is primarily hospital and referred to as Clinical Establishment and is entitled for the exemption from payment of Service Tax under Notification No.25/2012-ST dated 20.06.2012.





Definition of the Clinical Establishment and Health Care Service has been annexed to the MEGA EXEMPTION Notification No.25/2012-ST dated 20.06.2012 . I therefore would like to reproduce the said definitions of Sr. No. 2(j) and 2(t) ibid herein under:

2. Definitions. – For the purpose of this notification, unless the context otherwise requires, –

(j) “clinical establishment” means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;”

(t) “health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;”

20. As discussed hereinabove, the assessee is a Hospital which is clearly engaged in business of providing Health Care Service and is rightly covered under the above definition of clinical establishment.

21. Keeping in view the aforementioned detailed discussions, I find that the services rendered by the assessee is squarely covered under the Sr.No. 2(i) of the Notification No. 25/2012-ST dated 20.06.2012 and find that the exemption is quite clearly available to the assessee as claimed by them. Since I am fully convinced with the arguments put forth by the assessee, I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

22. Further, the assessee holding the Service Tax registration No.AACCT4148HSD001 has filed the ST3 returns for the F.Y.2015-2016, 2016-17 and 2017-18 (up to June-2017) and had paid the Service Tax on account of service provided for the Technical testing and analysis service. The assessee has also paid the Service Tax of Rs.439414/- (including Cess) for F.Y.2015-16, Rs. 132466/- (including Cess) for F.Y.2016-17 and Rs.45300/- (including Cess) for F.Y.2017-18 (up to June-2017). I find that the assessee has paid the Service Tax for the taxable service i.e “technical testing an analysis service” provided by them and filed ST-3 returns for the period 2015-16,2016-17 and 2017-18 (up to June,2017).

23. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee’s arguments.

Accordingly, it is my considered view that the assessee has established their case quite unambiguously that the difference in value of service as discerned by the department by comparing the value of services in ITR/TDS and gross value of services provided in ST-3 Returns is basically on account of the

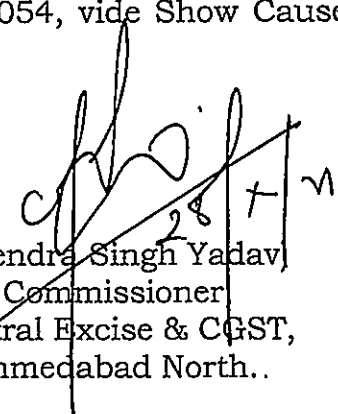


exempt service being the Health Care Service rendered by the assessee as discussed hereinabove which was not shown in ST-3 Returns. Since the sole basis of demanding the Service Tax from the noticee was on the basis of difference noticed in the ST3 returns and ITR sans any other investigations or documentary evidence. I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

24. In view of the facts and circumstances pertaining to the case, the demand is not tenable in law, accordingly I do not consider it necessary to delve in the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise of imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

**ORDER**

I drop the proceedings initiated against M/s. TCVS-Research & Trial (A unit of TCVS Pvt. Ltd.), Apex Heart Institute, Block G-K, Mondeal Business Park, Nr. Gurudwara, S.G. Highway, Ahmedabad - 380054, vide Show Cause Notice F.No. STC/15-163/OA/2020 dated 23.10.2020.

  
(Upendra Singh Yadav)  
Commissioner  
Central Excise & CGST,  
Ahmedabad North..

By Regd. Post AD./Hand Delivery

F.No. STC/15-163/OA/2020

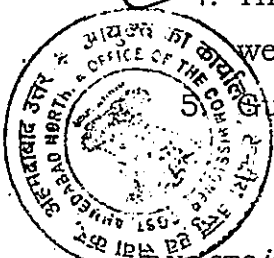
Date: 28 .10.2021 .


To,

M/s. TCVS-Research & Trial  
(A unit of TCVS Pvt. Ltd.),  
Apex Heart Institute, Block G-K,  
Mondeal Business Park,  
Nr. Gurudwara, S.G. Highway,  
Ahmedabad - 380054.

Copy to:

1. The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
  2. The Assistant Commissioner, CGST & C.Ex., Division-VI, Ahmedabad North.
  3. The Superintendent, Range-II, Division-VI, Ahmedabad North.
  4. The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- Guard File.



<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods &amp; Services Tax &amp; Central Excise, Ahmedabad North, Custom House(1<sup>st</sup> Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>		

**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा .सं/. STC/15-161/OA/2020

DIN : 20211064WT0000289542

आदेश की तारीख / Date of Order : 12.10.2021

जारी करने की तारीख / Date of Issue : 12.10.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-24/2021-22**

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 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 Tribunal 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 प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा



**BRIEF FACTS OF THE CASE:**

M/s ASITE SOLUTIONS PVT LTD situated at 201, PARSHWA TOWER, S.G. HIGHWAY, OPP. RAJPATH, CLUB, AHMEDABAD THALTEJ ROAD, AHMEDABAD, GUJARAT-380054 (hereinafter referred to as "the said assessee" for the sake of brevity) are engaged in providing services and having Service Tax Registration No. AAFCA4447FST001.

2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the records available with the divisional office of Division-VI and on going through the Third party Data provided by CBDT of the said assessee for the F.Y. 2015-16, the Sales/Gross Receipt from Services (Value from ITR) were found to not tallying with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16. Therefore, it appeared that the said assessee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for the F.Y. 2015-16 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16. The difference in value as observed for FY 2015-16 was as under :

Sr. No.	Financial Year	VALUE DIFFERENCE in ITR & STR / TDS & STR) (Whichever is higher) (in Rs.)	Service Tax (in Rs.)
01	2015-16	17,67,34,208	2,46,57,859

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. Rs.2,46,57,859/- (including Cess) on the differential value of Rs. 17,67,34,208/- [@ 12.36% for F.Y. 2015-16 & from 01-04-2015 to 31-05-2015] ; [@ 14% from 01-06-2015 to 14-11-2015] ; [@ 14.50% from 15-11-2015 to 31-03-2016].

The Superintendent vide his letter F. No. CGST-06/04-64/TPD/AR-020-21 dated 19.10.2020 had sought clarification from the assessee for difference in value shown in ST-3 Returns vis-a-vis that shown in Income Tax



return filed for FY 2015-16. It was also requested to furnish the documents viz. Audited Balance Sheet/ Profit and Loss Account, Gross Trial Balance, Ledger, Invoices, Form 26AS, ITR and ST-3 Returns for FY 2015-16. But, the said assessee neither produced any documentary evidences nor submitted any reply in the matter.

6. As per the provisions of Section 72 of the Finance Act, if any person, liable to pay Service Tax having made a return, fails to assess the tax, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

7. As per the provisions of Section 73(1) of the Finance Act, 1994 where any Service Tax has not been levied or paid or has been short levied or short paid by reasons of willful mis-statement or suppression of facts with intent to evade payment of Service Tax, the Central Excise Officer may within five years from the relevant date, serve a notice on the person chargeable with Service Tax which has not been levied or paid or which has been short levied or short paid requiring him to show cause why he should not pay the amount specified in the notice.

8. As per Rule 6 of the Service Tax Rules, 1994, the Service Tax shall be paid to the credit of the Central Government by 5<sup>th</sup> day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that assessee shall submit their Service Tax returns in the form ST-3 within the prescribed time.

9. From the documentary evidence available at the relevant time, it appeared that the said assessee had failed to pay/short paid/deposit Service Tax to the extent of Rs. 2,46,57,859/- which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 2015-16 vis-à-vis their ITR/Form 26AS. The said short payment appeared to have been done with an intent to evade payment of Service Tax. Accordingly,



it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 2,46,57,859/- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) worked out on value of Rs.17,67,34,208/- and therefore, Service Tax was required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

10. Therefore, it appeared that the said assessee had contravened the provisions of: (a) Section 66 of the Finance Act, 1994 in as much as they had failed to collect and pay the Service Tax as detailed above, to the credit of Central Government (b) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they had not paid the Service Tax as mentioned above to the credit of the Government of India within the stipulated time limit (c) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, as amended, in as much as they had failed to properly assess their Service Tax liability under Rule 2(1)(d) of Service Tax Rules, 1994 and failed to declare correct value of taxable services as well as exempted services to the department in the prescribed return in Form ST3.

11. It had been noticed that at no point of time, the said assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Service of the differential value that had 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 gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinbelow and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs.2,46,57,859/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the assessee which was in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

TABLE

Sr. No.	Financial Year	VALUE DIFFERENCE in ITR & STR / TDS & STR) (Whichever is higher) (in Rs.)	Service Tax Payable (in Rs.)
	2015-16	17,67,34,208	2,46,57,859



12. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (as such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appeared that the said assessee had short paid/not-paid Service Tax of Rs. 2,46,57,859/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 ibid not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee had suppressed the facts from the department and had contravened the provisions with an intent to evade payment of Service Tax. The said assessee had not discharged their Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.

13. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax and they appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of Service Tax as discussed in the foregoing paras and therefore, the said amount of Service Tax amounting to Rs.2,46,57,859/- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) not paid was required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

14. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it appeared that the said assessee had contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee appeared to have rendered the assessee liable to penalty under Section 76 & Section 77 of the Finance Act.

In addition to the contravention, omission and commission on the part of said assessee as stated in the foregoing paras, it appeared that the said



assessee had wilfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of Service Tax rendering them liable for penalty under Section 78 of the Finance Act, 1994.

16. Therefore, a Show Cause Notice No.STC/15-161/OA/2020 dated 23.10.2020 was issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North to M/s ASITE SOLUTIONS PVT LTD, 201, PARSHWA TOWER, S G HIGHWAY, OPP. RAJPATH, CLUB, AHMEDABAD THALTEJ ROAD, AHMEDABAD, GUJARAT-380054 asking them to show cause as to why;

- (i) Differential amount of Service Tax amounting to Rs.2,46,57,859/- (Rupees Two crore Forty Six lakhs Fifty Seven thousand Eight hundred Fifty Nine only) (inclusive of Education Cess and S&H Edu. Cess) short paid/not paid by them, should not be confirmed/demanded under proviso to Section 73(1) of the Finance Act, 1994;
- (ii) interest at the appropriate rates should not be recovered from them as prescribed under Section 75 of the Finance Act, 1994;
- (iii) penalty should not be imposed upon them under Section 76 of the Finance Act, 1994;
- (iv) penalty should not be imposed upon them under Section 77 of the Finance Act, 1994;
- (v) penalty should not be imposed upon them under Section 78 of the Finance Act, 1994.

#### 17. DEFENCE REPLY:

The assessee vide letter dated 14.12.2020 received by the Commissionerate on 16.12.2020 submitted their written submission wherein they have denied all the charges and allegations leveled in the said Show Cause Notice. They have stated that the same issue was earlier inquired by the Preventive Wing of CGST, Ahmedabad-South vide letter dated 02.12.2019 (F. No. IV/16-01/PI-II/Misc./Third Party /2019-20/1220) which was duly replied by them through E-Mail dt.10.12.2019 and there after submission of reply no further action was initiated by the preventive team; that after a span of one year, they again had received letter from Superintendent, CGST, Range-, Div-VI, Ahmedabad-North, vide F.No.CGST-06/04-64/TPD / AR-





I/2020-21 dated 19.10.2020 which was received by them via E-Mail on 20.10.2020 and the reply was duly complied by E-Mail dated 31.10.2020; They had received the subject SCN which was dated 23.10.2020 on 26.11.2020; the said SCN was issued without giving them the opportunity to reply/ respond to the same. They, further, stated that they were providing services of Information Technology & Software Service out of country as well as in India; that the services which are exported qualified under Exports of Services as per Export Supply as per Rule 6A of Service Tax Rules,1994. They submitted the Bifurcation of Income for F.Y.2015-16 was as under:

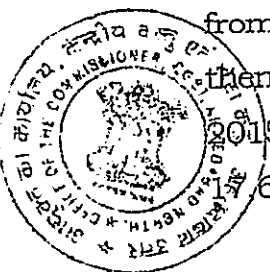
F.Y.	Domestic Supply	Export Supply	Income Earned	Value Declared in ST3
2015-16	99,65,814/-	17,67,73,612/-	18,67,39,426/-	1,00,05,218/-

They have further stated that the difference in their ST-3 returns and the relevant IT return is the value difference of Rs.17,67,34,208/- which is in relation to Export of Services which was not liable to Service Tax under provision of law; that their books of accounts had been audited by the department and the department had issued Final Audit Report No.1474/2017-2018 dated 27.03.2018; that the department had issued the SCN without proper verification of facts on records and it was done simply based on the information/details provided by Income Tax Department; that they had not been given proper opportunity to present their case. They, further, added that their services qualified as Export of services and are squarely exempt from the payment of service tax.

### **18. DISCUSSION AND FINDINGS:**

18.1 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 14.12.2020 and documents submitted by the assessee.

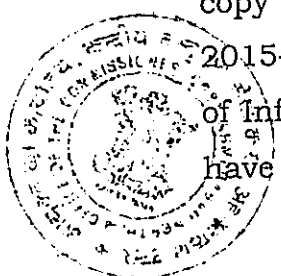
18.2 On going through the SCN, I find that data of Sales /Gross receipt from services was shared by the CBDT with CBIC for FY 2015-16, which was then compared with the gross value declared in ST-3 Returns filed for FY 2015-16 by the assessee. The difference in value of service to the extent of Rs. 17,34,208/- 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. 17,67,34,208/- under proviso to section 73(1) of Finance Act, 1944 or not.

18.3 I find that the assessee in their reply dated 14.12.2020 has stated that the difference in value of service between the sales/ gross receipts shown in their ITR and the gross value of service provided declared in their ST-3 returns filed for FY 2015-16, is on account of export of service. They have, further, stated that they had provided service of Information Technology & Software Service out of country as well, and such services qualified as Exports of Services as per Rule 6A of Service Tax Rules, 1994. They have also stated that their records have also been audited by the department and Final Audit Report No. 1474/2017-18 dated 27.03.2018 had been issued. In support of their reply, the assessee have submitted the copy of P&L account for FY 2015-16, copy of the list of Bank Realisation Certificated ("BRC" for sake of brevity) issued to them for Export of service (downloaded from website <https://dgiftebrc.nic.in>), Ledger "Sales Account-Export" for FY 2015-16, copy of Sales Invoices No. ASPL-2015-16/008 dated 30.11.2015 and ASPL-2015-16/010 dated 31.01.2016, sample BRCs and copy of Final Audit Report 1474/2017-18 dated 27.03.2018.

18.4 Having gone through the reply and documents submitted by the assessee, I discern from the P&L account for FY 2015-16, that the assessee has booked revenue of Rs. 18,67,39,426/- under the head of "Revenue from Operations" and in the ST-3 Returns (PART-B, Sr. No. B1.1) for FY 2015-16, they have shown the gross value of services provided as Rs. 1,00,05,218/- and have made the payment of service tax on this value. It is observed that the actual difference comes out to be Rs. 17,67,34,208/-. I also observe from the ST-3 Returns (Sr. No. B1.8 of Part-B of Returns) that the assessee has not claimed any deduction for export of services from gross value of services provided, hence it is evident that the gross value of service shown in ST-3 Returns do not include the service provided outside India. Hence, I find that the assessee has declared only those receipts/ value of service on which they have paid the service tax. Now moving ahead, on perusing the ledger account "Sales Account-Export" for FY 2015-16, copy of the list of BRCs issued and copy of Sales Invoices No. ASPL-2015-16/008 dated 30.11.2015 and ASPL-2015-16/010 dated 31.01.2016, I find that the assessee has provided services of Information and Technology Services to M/s. Asite Solutions Ltd. UK and have received payment in GBP. I find that the assessee in FY 2015-16 has



received revenue from sale of service outside India to the extent of Rs. Rs. 17,67,73,612/-.

18.5 From the above discussions and document available on records, I find that all the ingredients which formalize/ qualify the activity to be "export of service" for the purpose of Rule 6A of Service Tax Rules 1994, are satisfied by the assessee in as much as (a) the provider is located in the taxable territory (b) the recipient of service is located outside India (c) the service is not in a negative list (d) the place of provision is outside India in the instant case as per the Rule 3 of Place of Provision of Service Rules, 2012 (e) the payment has been received by the provider of service in convertible foreign exchange (f) the provider of service and the recipient of service are different legal entities established under different laws, hence, they are not merely distinct establishment of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the act.

18.6 I also take support of Final Audit Report No. 1474/2017-18 dated 27.03.2018 issued by the Assistant Commissioner (Audit), Ahmedabad to support my contention. I find that the audit of records of the assessee have already been carried out by the department before issuance of the subject SCN. I find that the audit had covered the period from Oct 2013 to March 2017. I also find that the audit had carried out the reconciliation of income booked in the financial records of assessee with the value declared in ST-3 Returns, and as a result, the short payment of service tax by the assessee was noticed. Accordingly, the audit had drawn a Revenue Para for the short payment during FY 2013-14 and 2016-17. The Revenue Para raised was settled by the audit on making payment by the assessee, no other revenue paras were drawn. It is implied from the audit report that the audit had taken into consideration all incomes of the assessee and had not questioned the taxability on sale of export service.

18.7 I also observe that the difference in value of service pointed out in the SCN is Rs. 17,67,34,208/- whereas the revenue flowing from the export of service is Rs. 17,67,73,612/-, which is slightly more than the difference brought in the subject notice issued to the assessee.

18.8. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. I am therefore of the view that the assessee has established their case quite clearly that the difference in value of service is on account of export of service.

I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

18.9 In view of the facts and circumstances pertaining to the case as aforementioned, the demand is not tenable in law, accordingly I do not consider it necessary to delve in the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

**ORDER**

I drop the proceedings initiated against M/s. Asite Solutions Pvt. Ltd., 201, Parshwa Tower, S.G. Highway, Opp. Rajpath Club, Thaltej Road, Ahmedabad-380054, vide Show Cause Notice F.No. STC/15-161/OA/2020 dated 23.10.2020.

(Upendra Singh Yadav)  
Commissioner,  
Central Excise & CGST,  
Ahmedabad North.

By Regd. Post AD./Hand Delivery

F.No. STC/15-161/OA/2020

Date: 12.10.2021

To,

M/s. Asite Solutions Pvt. Ltd.,  
201, Parshwa Tower,  
S.G. Highway, Opp. Rajpath Club,  
Thaltej Road,  
Ahmedabad-380054,.

Copy to:

1. The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
2. The Assistant Commissioner, CGST & C.Ex., Division-VI, Ahmedabad North.
3. The Superintendent, Range-I, Division-VI, Ahmedabad North.
4. The Superintendent (System), CGST, Ahmedabad North for uploading the same on website.

5. Guard File

