आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा ,अहमदाबाद- 380009		 OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No.STC/15-45/OA/2017

आदेश की तारीख़/Date of Order: - 28.03.2018

जारी करने की तारीख़/Date of Issue :- 02.04.2018

द्वारा पारित/Passed by:- जी. सी. जैन /G. C. Jain

अपर आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 12-14/JC/2018/GCJ

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

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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध 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 इ.ए-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रू .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 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:

(1) Copy of accompanied Appeal.

(2) 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.2.00.

विषय: -कारण बताओ सूचना/Show Cause Notice **F.No. STC/04-80/0&A/ 14-15dated 17.04.2015, STC/04-96/O&A/15-16 daetd 28.06.2016 and STC/4-44/O&A/SAI/2016-17 dated 21.03.2017 issued to M/s. Sai Consulting Engineers Pvt. Ltd.,Block A, Satyam Corporate Square, B. H. Rajpath Club, Bodakdev, Ahmedabad-380059.**

Brief facts of the case:-

M/s. Sai Consulting Engineers Pvt. Ltd., Ahmedabad, situated at Block A, Satyam Corporate Square, B. H. Rajpath Club, Bodakdev, Ahmedabad-380059 (hereinafter referred to as the "assessee") are engaged in providing taxable services of Consulting Engineer Service and registered with erstwhile Service Tax Department and having Registration Number AADCS0481PST001 date 04.03.2003. The assessee is availing the facility of cenvat credit.

2. During the course of audit and on verification of records, it is noticed that the assessee had shown certain amount under the head of 'professional Fees-Foreign" as expenditure in their books of accounts on which no service tax under reverse charge mechanism in the category of consulting engineer service was paid. The assessee was liable to pay service tax on the amount of expenditure under the category of 'professional fees-foreign' under reverse charge mechanism as per Section 66A of the Finance Act, 1994 under the category of Consulting Engineer's services.

3. The expenditure made by the assessee in foreign currency, shown in the books of account under the head of 'professional fees-foreign' indicates that the assessee has imported services and used the same in export of the services. Therefore, upto 30.06.2012, the assessee was liable to pay service tax on the value of import of services under reverse charge mechanism as per erstwhile Section 66A of the Finance Act, 1994 under the category of Consulting Engineer services. From 01.07.2012 there was no service wise classification on introduction of negative list regime, however the impugned activity is fallen under the purview of 'service' as defined under Section 65B and made taxable in terms of Section 66B read with Section 66D of the Finance Act, 1994, as the same is neither covered by negative list nor by any exemption notification.

4. The expenditure made by the assessee in foreign currency under the head **'professional fees-foreign'** is for the consultancy engineer's services received from foreign service providers and hence with effect from 01.07.2012, the said activity is to be considered as "Service" in terms of Section 65B (44) of the Finance Act, 1994 and hence liable to service tax in terms of Section 66B of the Finance Act, 1994 under reverse charge mechanism.

5. Further, Notification No. 30/2012-ST dated 20.06.2012 (effective from 1.7.2012) issued under Section 68(2) of the Finance Act, 1994, specified the taxable services and the extent of service tax payable thereon by the recipient of services. As per Sr.No. 10 of the Table, 100% service tax is payable by the recipient in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory. Thus, in view of this notification, the assessee appears liable to pay the entire service tax liability in respect of import of services.

6. As the assessee has shown expenses as 'fees-Foreign' against the services received which clearly indicates that the services have been received in taxable territory, i.e. in India, and service tax is required to be levied at the prescribed rate. Further, as per the provisions of Rule 3 of the Place of Provision of Services Rules, 2012, the place of provision of service is the location of service receiver (i.e. location of assessee in this case which is India); hence service has been provided in taxable territory.

7. From the information furnished by the assessee for the subsequent period, it was noticed that the assessee had made following amount as expenditure under the head of 'professional Fess-Foreign'.

Period	Amount shown as expenditure under the head of 'Professional Fees-Foreign". (Rs.)
2013-14	5,47,02,663/
2014-15	4,85,62,122/
2015-16	5,15,32,345

8. It is further noticed that the assessee has continued the practice of non-payment of service tax on the amount shown under the head of 'professional Fees-Foreign' and hence

normal banking channels at Ahmedabad and they transferred a part of the payments so received by them to the local experts for paying as regards the part of the contract performed by them in the concerned countries and all that payments are regarding the projects in foreign countries only through the money is transferred to them at Ahmedabad and from Ahmedabad to their joint venture partners i.e. local experts in foreign countries and therefore the requisite amount is remitted to them through ICICI bank, Ahmedabad being their Bankers. They contended further that there is no liability of service tax on the remittance made by them to the experts in various foreign countries because that remittance is for the activities that had taken place in foreign countries; that the services provided by local experts in foreign countries is in the nature of non-taxable territory; that the recipient of the service i.e. the agency awarding the main project is also located in a foreign country; that the payment for that service is received by them in convertible foreign exchange and out of such payment received by them a certain amount is remitted to the sub-contractors in foreign countries and all ingredients of 'export of service' are satisfied in that case; that the remittance made by them to the sub-contractors is therefore not for import of any service and therefore no service tax was to be paid on that remittance by them.

10.2 It is further stated that provisions of Section 66B are not relevant in the present cases because the taxable event i.e. the service of the foreign consultants has admittedly not taken place within the territory of the Union of India; that service tax can be demanded from a recipient of service located in India only when the service was rendered in India but not when the service was rendered in a foreign country.The assessee then referred to the decisions of Tribunal in case like Welspun Gujarat Stahi Rohren Limited- 2007 (5) STR 38, Bharat Forge Limited- 2008 (9) STR 67 and Intas Pharmaceuticals – 2009 (16) STR 748 and stated that all these cases are related to the situation where an Indian entity received a service in a foreign country and the service was received and consumed also in a foreign country and held that in such a situation service tax was applicable only to the services received in India, but the recipient was not liable to pay service tax if the services were received and used outside India. The assessee also relied on the decision of Tribunal in the case of Infosys Ltd reported at 2014-TIOL-409-Cestat-Bang. And KPIT Technologies Ltd reported at 2014 (36) STR 1098 on the matter of service tax liability under reverse charge mechanism. They contended that case laws quoted by them are applicable to their case also as service of sub-contractors was received and consumed by them in foreign countries and therefore Union of India has no jurisdiction to tax such transactions.

10.3 They also stated that Government by circular No. 36/4/2001 dated 8.10.2001 clarified that services provided beyond the territorial waters of India were not liable to service tax as service tax had not been extended to such areas like the Continental Shelf and the Exclusive Economic Zones of India; that though this clarification is with regard to the services rendered in economic zones and the continental shelf areas, the issue that the levy was only for the services rendered within the country, and not for the services rendered in a foreign country stands clarified by that circular also. They also referred to the letter FNo. 354/11/2011-TRU dated 22.3.2011 of Board wherein certain clarification on applicability of service tax on overseas trade fairs/exhibition under 'business exhibition services' has been issued.

10.4 They further submitted that they are a Private Limited Company engaged in providing consulting Engineer's Services and have obtained a service tax registration under the provisions of the said Finance Act, and they have been regularly discharging service tax liability for the above referred taxable services rendered by them.; that they are also filing returns in form ST-3 on six monthly basis in accordance with the provisions of the said Finance Act, and complete details of taxable services provided by them, value of such services and service tax payable thereon etc. are also disclosed in the returns which are filed by us. They stated that in addition to the returns, they are also recording all their business transactions in their books of accounts which are maintained by them in accordance with General Accounting Principles, and also in accordance with the provisions of the Companies Act, 1956; that their books of accounts are audited also, and the audited books of accounts including the balance sheets are submitted before various Government and Semi-Government Authorities like the Office of the Registrar of Companies and thus, all their business transactions including taxable services provided by us and the income earned by us out of such business transactions are disclosed in all the above documents which are in the nature of public documents; that there is nothing suppressed or hidden by them in so far as their business transactions are concerned.

tax for any of these activities, and Section 66A of the said Act is also not attracted for such services or activities performed wholly outside the country.They then argued that there being no validity and justification in this demand of service tax, the other consequent proposals for charging interest and imposing penalty would also not be surviving and therefore, requested for withdrawing the SCNs in the interest of justice. They made further submissions that the Central Government has made "Place of Provision of Services Rules, 2012" and these Rules are notified vide Notification No.28/12012-$T dated 20.6.2012; that these Rules have come into force on 01.07.2012, and the place of provision of a service for the purpose of determining chargeability of service fax on such service is to be decided with reference to these Rules; that when Rules 3 to 12 of these Rules are considered serially, it transpires that various situations with respect to various services are considered thereunder, and tests to determine place of provision for charging service tax are laid down; that Rule 5 of these Rules is a specific provision for services provided directly in relation to an immovable property. Services provided by experts, services for carrying out or for coordination of construction work, including architects or interior decorators, and such services directly relatable to any immovable property are covered under Rule 5 of the PPS Rules; and it is laid down thereunder that the place where the immovable property was located was the place of provision of such service. Accordingly, liability and chargeability of service tax for services provided directly in relation to an immovable property shall be determined in view of the location of the immovable property.They further stated that in the present case, all the projects that have been awarded to them which they have executed directly as well as through sub consultants are in relation to immovable properties like roads, highways and such civil works; that the Sub Consultants to whom payments have been made by their company (which are shown under the head 'Project Work (Sub Contract)" which is the subject matter of the present Show Cause Notice have rendered Consulting Engineer's Services in relation to such immovable properties. The MOUs made between us and the Sub Consultants and also the main agreements between them and the agencies that have awarded the projects to them also bear out that the activities and services were all directly in relation to immovable properties like roads, highways and such civil construction and therefore, the place where the immovable property was located would be the place of provision of services, and accordingly no charging event has taken place in India; that in other words, the services of sub consultants and sub contractors, which are allegedly in the nature of Consulting Engineering Services, were provided directly in relation to immovable properties located in countries like Mozambique, Ghana, Kenya, Tajikistan, Tanzania, Ethiopia etc., and therefore, the place of provision of such services was not India but such foreign countries where immovable properties were located. Therefore also, they argued that, no liability of service tax would arise in the present case.

10.8 They stated further that the proceedings initiated against them by way of these Show Cause Notices are even otherwise unjustified and impermissible because the present case involves a revenue neutral situation; that if they had to pay any service tax under reverse charge mechanism for the subject matter of the present Show Cause Notice, then we would have been entitled to credit of such amount because the services of sub consultants and sub contractors were in the nature of input services for us; and they were liable to pay service tax only as a recipient of service and such Cenvat credit would have been utilized by us for discharging service tax liability on output services rendered by them in India, and thus the situation would have been revenue neutral; that they are registered with the Service Tax Department for Consulting Engineer's Services, and they also hold a registration as a service provider, and they have been discharging service tax liability on various works and projects executed in India; that actually, they have been discharging substantial liabilities of service tax, and therefore any service tax paid under reverse charge mechanism for the sub consultants' works and services would have been fully utilized by them for discharging our service tax liability for projects, works and services involved in India and there was thus a revenue neutral situation in this case, and accordingly the initiation of the present proceedings and also invocation of the larger period of limitation are unjustified and without jurisdiction; that when any payment of duty or tax by an assessee results in admissibility of Cenvat credit to the assessee himself, it is revenue neutral situation not authorizing the Revenue to initiate any proceedings against the assessee as held by the Hon'ble Supreme Court in cases like Narmada Chematur Pharmaceuticals Ltd. reported in **2005 (179) ELT 276 (S.C.)** and CCE, Pune V/s Coca-Cola India Pvt. Ltd. reported in **2007 (213) ELT 490 (SC)** and also by the Appellate Tribunal in cases like $RF Ltd. - **2007 (81) RLT**

besides the present issue, covers another point of the recovery of cenvat credit under Rule 6 of the Cenvat Credit Rule, 2004, which is pending in certain appellate forum, and hence that SCN has been kept alive in call book. Therefore, vide the present proceedings, show cause notices issued for the subsequent period i.e. 2013-14 to 2015-16, are only included.

14 Before examining the service tax liability on the part of the assessee on the amount of payments made in foreign currency under the head 'professional fees-foreign' as a recipient of service, it would be prudent to understand the provisions of relevant service tax law on the issue.

15. The notices before me for a decision on demand notices for recovery of service tax on the amount of expense under the head of 'professional fees-foreign' was incurred by the assessee during the period 2013-14 to 2015-16. Thus the period involved in all these notices is post 1.7.2012. From 01.07.2012, levy of service tax was based on negative list based services as declared in Section 66D of the Finance Act, 1994. Further, from 01.07.2012 onwards, as per Section 68(2) of the Finance Act, 1994, in respect of such taxable services as may be notified by the Central Government in the official gazatte, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in Section 66B and all the provisions of this chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service. Provided that the central government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider. Relevant portion of Section 68(2) is reproduced herein below-

' *Section 68- Payment of service tax-*

......

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

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

16. Further, as per Rule 3 of the Place of Provision of Service Rules, 2012, the place of provision of a service would be the location of the recipient of service. However, in case the location of the service receiver is not available in the ordinary course of a business, the place of provision shall be the location of the provider of service.

17. Notification No. 30/2012-Service Tax dated 20.06.2012, issued in exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994; specifying thereunder the services in respect of which service tax is to be paid under reverse charge which include, amongst other services, any taxable services provided or agreed to be provided by any person located in a non-taxable territory and received by any person located in a taxable territory.

18. The assessee, having fixed establishment in India, is said to have given contracts/sub-contracts to various experts for executing works in foreign countries and for such contract works executed by that experts, the amount in dispute was paid by the assessee and grouped the said expense under the head-'professional fees- foreign'. In view of Rule 3 of the Place of Provision of Services Rules, 2012, the place of provision of service should be the place of service recipient. As the assessee is situated in the taxable territory in India, being a recipient of service, they should have paid service tax on the value of services received from non-taxable territory.

19. The assessee is found to have mainly contended that they are not liable to pay service tax on the payments made to the experts in connection with the civil project works in various

present case new Section 76 of the Act effective from 14.5.2015 is applicable as per the provisions of Section 78B of the Act ; abstract of which is as under-

"78B. (1) Where, in any case,--

(a) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and no notice has been served under sub-section (1) of section 73 or under the proviso thereto, before the date on which the Finance Bill, 2015 receives the assent of the President; or

(b) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and a notice has been served under sub-section (1) of section 73 or under the proviso thereto, but no order has been passed under sub-section (2) of section 73, before the date on which the Finance Bill, 2015 receives the assent of the President, then, in respect of such cases, the provisions of section 76 or section 78, as the case may be, as amended by the Finance Act, 2015 shall be applicable."

27. Section 76 of the Finance Act, 1994, amended vide Finance Act, 2015, says that-

"Section 76(1)- where service tax has not been levied or paid, or has been short levied or short paid, or errenously refunded, for any reason, other than the reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this chapter or of the rules made thereunder with the intent to evade the payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent of the amount of such service tax"

28. It would be seen from above that the maximum penalty under Section 76 is ten per cent of the amount of service tax short levied or paid for which demand notice under Section 73(1) of Finance Act, 1994 is issued. It is to note here that the present demand notices are issued under Section 73(1) of Finance Act, 1994. I find that due to nonpayment of Service Tax the assessee is liable to pay penalty under Section 76 of the Finance Act, 1994.

29. Further, Section 77(1) prescribes the penalty for contravention of specified rules and provisions of Act for which no penalty is specified elsewhere. Section 77(2) provides for imposition of penalty which may extend to ten thousand rupees on the person who contravenes any of the provisions of this chapter or any rules made there under for which no penalty is separately provided. In the present case, for the failure of the assessee to self assess their tax liability and to declare the taxable value in their periodical returns filed, penal provision under Section 77 is proposed. Section 70 mandates the assessee to assess the service tax due on the taxable services and to pay such tax and to furnish a specified return within the specified time before the Range Superintendent. In the instant cases, it is concluded that the assessee failed in assessing the service tax leviable on the taxable services received by them and to pay the tax as a recipient of taxable service under reverse charge mechanism. They also failed in declaring such taxable services received by them in the taxable territory i.e. India. Hence, ingredients of provisions which attract the penalty under Section 77(2) of the Act are in existence in the instant cases and accordingly the assessee is liable to pay penalty prescribed under this section.

30. Notices also propose to recover interest on the unpaid service tax amount on the value of taxable services received by them under consulting engineer service under reverse charge mechanism from the assessee under the provisions contained in Section 75 of the Finance Act, 1994. Section 75 of the Act provides that every person liable to pay the tax in accordance with the provisions of Section 68 or rules there under, who fails to credit the tax or any part thereof to the account of the central government within the period prescribed, shall pay interest at the specified rate. In the instant case the assessee had not paid service tax on the amount of taxable services received by them under reverse charge mechanism. Thus the interest at the appropriate rate, as was in existence at the relevant time, is chargeable from the assessee in terms of the Section 75 of the Finance Act, 1994.

31. In view of above, I pass following order:-

Copy to:

1. The Commissioner of CGST & C.Excise, Ahmedabad-North (RRA Section).
2. The Deputy/Assistant Commissioner of CGST & C.Ex., Division VI, Ahmedabad North.
3. The Superintendent of CGST & C.Excise, AR.I, Division VI, Ahmedabad North.
4. Guard File.