



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

फा.सं./F.No. STC/15-96/OA/2020

आदेश की तारीख/Date of Order: - 28.06.2021

जारी करने की तारीख/Date of Issue :- 29.06.2021

DIN-20210664WT0000888ABC

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 10/JC/MT/2021-22

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 दो महिनों के अन्दर आयुक्त (अपील), केन्द्रीयजी.एस.टी., केन्द्रीयजी.एस.टी.भवन, अंबावाड़ी, अहमदाबाद - 380015 को प्रारूप संख्या एसटी-4 (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 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 ST-4 to the Commissioner(Appeals), GST Bhawan, Ambawadi, Ahmedabad-380015 within two months 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 की धनराशि का प्रमाण देना आवश्यक है।

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

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एसटी-4 (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।

(1) उक्त अपील की प्रति

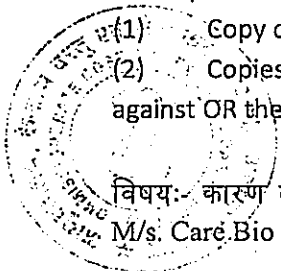
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिस पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

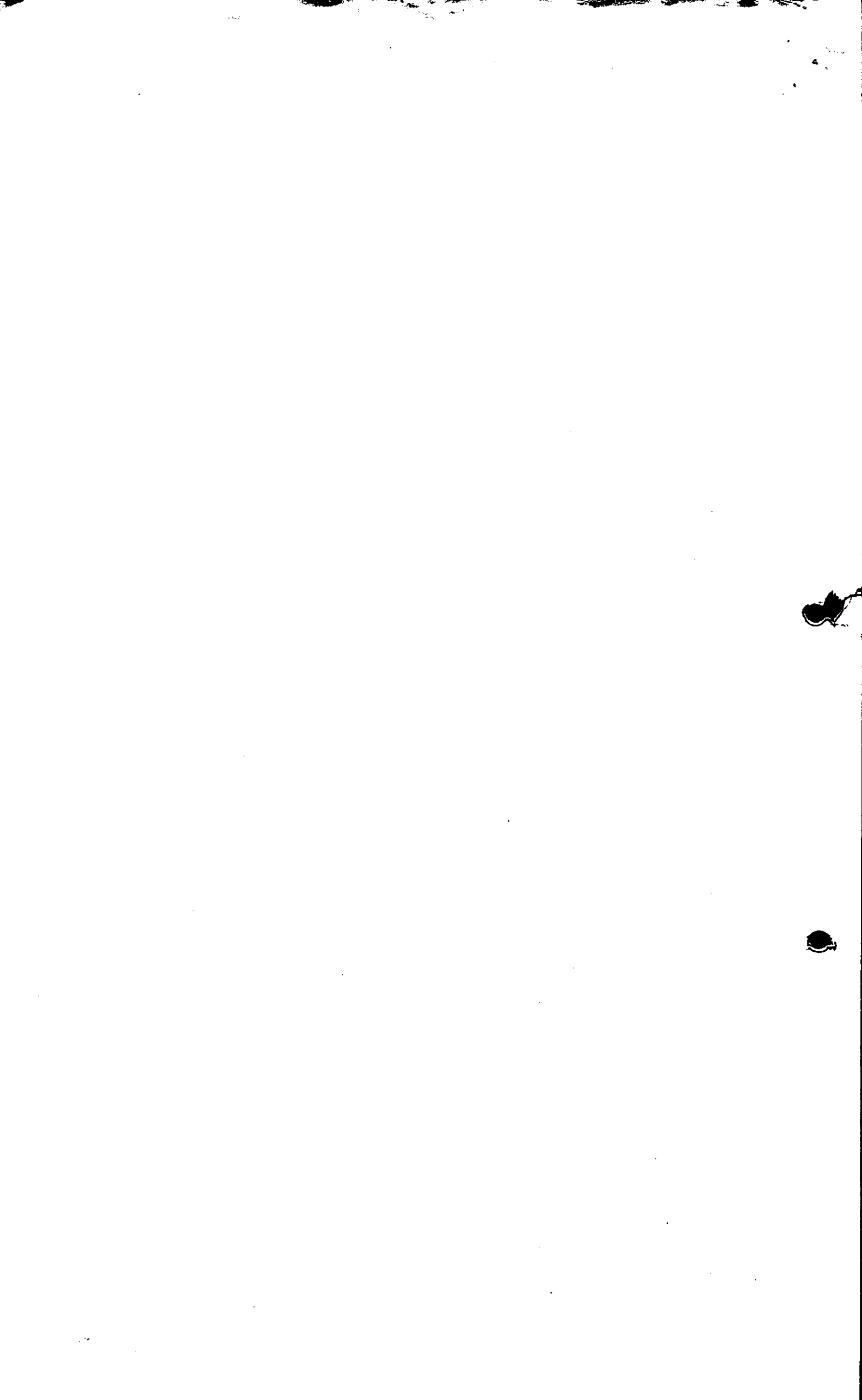
The appeal should be filed in form ST-4 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(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.5.00.

विषय:- कारण बताओ सूचना/ The Show Cause Notice No. STC/15-96/OA/2020 dated 29.09.2020 issued to M/s. Care Bio Medical Waste Incinerator, Mansarovar 301 opp. Laxmi Hospital Nava Vadaj, Ahmedabad.





Brief Facts of the case:

M/s. Care Bio Medical Waste Incinerator, Mansarovar 301 opp.Laxmi Hospital Nava Vadaj Ahmedabad Nava Vadaj Ahmedabad, were holding Service Tax registration No. AACFC9601PSD001 for providing the Other taxable service.

2. Data regarding ITR and ST-3 was received from Central Board of Direct Taxes (Income Tax). On scrutiny of the said data for the Financial Year 2014-2015 to 2016-17 and comparing the Value declared in their Income Tax returns' P&L Account/ Balance Sheet/Form 26AS and ST-3 Returns filed, it was observed that the tax payer has short-paid Service Tax to the tune of Rs.1,81,20,539/- as per details given below:-

Sl.No.	Description	Amount (Rs.)2014-15	Amount (Rs.)2015-16	Amount (Rs.)2016-17
1.	Value as per P & L Acc.	47671604/-	0/-	0/-
2.	Value as per ITR	0/-	50572228/-	56599137/-
3.	Value as per Form 26AS	0/-	25196564/-	26632764/-
4.	Higher of above (1., 2. & 3.)	47671604/-	50572228/-	56599137/-
5.	Amount claimed as abetment in ST-3 (Less)	0/-	0/-	0/-
6.	Exemption claimed in ST-3 (Less)	0/-	0/-	0/-
7.	Any other deduction claimed (RCM) (Less)	0/-	0/-	0/-
8.	Net value	47671604/-	50572228/-	56599137/-
9.	Value Declared in ST-3 Returns	21580494/-	0/-	6181103/-
10.	Differential Value (8-9)	26091110/-	50572228/-	50418034/-
11.	Service tax payable (12.36% including Cess14.5% & 15%)	3224861/-	7332973/-	7562705/-
			TOTAL	1,81,20,539/-

3. It appeared that the tax payer has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of Rs.1,81,69,866/-, by declaring less value in their ST-3 Returns vis-à-vis their ITR/ P&L Acc./Balance Sheet, Form 26AS in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

4. It was noticed that at no point of time, the tax payer 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 data submitted by the CBDT data generated for the Financial Year 2014-2015 to 2016-17. They failed to honor the trust cast upon them by the Government for measures like self-assessment etc. based on mutual trust and confidence are in place. From the evidences, it appeared that the said tax payer 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. 1,81,69,866/-. It appeared that the above act of omission on the part of the tax payer resulted into short payment/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. Therefore, the same appeared to be recoverable from them under the provisions of Section 73 of the Finance Act, 1994 along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the tax payer constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appeared that they have rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

5. Therefore, M/s.Care Bio Medical Waste Incinerator was called upon to show cause to the Additional/Joint Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad-380 009 vide show cause notice F.No.STC/15-96/OA/2020 dated 29.09.2020 as to why :

- (i) The said differential amount should not be considered as taxable value and the demand for Service tax to the extent of Rs. 1,81,69,866/- (Rupees One Crore Eighty One lakhs Sixty Nine thousand Eight hundred Sixty Six only) 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;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

Defence Reply:

6. The tax payer vide their letter dated 08.10.2020 submitted that –
The activity carried out by them since inception is operation of common bio-medical waste treatment facility which is an exempted services under Notification No.25/2012-ST dated 20.06.2012 as amended; that the exemption provided by the said notification for the services provided by operators of the Common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of common bio-medical waste or the process incidental thereto. The said Notification has been amended vide Notification No.06/2014 dated 11.07.2014 under which exemption to the service provider of common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of common bio-medical waste or the processes of incidental thereto.

- (1) In the said Notification, in the opening paragraph,
 - (i) After entry 2A, the following entry shall be inserted namely;
 - (ii) “2B, Services provided by operators of the Common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of common bio-medical waste or the processes incidental thereto”;

7. They also referred to the definition of Section 2(e) of the Clinical Establishment (Registration and Regulation) Rules, 2010 wherein it has been defined as –

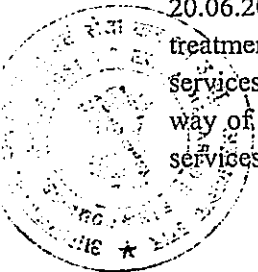
(i) a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution by whatever name called that offers services, facilities requiring diagnosis, treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicine established and administrated by any person or body of persons, whether incorporated or not; or

(ii) a place established as an independent entity or part of an establishment referred to in sub para (i), in connection with the diagnosis or treatment of diseases where pathological, bacteriological, genetic, radio logical, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment, are usually carried on, established and administrated or maintained by any person or body of persons, whether incorporated or not, and shall include a clinical establishment owned, controlled or managed by the:

- The Government or a department of the Government,
- A trust, whether public or private;
- A corporation (including a society) registered under a Central, Provincial or State Act, whether or not owned by the Government;
- A local authority; and
- A single doctor.

8. But does not include the clinical establishments owned, controlled or managed by the Armed Forces constituted under the Army Act, 1950, the Air Force Act, 1950 and the Navy Act, 1957.

9. They stated that the Audit Department had also carried out for the financial year 2012-13 to 2013-14 and issued Service Tax audit report dated 16.10.2014 in which it has been clearly stated that - item No.7 regarding exemption Notification and effective date that - Notification No.25/2012-ST dated 20.06.2012 Sr.No.25 (a) as amended has exempted their services of providing common bio-medical waste treatment facility with effect from financial year 2012. The Audit department has also considered the services provided by them for common biomedical waste treatment facility to clinical establishment by way of treatment or disposal of common bio-medical waste or the process incidental thereto as exempt services. They stated that they filed all Service Tax return on self-assessment basis with the claim of



exemption since inception from the financial year 2012-13 to 2016-17 and honestly paid the Service Tax on the services provided of common bio-medical waste treatment facility when taxable without claiming any Input Tax Credit. They reiterated that their service falls under exempted service as per Notif.No.25/2012-ST as amended. They also stated that they submitted all the relevant documents such as ST-3 Returns, Income Tax Returns, 26AS, Annual Bank statements of HDFC Bank Ltd, Audited balance sheets etc to the Deputy Commissioner Service Tax (Preventive).

10. Regarding the amount of Rs.399086/- written off in the profit and loss account is irrecoverable debt on which no Service Tax of Rs.49327/- is payable since the amount is written off from the exempted receipts recoverable. They enclosed copy of Notif.No.06/2014 (amended Notif.No.25/2012-ST), Audit Report, Consent and authorization received from Gujarat Pollution Control Board valid upto 06.05.2022 for providing common Biomedical Waste Treatment facility. They also requested for a personal hearing.

Personal Hearing:

11. Personal hearing was held on 03.05.2021. Shri Gaurang Shah, CA, appeared for the personal hearing. He stated that they had not mentioned the exempted amount in the ST-3 Return because they were under the impression that only taxable services/amount is to be shown. They referred to the content of their written reply dated 08.10.2020 and stated that they have nothing more to add. They also submitted photocopies of the following documents-

- 1) Form ST-2
- 2) P/L A/c for the year 2014-15, 2015-16 and 2016-17
- 3) ITR for the assessment year 2015-16, 2016-17 and 2017-18
- 4) ST-3 Returns for the year 2014-15, 2015-16 and 2016-17.

Discussion and Findings:

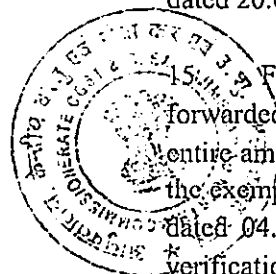
12. I have carefully gone through the records of the case, written reply submitted to the show cause notice and also submission made during the course of personal hearing.

13. I find in the present case, show cause notice has been issued to the noticee demanding Service Tax to the tune of Rs.1,81,20,539/- based on the data received from the Income Tax authorities. The noticee, in their written submission and also during the course of personal hearing contented that their case is falling under the exempted category falling under Notification No.25/2012-ST dated 20.06.2012 as amended by Notification No.06/2014-ST dated 11.07.2014. To verify the claim of the noticee, it is necessary to examine the Notification No.06/2014-ST dated 11.07.2014. The Entry No.2B of Notification No.06/2014-ST reads as under:-

"2B. Services provided by operators of the Common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto;"

14. I find that in the present case, the noticee provides the services of bio-medical waste treatment facility to their various clients (hospitals) which is covered under Sr.No.2B of Notification No.06/2014-ST dated 11.07.2014 (amended Notification of 25/2012-ST). I also find that the noticee has also got the consent of Pollution Control Board for the said service. I have also examined copy of the Audit No.167/2014-15 dated 16.10.2014 relating to the period of Audit conducted for the period from 2012-13 to 2013-14 wherein it is clearly stated that the noticee availed exemption Notification No.25/2012-ST dated 20.06.2012 Sr.No.25(a) as amended.

Further, copies of the documents submitted by the tax payer viz. P/L, ST-3, ITR etc, were forwarded to the Deputy Commissioner, CGST & Central Excise, Division-VII to examine whether the entire amount of Service Tax demanded for the year 2014-15 to 2016-17 is coming under the purview of the exempted service as claimed by the noticee or not. Vide letter F.No. Div-VII/Demand/Misc/2019-20 dated 04.06.2021, the Deputy Commissioner, CGST & Central Excise, Division-VII, forwarded the verification report submitted by the Superintendent, AR-V, Div-VII/CGST & Central Excise, Ahmedabad vide letter F.No. CGST/AR-V/Demand/Misc/20-21 dated 03.06.2021. As per the said verification report of the Jurisdictional Superintendent, the issue has been examined in detail with respect to the Notification No.25/2012-ST as amended by No.06/2014-ST dated 11.07.2014, Clinical Establishment (Registration



and Registration) Act, 2010, nature of service rendered by the noticee and the documents P/L account, ST-3, ITR etc. Gist of which is reproduced as under.

"After going through the definition of the clinical establishment under the said act which encompasses the all hospitals, maternity home, nursing home, dispensary, clinic, etc or an institution by whatever name called.....

And submission made by the assessee, the income received from those units also falls under the exemption category apparently. So this office has a view that income should be exempted on the above ground.

Accordingly, it is to submit that the verification of tax liability discharged by the assessee is found in order."

16. In view of the facts ascertained at the verification report as discussed above, I find that the activity carried out by the tax payer is treatment of Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of common bio-medical waste or the process incidental thereto. Such an activity is covered under Notification No.25/2012-ST dated 20.06.2012 amended by Notification No.06/2014-ST dated 11.07.2014. Therefore, the demand issued for recovery of Service Tax to the tune of Rs.1,81,69,866/- is not sustainable and as such, is to be dropped. Since the demand of Service Tax is not sustainable, demand of interest and penalty is also not sustainable. In view of the above, I pass the following orders-

ORDER

I drop the proceedings initiated against M/s. Care Bio Medical Waste Incinerator, Mansarovar 301 opp. Laxmi Hospital Nava Vadaj, Ahmedabad vide Show Cause Notice F.No.STC/15-96/OA/2020 dated 29.09.2020.



(Marut Tripathi)

Joint Commissioner,
CEx & CGST, Ahmedabad North

Dated-29.06.2021

F.No. STC/15-96/OA/2020
By Regd. Post AD./Hand Delivery
To

M/s. Care Bio Medical Waste Incinerator
Mansarovar 301 opp.Laxmi Hospital Nava Vadaj
Ahmedabad

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North
2. The Deputy Commissioner, Division-VII, Central Excise and Central GST, Ahmedabad North.
3. The Superintendent, Range-I, Division - VII , CGST, Ahmedabad North.
4. Guard File