



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544663</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. STC/15-186/OA/2020

DIN- 20220964WT0000444CE8

आदेश की तारीख/Date of Order :- 28.09.2022
जारी करने की तारीख/Date of Issue :- 28.09.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 43/JC/ LD /2022-23

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

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

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

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

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

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

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

(77) उक्त अपील की प्रति।

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

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

(77) Copy of accompanied Appeal.

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

विषय:- कारण वताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-1863/OA/2021 dated 14.12.2020 issued to M/s Max Energy Care,G-10, Shukan Flat, Nr. Nirmay Nagar Garnala, Ghatlodiya, Ahmedabad, Gujarat-382480.

BRIEF FACTS OF THE CASE

M/s. Max Energy Care, G-10, Shukan Flat, Nr.Nirnay Nagar Garnala, Ghatlodya, Ahmedabad-382480 (hereinafter referred to as the 'assessee' for the sake of brevity) is registered under Service Tax having Registration No.-BYXPP4251NSD001 & are engaged in the business of providing taxable services.

2. On perusal of the data received from CBDT, it was noticed that the assessee had declared different values in Service Tax Return (ST-3) and Income Tax Return (ITR/Form 26AS) for the Financial year 2015-16 & 2016-17. On scrutiny of the above data, it appears that the assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2015-16& 2016-17 as compared to the Service related taxable value declared by them in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

(Amount in Rs.)

Sr No	F. Y.	Total Gross Value Provided (STR)	Sale Of Services (ITR)	Total Value for TDS(including 194C,194Ia,194Ib,194J,194H)	Higher Value (Value Difference in ITR & STR) OR (Value Difference in TDS & STR)	Resultant Service Tax short paid (including Cess)
1	2015-16	8213348	4355844	36226425	28013077	4061896
2	2016-17	44512496	48027600	51833494	7320998	1098150
Total						51,60,046

3. To explain the reasons for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns for the Financial Year 2015-16 & 2016-17, Letter dated 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.

4. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16 & 2016-17, the service tax liability of the service tax assessee has been ascertained on the basis of income mentioned in the Income Tax returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the Service tax liability under Section 67 of the Finance Act, 1994.

5. No data was forwarded by CBDT, for the period 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 this stage, at the time of issue of SCN, it is 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.”

6. From the data received from CBDT, it appeared that the “Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)” for the Financial year 2017-18 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 letter from the Department. Therefore, the assessable value for the year 2017-18 (upto June-2017) is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said 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 2017-18 (upto-June 2017) under this Show Cause Notice, and due service tax will be recoverable from the assessee accordingly.

7. The government has from the very beginning placed full trust on the service provider so far as service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust by the service provider, no matter how innocently. From the evidence on record, it appears that the said assessee had not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider appears to have made deliberate efforts to suppress the value of taxable service to the department and appears to have not paid the liable service tax in utter disregard to the requirements of law and the trust deposited in them. Such outright act in defiance of law, appears to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

8. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the assessee, M/S. MAX ENERGY CARE 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.

9. The above said service tax liabilities of the assessee, M/S. MAX ENERGY CARE., has been worked out on the basis of limited data/ information received from the Income tax department for the financial years 2015-16 & 2016-17. Thus, the present notice relates exclusively to the information received from the Income Tax Department.

10. It has been noticed that at no point of time, the assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2015-16 & 2016-17. 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. 5160046/- (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 30.09.2020 issued vide F.No.450/61/2020-Cus. IV(Part-1) 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.

11. Therefore Show Cause Notice was issued to M/s.Max Energy to show cause as to why :

- (i) The Service Tax to the extent of Rs.51,60,046/- (including cess) 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 30.09.2020 issued vide F.No.450/61/2020-Cus. IV(Part-1);
- (ii) Service Tax liability not paid during the financial year 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

12. The assessee vide letter dated 31.12.2020 submitted their reply to SCN and wherein they stated that their service tax audit from 01.04.2014 to 30.06.2017 was already conducted by the office of the Commissioner (Audit) Ahmedabad on 28.08.2019 with demand of Rs.9,37,901/-. The said demand was paid by them on 29.07.2019. Copy of the Final Audit Report No.121/2019-20 was also enclosed by the assessee alongwith copy of challan. They further stated that as the service tax audit from 01.04.2014 to 30.06.2017 completed hence they requested to cancel the SCN.

PERSONNE HEARING

13. Personal hearing in the matter was granted on 30.08.2022 and Shri Naresh Patel, authorised representative appeared on behalf of the assessee. He reiterated their written submissions dated 31.12.2020 and requested to decide the case on merits.

DISCUSSION AND FINDINGS

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

15. I have carefully gone through the Show Cause Notice, reply filed by the assessee and copy of Audit Report No.ST-121/2019-20 dated 28.08.2019 issued by Deputy Commissioner, Audit Commissionerate, Ahmedabad and other facts available on record.

16. As per the SCN, the said assessee is registered with department under Registration No.BYXPP4251NSD001 and are engaged in the business of providing taxable services. As per the facts of case in order to verify whether the said noticee have discharged their Service Tax liability properly, Jurisdictional Range Officer (JRO) had written various letters to said assessee to provide the details of such services provided during the period from 2015-16 to 2016-17. However, the said assessee neither submitted any details /documents explaining such difference nor responded to the Letters in any manner. As per SCN, the said assessee has filed ST-3 returns for the SCN period.

17. The Service tax payable is arrived at on the basis of value of "sales of services" shown in the 26AS for the Financial year 2015-16 and 2016-17. By considering the said amount as taxable income, the service tax liability is calculated as tabulated in Table-A supra.

19. I have gone through the reply to SCN filed by the assessee carefully and find that the assessee has mentioned that their firm was audited by the Commissionerate of Audit, Ahmedabad for the period from 2014-15 to June 2017 and have paid Rs.9,37,901/-. They have also produced copy of Audit Report No.ST-121/2019-20 dated 28.08.2019 issued by Deputy Commissioner, Audit Commissionerate, Ahmedabad.

20. In view of the submission made by the assessee, I find that the Final Audit Report issued by the department must be looked at. On perusing the Final Audit Report No. ST-121/2019-20 dated 28.08.2019, I find that the audit was conducted during the month of July, 2019 by the audit party of CGST, Audit Commissionerate, Ahmedabad for the period April 2014 to June 2017. The Audit Report was issued by the Deputy Commissioner(Audit), CGST Audit, Ahmedabad from F.No. CTA/04-166/Cir - VII/AP-43/2018-19. On perusal of the Audit report, I find that the assessee is engaged in providing services of Manpower recruitment/supply agency service, Maintenance or repair service, Legal consultancy service & erection, commissioning and installation service. On perusal of the said audit report, I find that the audit has raised certain objection on reconciliation of income in financial accounts with the income shown in ST 3. The summary of major audit objections is reproduced herein under for ease of reference:

1.Summary of major audit objections from the working paper.

Sr. No	Gist of objections	Revenue implication, if any(Rs)	Audit objection code	Assessee in agreement Yes/No	Departments decision
01	Short payment of S.Tax liability on reconciliation of income in financial accounts with the income shown in ST 3	S.Tax Rs.487250/- Penalty Rs.73087/- Interest Rs.362364/- Total Rs.922701/-	VSR030	Yes	Approved & settled
02	Penalty not paid on delay filing of ST 3 returns	Penalty Rs.15200/-	CSR 99	Yes	Approved & settled
Total Detection		Rs.9,37,901/-			
Spot Recovery		Rs.9,37,901/-			

21. On perusal of audit report , I find that the assessee has agreed with the audit objections raised by the Audit Party and paid the entire amount of Rs.9,37,901/- vide Challan No.19072400564577 & No.19072400564577 both dated 29.07.2019 and accordingly audit paras are settled and Final Audit Report No. ST-121/2019-20 dated 28.08.2019 by the Deputy Commissioner of Audit, Audit Commissionerate, Ahmedabad from file F.No. CTA/04-166/Cir - VII/AP-43/2018-19.

22. Therefore, it is apparent from the Final Audit Report that the reconciliation of Income booked/ shown in the books of accounts of the assessee, for the period 2014-15, 2015-16, 2016-17 & 2017-18 (upto June 2017) was carried out with Taxable value disclosed in their ST-3 Returns filed by the assessee. It is also seen that the assessee had already paid the service tax on the differential value of service as observed by the audit. It is also evident that the audit of records of assessee by the department had already been conducted before the issuance of the subject SCN. Despite of the above fact the SCN seeks demand of the service tax on differential value worked out by comparing the Income as per ITR/ Form 26AS vis-à-vis Taxable value disclosed in ST-3 Returns. I find that apart from the differences noticed in the figures reported in ST-3 returns and in ITR/Form 26AS, the department had not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non payment of service tax. Having considered these factual and documentary evidences available on records, and relying on the Final Audit Report, I find that there is no short payment on the part of the assessee. The SCN issued to the assessee after audit of the assessee and therefore the subject SCN is liable to be dropped on merits being incorrect and legally not sustainable.

23. 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 on the merits of the case by 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 for imposing any penalty.

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

ORDER

25. I hereby order to drop proceedings initiated for recovery of service tax of Rs.51,60,046/- along with interest and penalties against M/s. Max Energy Care vide SCN No.GEXCOM/ADJN/ST/ADC/309/2020-ADJN dated 14.12.2020.


(Lokesh Darnior) 28/09/2022

Jointl Commissioner
Central GST & Central Excise
Ahmedabad North

F.No. STC/15-186/OA/2021

Date:

To,
M/s. Max Energy CARE,
G-10, Shukan Flat, Nr.Nirnay Nagar Garnala,
Ghatlodya, Ahmedabad-382480

Copy to:

- 1) The Commissioner Central GST & Central Excise, Ahmedabad North.
- 2) The A.C, Central GST & Central Excise, Division-VII, Ahmedabad North.
- 3) The Supdt., C GST & Central Excise, Range-III , Division-VII, Ahmedabad North
- ✓ 4) The Supdt. Systems ,CGST& CX, Ahmedabad North for uploading the order
- 5) Guard File.