



<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</p> <p>CUSTOM HOUSE, 1ST FLOOR,</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- aaahmedabad2@gmail.com</p>

F.No:- STC/15-35/OA/2019

आदेश की तारीख/Date of Order : - 19.03.2021
जारी करने की तारीख/Date of Issue :- 19.03.2021

DIN No.:20210364WT000000C790

द्वारा पारित/Passed by:-

एम. एल. मीणा / *M. L. Meena*
अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 61/ADC/2020-21/MLM

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 इ.ए.-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रु .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 विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु 2.00 दो रुपये (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 No.VI/1(b)CTA/Tech-20/SCN/Bosch Rexroth/2018-19 dated 17.06.2019 issued to M/s. Bosch Rexroth (India) Pvt. Ltd., Survey No. 206/2, 207, 214/2P, 211, 212, 213/4, 213/3P, 213/1P Sanand-Viramgam Highway, Iyava, Sanand Ahmedabad.

Brief facts of the case

M/s. Bosch Rexroth (India) Pvt. Ltd., Survey No. 206/2, 207, 214/2P, 211, 212, 213/4, 213/3P, 213/1P Sanand-Viramgam Highway, Iyava, Sanand Ahmedabad (hereinafter referred to as the 'assessee' for sake of brevity) is engaged in the manufacture of Hydraulic Systems and its accessories falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. The assessee was holding Central Excise Registration No. AAACM9898FEM005 & Service Tax Registration No. AAACM9898FST001.

2 The EA 2000 Audit of the assessee, covering the period from April, 2014 to March 2017, was conducted by the officers of the Central Goods & Service Tax, Audit Commissionerate, Ahmedabad.

3 During the course of audit, it was observed that the assessee had received various services on which Service Tax was liable to be paid under Reverse Charge Mechanism, *i.e.*, the service recipient is liable to pay service tax instead of the service provider. Section 68(2) of the Finance Act, 1994 (hereinafter referred to as *the Act*) empowers the Central Government to notify any service in the Official Gazette and the Service Tax thereon shall be paid by such person and in such manner as may be notified and all the provisions of the Act shall apply to such persons as if they are the persons liable for paying service tax. The said Section provides for payment of service tax by a person other than the service provider when service tax is levied under Section 66B. By exercising the powers under sub-section (2) of Section 68 of the Finance Act, 1994, the Government has issued Notification No. 30/2012-ST dated 20.6.2012, as amended, wherein the class of services under the reverse charge mechanism; the person liable to pay service tax; and the extent of service tax payable by such person, has been specified. The person liable to pay service tax in respect of taxable services notified under sub-section (2) of Section 68 of the Act has been stipulated under Rule 2(1)(d) of the Service Tax Rules, 1994. The assessee is a Limited company, registered with the Registrar of Companies and is falling under the category of '*body corporate*'. Thus, in terms of the provisions of Sec. 68(2) of the Act read with Rule 2(1) (d) of the Service Tax Rules, 1994 and Notification No.30/2012 ST, as amended, the assessee, *i.e.*, the service recipient, was liable to pay service tax under Partial Reverse charge/ Full Reverse Charge Mechanism as per Notification No.30/2012 ST dated 20.6.2012, as amended, during the period from 2014-15 to 2016-17.

3.1 Further, during audit it was noticed that the assessee had entered into an Agency Agreement with Bosch Rexroth AG Germany with the objective of developing business, to explore commercial opportunities and canvass customers for the products manufactured / sold by the Principal as well as supply of services/products on behalf of the Principal to customers. The Agreement also mentions that the Agency shall continue to provide the Principal, sales, technical and administrative services as defined in the Agreement. On reconciliation of the figures of taxable income as reflected in their books of accounts, *vis-a-vis* taxable value declared in the ST-3 Returns filed by them during the period from 2014-15 to 2016-17, it was observed that the assessee has not discharged Service Tax liability on some portion of the taxable value of *Agency Services* provided by them to their Principal, M/s. Bosch Rexroth AG Germany, in India. Further

they had short paid service tax on *Repair & maintenance Services* provided to their customers in India. The assessee had also short paid service tax on the taxable value of *GAM expenses reimbursed to them by their Principal*.

4. Consequent to audit, the following revenue paras, detailed in the Final Audit Report 1853/2017-2018 dated 28.05.2018, remained unsettled:

5. **Revenue Para 1 (ST) : Short payment of service tax on Legal & Professional Services received from non-taxable territory**

5.1 During the course of scrutiny of various financial records and reconciliation with the ST-3 returns for the audit period, it was noticed that the assessee had short paid Service Tax on Legal Consultancy Services received by them from the service providers located in the non-taxable territory, under Reverse Charge Mechanism.

5.2 In light of the Notification No. 30/2012-ST dated 20.06.2012, in relation to any taxable service provided or agreed to be provided by any person located in a non-taxable territory and received by any person located in the taxable territory, the recipient of such service will be liable to pay 100% service tax. In view of the above provision, it appeared that the assessee has received legal services provided from the non-taxable territory on which they were liable to discharge service tax under Reverse Charge Mechanism.

5.3 On reconciliation of the ST-3 returns filed by the assessee with their financial records for the period from 2014-15 to 2016-17, it appeared that the assessee had shown less gross taxable value in their ST-3 returns and has therefore short paid service tax of Rs.3,40,597/- on the differential taxable value of Legal Services received by them during 2014-15.

5.4 When it was pointed out, the assessee agreed with the objection under their letter dated 15th April, 2018 and has stated that they have paid the service tax amounting to Rs.3,40,597/-. The assessee however, refused to pay the interest and the penalty.

6. **Revenue Para 2(ST) : Short payment of service tax on recovered GAM expenses incurred for providing various services in India on behalf of their related Companies:**

6.1 During the course of audit it was observed that the assessee had incurred expenses for providing various services on behalf of their related companies in India and had claimed reimbursement of the same. Verification of the financial records for the period from 2014-15 to 2016-17 revealed that the assessee has short paid the service tax on such services, as shown below:

(Rs in actuals)		
YEAR	Difference	Service Tax Payable
2014-15	Rs.44,12,636/-	Rs.5,45,401/-
2015-16	Rs.59,28,804/-	Rs.8,40,633/-
TOTAL		Rs.13,86,034/-

6.2 Any activity of service, when carried out by a person for another, for consideration, would amount to provision of service, as defined in Section 65B (44) of the Act, leviable to Service tax in terms of Section 66B of the Finance Act, 1994. As per Section 67(1)(i) of the Act *ibid*, it is seen that the value of any taxable service, *in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him.* Hence, where the consideration received for provision of services is wholly in money, the value shall be the gross amount charged by the service provider for provision of services. As per the Explanation (a) provided under Section 67, the term 'consideration', includes any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, In view of the above provisions, the GAM expenses incurred by the assessee on behalf of their related companies and duly reimbursed to them is liable to be included in the gross amount charged by them for provision of taxable services.

6.3 On being pointed out, the assessee agreed with the objection under letter dated 15th April, 2018, and stated that they had not discharged service tax on the reimbursed GAM expenses recorded under certain GL heads due to oversight. The assessee also stated that they have paid the service tax amounting to Rs. 13,86,034/-. However, the assessee refused to pay the interest and the penalty.

7. Revenue Para 3 (ST): Short payment of service tax on Agency Services provided :

7.1 During the course of audit, it was noticed that the assessee had entered into an agreement with M/s. Bosch Rexroth AG, Germany to develop business, explore commercial opportunities and canvass the products manufactured/sold by M/s. Bosch Rexroth AG, Germany, in India and had provided taxable services to M/s. Bosch Rexroth AG Germany. The assessee had provided Agency services to M/s Bosch Rexroth AG, Germany, in India for which they had received commission from the Principal. It appeared that the assessee is liable to pay service tax on the commission received against provision of Agency Services to their Principal, M/s Bosch Rexroth AG, Germany. On a comparison of the financial records with the ST-3 returns filed by the assessee, it was noticed that the assessee had short paid service tax on Agency services provided by them to M/s. Bosch Rexroth AG, Germany as detailed below:

(Rs in actuals)

YEAR	As per Records	As per ST-3 Return	Difference	Service Tax Payable
2014-15	Rs.5,73,70,354/-	Rs.2,95,53,166/-	Rs.2,78,17,188/-	Rs.34,38,204/-
2015-16	Rs.5,87,97,656/-	Rs.5,81,94,521/-	Rs.6,03,135/-	Rs.87,455/-
2016-17	Rs.4,33,80,563/-	Rs.3,74,78,624/-	Rs.59,01,939/-	Rs.8,85,291/-
TOTAL				Rs.44,10,950/-

7.2 On being pointed out, the assessee agreed partially with the objection and paid the service tax amounting to Rs. 9,72,746/-, for the period 2015-16 and 2016-17, vide challans No.18032400017567, 18032400017575 & 18032400017523, 18032900016435 & 18032900016422. However, the assessee did not agree to the rest of the demand of Rs. 34,38,204/- pertaining to the period 2014-15. It was submitted by the assessee vide their letter dated 15/4/2018, that in order to determine whether a service is provided in the taxable territory, it is required to resort to the Place of Provision of Service Rules, 2012 ('POPS Rules'). According to Rule 9(c) of the POPS Rules, place of provision of intermediary services shall be the location of the service provider. Prior to 1.10.2014, the definition of the term "Intermediary" as provided under POPS Rules read as – "*means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of service (hereinafter called as the main service) between two or more persons, but does not include a person who provides the main service on his account.*" Therefore, for the period prior to 1/10/2014, the Place of Provision of Service for the services provided by M/s. Bosch Rexroth (India) Private Limited cannot be determined in accordance with Rule 9 but should have been determined according to Rule 3 of POPS Rules. In terms of Rule 3 of the POPS Rules, the location for the provision of intermediary services is outside India, *i.e.*, location of the recipient. Hence, it was submitted that they are not liable to pay the service tax for the period 2014-15. The assessee also refused to pay the interest and the penalty on the entire amount of service tax liability of Rs. 44,10,950/-.

7.3 It seemed that the contention of the assessee for non-payment of service tax liability of Rs. 34,38,204/- for the period 2014-15 cannot be accepted in view of the discussions hereunder.

7.4 As per the Agency Agreement entered into between the assessee and the Principal, M/s. Bosch Rexroth AG, Germany, the assessee is required to develop business, explore commercial opportunities and canvass the products manufactured/sold by M/s. Bosch Rexroth AG, Germany. As per the said Agreement the assessee is also required to provide sales, technical and administrative services to the Principal as well as to represent the Principal with regard to provision of services to customers of the contractual products. Hence, as per the Agency Agreement the assessee is operating as an agent not only for supply of goods but also for supply of services to customers on behalf of the Principal.

7.5 Section 66B specifies the charge of service tax, which is essentially that service tax shall be levied on all services provided or agreed to be provided in a taxable territory, other than services specified in the negative list. Any activity of service, when carried out by a person for another, for consideration, would amount to provision of service, as defined in Section 65B (44) of the Act and would be leviable to Service tax in terms of Section 66B of the Finance Act, 1994. Section 67(i) of the Act *ibid* provides that "*in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him*". Thus, the activity of Agency Services, when carried out by a person for another, for consideration, would amount to provision of service, and the taxable value shall be the gross amount charged by the service provider for provision of services.

7.6 Since the provision of service in the taxable territory is an important ingredient of taxability, Central Government has issued the Place of Provision of Services Rules, 2012. Place of Provision of Service shall be governed and determined by Section 66C (Determination of place of provision of service) and the Place of Provision of Service Rules, 2012. As per Rule 2 (f) of POPS Rules, "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (*hereinafter called the 'main' service*) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account. Generally, an "intermediary" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus an intermediary is involved with two supplies at any one time, i.e., (1) The supply between the principal and the third party; and (2) The supply of his own service (agency service) to his principal for which a fee or commission is usually charged. The definition of intermediary as defined under Rule 2(f) of the Place of Provision of Services Rules, 2012 was amended vide Notification No.14/2014-ST dated 11.7.2014 to include 'supply of goods'. Prior to such amendment only agent or intermediary engaged in providing of services was covered under the definition. The place of provision of specified services has been provided under Rule 9 of the Place of Provision of Services Rules, 2012. The relevant text reads as under:

"RULE 9. Place of provision of specified services. — The place of provision of following services shall be the location of the service provider:

(c) Intermediary services"

7.7 As per Rule 9(c) of the Place of Provision of Services Rules, 2012, the place of provision of service for intermediary service shall be the location of service provider. The assessee is providing agency services to M/s. Bosch Rexroth AG Germany, in the taxable territory of India and is facilitating the provision of composite services such as supply of goods as well as supply of services to the customers on the behalf of the Principal. Rule 14 of the POPS Rules lays down the order of the application of rule and states that where the provision of a service is, *prima facie*, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration. Hence, the provisions of Rule 3 of POPS rules would apply only when any of the rules 4 to 9 are not applicable. In the present case Rule 9 which occurs later among the rules would be applicable for determining the place of provision of intermediary service and as per the above Rule, the place of provision of intermediary services would be the location of the service provider, i.e., the assessee. Moreover, the definition of intermediary, as defined under Rule 2(f) of the Place of Provision of Services Rules, 2012, has been amended vide Notification No.14/2014-ST dated 11.7.2014 to include supply of goods, which would effectively cover the assessee, who is under an contractual agreement to supply goods to customers in India on behalf of the Principal. Hence it appeared that the Agency Services provided by the assessee against consideration in the form of commission received from the Principal, M/s. Bosch Rexroth AG Germany, would be liable to service tax under Section 66B which lays down that service tax shall be levied on all services

provided or agreed to be provided in a taxable territory. In view of the above discussion, it appeared that the assessee is liable to pay service tax of Rs.44,10,950/- on such Agency Services provided to their Principal during the period from 2014-15 to 2016-17 including the unpaid amount of service tax of Rs.34,38,204/- pertaining to the period 2014-15.

7.8 Vide letter dated 15th April, 2018, the assessee partially agreed with the objection raised by audit for the period 2015-16 and 2016-17 and stated that they have paid the service tax amounting to Rs. 9,72,746/-. However, the assessee refused to pay the service tax of Rs.34,38,204/- pertaining to the period 2014-15 and also the interest and penalty on the total service tax liability of Rs.44,10,950/- .

8. Revenue Para 4 (ST): Short payment of service tax on Repair & Maintenance Services:

8.1 On comparison of the financial records *vis- a- vis* the ST-3 returns filed by the assessee for the period from 2014-15 to 2016-17, it was noticed that the assessee has short paid service tax on Repair & Maintenance Services, as shown below:

(Rs in actuals)

YEAR	As per Records	As per ST-3 Return	Difference	Service Tax Payable
2014-15	Rs.10,44,72,073/-	Rs.99,459,192/-	Rs.50,12,881/-	Rs.6,19,592/-
2016-17	Rs.14,10,97,623/-	Rs.139,476,198/-	Rs.16,21,425/-	Rs.2,43,214/-
TOTAL				Rs.8,62,806/-

8.2 Any activity of service; when carried out by a person for another, for consideration, would amount to provision of service, as defined in Section 65B (44) of the Act, leviable to Service tax in terms of Section 66B of the Finance Act, 1994. Section 67(i) of the Act *ibid* provides that "*in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him*". Thus, the activity of repair and maintenance, when carried out by a person for another, for consideration, would amount to provision of service, and the taxable value shall be the gross amount charged by the service provider for provision of services.

8.3 On being pointed out, the assessee agreed with the objection under their letter dated 15th April, 2018 and stated that due to oversight they have short paid service tax as alleged by the department since they did not record the entries against all the relevant GL codes while filing returns. The assessee also stated that they have paid the service tax amounting to Rs.8,62,806/-. The assessee however, refused to pay the interest and the penalty.

9. Revenue Para 5 (ST): Short payment of service tax on Rent-a Cab Services under Reverse Charge Mechanism:

9.1 On reconciliation of the financial records with the ST-3 returns filed by the assessee, it was observed that the said assessee had short paid service tax on rent-a-cab services availed by them during the financial years 2014-15 to 2016-17, under reverse charge mechanism as under:

(Rs in actuals)

YEAR	As per Records	As per ST-3 Return	Difference	Service Tax Payable
2014-15	Rs.19,593,715/-	Rs.18,637,592/-	Rs.9,53,123/-	Rs.47,122/-
2015-16	Rs.22,031,821/-	Rs.9,974,308/-	Rs.1,20,57,513/-	Rs.6,75,221/-
2016-17	Rs.24,909,585/-	Rs.3,317,814/-	Rs.2,15,91,771/-	Rs.12,95,506/-
TOTAL				Rs.20,17,849/-

9.2 As per Notification No.30/2012-ST, dated 20-6-2012, as amended, in case of taxable services provided or agreed to be provided, to a business entity registered as body corporate, located in the taxable territory, by way of renting of a motor vehicle designed to carry passengers on non-abated value, by any person who is not engaged in the similar line of business, percentage of service tax payable by any person liable for paying service Tax other than the service provider, is 50%.

9.3 From a reconciliation of the ST-3 returns filed by the assessee and their financial records for the period, 2014-15 to 2016-17, it appeared that the assessee received rent-a-cab services on which they were liable to pay service tax under Partial reverse charge; the assessee has shown less gross value in their ST-3 returns as compared to their financial statements and has, therefore, short paid service tax of Rs.20,17,849/- on differential gross value charged from them by their service providers. It therefore, appeared that the assessee is liable to pay service tax of Rs.20,17,849/- as shown in Table above, on the differential taxable value of rent-a-cab services received by them during the period 2014-15 to 2016-17.

9.4 On being pointed out, the assessee agreed with the objection under letter dated 15th April 2018 and stated that they have paid the service tax amounting to Rs.20,17,849/-. They did not pay the interest and penalty.

10. Revenue Para 6 (ST): Short payment of service tax on Manpower Supply Services under Reverse Charge Mechanism:

10.1 During the course of scrutiny of the financial records and reconciliation with the ST-3 returns for the audit period, it was noticed that the assessee had short paid Service Tax on Manpower Supply Services under Reverse Charge Mechanism as per Noti. 30/2012-ST dated 20.06.2012 as under:-

(Rs in actuals)

YEAR	As per Records	As per ST-3 Return	Difference	Service Tax Payable
2014-15	Rs.16,639,602/-	Rs.15,676,070/-	Rs. 9,63,532/-	Rs.89,319/-
2015-16	Rs.24,233,006/-	Rs.23,535,632/-	Rs. 6,97,374/-	Rs.97,632/-

2016-17	Rs.13,482,281/-	Rs.9,166,754/-	Rs.43,15,527/-	Rs.6,47,329/-
TOTAL				Rs.8,34,280/-

10.2 In relation to taxable services provided or agreed to be provided by way of supply of manpower for any purposes or security services, by an individual, Hindu Undivided Family or partnership firm, whether registered or not including association of persons, located in the taxable territory to a business entity registered as a body corporate, located in the taxable territory, then the recipient will be liable to pay 100% service tax. This amendment was effective w.e.f 1.4.2015 vide Notification No.7/2015-ST dated 1.3.2015. Prior to that the recipient was liable to pay 75% of the service tax and the remaining 25% was liable to be paid by the service provider. In this case, the assessee is a limited company which is body corporate; and therefore, the extent of service tax payable thereon by the person liable for paying service tax other than the service provider, w.e.f. 1.4.2015 would be 100%.

10.3 On reconciliation of the ST-3 returns filed by the assessee with their financial records for the period from 2014-15 to 2016-17, it appeared that the assessee has shown less gross taxable value in their ST-3 returns against Manpower Supply Services on which they were liable to pay service tax under reverse charge. It appeared that the assessee has short paid service tax of Rs.8,34,280/-on differential gross value charged from them for Manpower Supply Services. It therefore, appeared that the assessee is liable to pay service tax of Rs.8,34,280/-as shown in above Table, on the differential taxable value of Manpower Supply Services received by them during the period 2014-15 to 2016-17.

10.4 On being pointed out, the assessee agreed with the objection under letter dated 15th April, 2018 and stated that they have paid the service tax amounting to Rs.8,34,280/-. The assessee however, refused to pay the interest and penalty.

11. Revenue Para 7(ST): Short payment of service tax on GTA Services under Reverse Charge Mechanism:

11.1 On scrutiny of the various financial records and reconciliation with the ST-3 returns for the audit period, it was noticed that the assessee had short paid Service Tax on Goods Transport Agency Services under Reverse Charge Mechanism as per the Table below: -

(Rs in actuals)

YEAR	As per Records	As per ST-3 Return	Difference	Service Tax Payable
2014-15	Rs.7,877,725/-	Rs.7,417,503/-	Rs.4,60,222/-	Rs.17,065/-
2015-16	Rs.7,826,307/-	Rs.7,703,878/-	Rs.1,22,499/-	Rs.5,145/-
2016-17	RS.22,630,523/-	Rs.22,049,393/-	Rs.5,81,130/-	Rs.26,151/-
TOTAL				Rs.48,681/-

11.2 In the case of taxable services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is, any body corporate established, by or under any law; the extent of service tax payable thereon by the person liable for paying service tax other than the service provider, is 100%.

11.3 On reconciliation of the ST-3 returns filed by the assessee with their financial records for the period from 2014-15 to 2016-2017, it appeared that the assessee has shown less gross value in their ST-3 returns against GTA services on which they were liable to pay service tax under reverse charge and is therefore liable to pay service tax of Rs.48,681/- as shown in Table above, on the differential taxable value of GTA Services received by them during the period 2014-15 to 2016-2017.

11.4 On being pointed out, the assessee agreed with the objection under their letter dated 15th April, 2018 and stated that they have paid the service tax amounting to Rs.48,681/-. The assessee however, refused to pay the interest and the penalty.

12. Revenue Para 8 (ST): Short payment of service tax on Legal Services under Reverse Charge Mechanism:

12.1 During the course of scrutiny of various financial records and reconciliation with the ST-3 returns for the audit period, it was noticed that the assessee had short paid Service Tax on Legal Consultancy Services received by them, under Reverse Charge Mechanism as per Notif. 30/2012-ST dated 20.06.2012 as under:-

(Rs in actuals)

YEAR	As per Records	As per ST-3 Return	Difference	Service Tax Payable
2015-16	Rs.5,50,000/-	Rs.5,10,000/-	Rs.40,000/-	Rs.5,800/-
2016-17	RS.4,80,412/-	Rs.4,20,000/-	Rs.60,412/-	Rs.9,062/-
TOTAL				Rs.14,862/-

12.2 In relation to taxable services provided or agreed to be provided by an individual advocate or a firm of advocates by way of legal services to any business entity located in the taxable territory, then the recipient will be liable to pay 100% service tax. As per Rule 2(cca) of Service Tax Rules, 1994 *legal service* means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority. Section 65B(17) of the Finance Act, 1994 defines 'business entity' as any personal ordinarily carrying out any activity relating to industry commerce or any other business or profession.

12.3 On reconciliation of the ST-3 returns filed by the assessee with their financial records for the period from 2014-15 to 2016-17, it appeared that the assessee has shown less gross taxable value in their ST-3 returns against legal services on which they were liable to pay service tax under reverse charge and has therefore, short paid service tax of Rs.14,862/-on differential gross value incurred by them on legal services. It therefore, appeared that the assessee is liable to pay service tax of Rs.14,862/-as shown in the above Table, on the differential taxable value of Legal Services received by them during the period 2014-15 to 2016-17.

12.4 On being pointed out, the assessee agreed with the objection under letter dated 15th April, 2018 and stated that they have paid the service tax amounting to Rs.14,862/-. However, the assessee did not pay the interest and penalty.

13.1 Thus, as evident from reconciliation of the financial records *vis-à-vis* the ST-3 Returns filed by the assessee during the period from 2014-15 to 2016-17, it appeared that the assessee has received taxable services in the nature of (1) Legal & Professional Services received from non-taxable territory; (2) Rent-a-Cab Services; (3) Manpower Supply Services; (4) GTA Services and (5) Legal Services, during the period from April 2014 to March 2017, on which they have short paid Service Tax of Rs.32,56,269/-, as recipient of service, as per Notification No.30/2012 ST dated 20.6.2012, as amended, issued in terms of Sec. 68(2) of the Finance Act, 1994 read with Rule 2(1)(d) of the Service Tax Rules, 1994. The assessee has agreed to their service tax liability under their letter dated 15th April, 2018 and has stated that they have paid their service tax liability of Rs.32,56,269/- as recipient of service as per Notification No.30/2012 ST dated 20.6.2012, as amended.

13.2 On reconciliation of the financial records *vis-à-vis* the ST-3 Returns filed by the assessee, it also appeared that the assessee has provided taxable services of (1) *Agency Services*, (2) *GAM expenses, reimbursed to them by their Principal* and (2) *Repair and Maintenance Services*, on which service tax is leviable under Section 66B, and on which they have short paid service tax of Rs.66,59,790/- on differential gross value charged by them from their customers. Against such taxable services provided by the assessee, they have stated that they have paid service tax of Rs.8,62,806/- on Repair & Maintenance services; Rs.13,86,034/- on recovered GAM expenses; and also partially paid the service tax liability of Rs.9,72,746/- on Agency services provided by them, in India, on behalf of their Principal, M/s. Bosch Rexroth AG, Germany, for the period 2015-16 and 2016-17 but has refused to pay the service tax liability of Rs.34,38,204/- for the period 2014-15.

14. Pre-Show Cause Notice consultation for Litigation Management and Dispute Resolution, in terms of instructions issued from File No 1080/09/DLA/MISC/15 dated 21.12.2015, F.No. 1080/DLA/CC Conference/2016 dated 13.10.2016 and Master Circular No. 1053/02/2017-CX dated 10.03.2017, was granted on 02/11/2018, before the Joint Commissioner, Central Tax Audit, Ahmedabad. The assessee submitted a letter dated 02/11/2018 under which copies of challans No. 18032400017523, 18032900016422, 18032700034888, 18032400017567, 18032400017575, 18032900016435 all dated 5.3.2018 reflecting total amount of Rs.64,77,535/- deposited towards service tax liability, were enclosed. A copy of challan No. 500024 dated 1.11.2018 showing deposit made towards interest of Rs.18,75,722/- was also attached. However, Form GST DRC-03 reflecting intimation of payment made voluntarily could only be furnished by the assessee for a total amount of Rs.37,45,722/- against the total service tax liability of Rs.64,77,535/-.

15. The services received by the assessee on which they were liable to pay service tax under Partial Reverse charge/ Full Reverse Charge Mechanism as per Notification No.30/2012 ST dated

20.6.2012, as amended, as also the taxable services of (1) *Agency Services*, (2) *Recovered GAM expenses* and (2) *Repair and Maintenance Services*, provided by them during the period from 2014-15 to 2016-17, discussed hereinabove and service tax liability against such taxable services is summarized below :-

Sr No	Description of service	Total Service tax required to be paid by the assessee (Actual in Rs.)	Service tax stated to have been paid by the assessee (Actual in Rs.)	Unpaid service tax (Actual in Rs.)
a	b	c	d	e
1	Legal & Professional Services received from non-taxable territory (RCM)	3,40,597/-	3,40,597/-	0
2	Rent-a-Cab Services (RCM)	20,17,849/-	20,17,849/-	0
3	Manpower Supply Services (RCM)	8,34,280/-	8,34,280/-	0
4	GTA Services (RCM)	48,681/-	48,681/-	0
5	Legal Services (RCM)	14,862/-	14,862/-	0
	TOTAL (A)	32,56,269/-	32,56,269/-	0
1	Recovered GAM expenses	13,86,034/-	13,86,034/-	0
2	Agency Services	44,10,950/-	9,72,746/-	34,38,204/-
3	Repair & Maintenance Services	8,62,806/-	8,62,806/-	0
	TOTAL (B)	66,59,790/-	32,21,586/-	34,38,204/-
	TOTAL (A)+ (B)	99,16,059/-	64,77,855/- (But Form GST DRC-03 submitted for payment of Rs.37,45,722/- only)	34,38,204/- (Additionally, DRC-03 not submitted for payment of service tax of Rs.27,32,133/-)

16. The service tax liability of the assessee under Reverse Charge Mechanism totaling Rs.32,56,269/- was detected consequent to initiation of audit and verification of the records by the officers. Similarly, the fact of nonpayment of service tax of Rs. 66,59,790/- on taxable services provided towards GAM expenses; Agency Services and on Repair and Maintenance Services by the assessee, was also unearthed during audit. The assessee had not disclosed the short-payment of Service tax under Reverse charge mechanism and under Forward charge, to the department in any manner. Further, it appears that the assessee has not disclosed the full amount of consideration received by them on provision of the services in the ST-3 returns filed by them for the period from 2014-15 to 2016-17 and has therefore, suppressed the material facts from the

department. If the audit had not been undertaken by the department, such taxable services received/provided by the assessee would have escaped assessment, resulting in evasion of Service tax. Hence, it appeared that the assessee has deliberately and willfully suppressed the material facts from the department with an intent to evade payment of service tax.

17. It therefore, appeared that the assessee has contravened the provisions of Section 67, 68, & 70 of the Finance Act, 1994 and Rule 6 and Rule 7 of the Service Tax Rules, 1994 inasmuch as they have :-

- (a) contravened Section 67 of the Finance Act, 1994 read with Rule 6(1) of the Service Tax Rules, 1994 inasmuch as they have failed to correctly self-assess their Service Tax Liability at the specified rates and in such manner and within such period as discussed *supra*;
- (b) contravened Section 68 of the Finance Act, 1994 read with Rule 2(1)(d) and Rule 6 of the Service Tax Rules, 1994 inasmuch as they failed to pay the Service Tax on the gross taxable value to the credit of the Central Government, by the 5th of the quarter immediately following the calendar quarter, in which the payments are received, towards the value of taxable services;
- (c) contravened Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they failed to submit a correct half-yearly return incorporating the details of the Service Tax discussed *supra*, along with a copy of the Challan in form GAR-7, for the quarters covered in the half-yearly returns.

18. The assessee has neither agreed to nor paid their service tax liability amounting to Rs.34,38,204/- on the Agency Services provided by them during the period 2014-15 on behalf of M/s. Bosch Rexroth AG, Germany, in India. They have not submitted Form GST-DRC-03 for showing voluntary payment of service tax amounting to Rs.27,32,133/- They have also refused to pay the interest and penalty on the total service tax liability of Rs.99,16,059/- (as reflected in column no.(c) of the above Table).

19. It appeared that interest is to be charged and recovered from the assessee under the provisions of Section 75 of the Finance Act, 1994 on the service tax liable to be paid by them. As per Section 75 of the Act *ibid* the person who is liable to pay the tax in accordance with the provisions of Section 68 or rules made thereunder, who fails to credit the tax to any part thereof to the account of the Central Government within the period prescribed shall pay simple interest at such rate as is for the time being fixed by the Central Government by Notification in the Official Gazette for the period for which such crediting of the tax or any part thereof is delayed. Thus in view of the above provisions, it appeared that the assessee is liable to pay interest on the service tax liability of Rs.99,16,059/-.

20. Sub-section (1) of Section 78 of the Finance Act, 1994 provides 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 fraud or collusion or willful misstatement or suppression of facts of contravention

of any of the provisions of this Chapter or the rules made thereunder with intent to evade payment of service tax, the person who has been served notice under the proviso to 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 which shall equal to hundred per cent of the amount of such service tax.

21 All the acts of contravention on the part of the assessee, as discussed in para 17, appeared to have been committed with an intent to evade payment of Service Tax, and therefore, the Service Tax short paid/not paid amounting to Rs. 99,16,059/- is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of 5 years along with interest under Section 75 of the Finance Act, 1994. It appeared that they have suppressed the material facts from the department with intent to evade the payment of Service Tax and has also contravened various provisions of the Finance Act, 1994 and Service Tax Rules, 1994, and has therefore rendered themselves liable for penalty under Section 78 of the Finance Act, 1994. In view thereof, service tax short paid/not paid amounting to Rs 99,16,059/- on the gross value of taxable services received/ provided by them is liable to be demanded and recovered from the assessee under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 along with interest under Section 75 of the Act, *ibid*. It also appeared that by the act of not disclosing the full amount of consideration received on account of provision of services, the assessee is liable for penal action under Section 78(1) of the Act, *ibid*. The service tax of Rs.37,45,722/-, voluntarily paid by the assessee under Form GST-DRC-03 is required to be appropriated against their total service tax liability of Rs.99,16,059/-.

22. Therefore, SCN F.No.VI/1(b)CTA/Tech-20/SCN/Bosch Rexroth/2018-19 17.6.2019 was issued to the assessee by the Additional Commissioner of Central Excise, Audit Commissionerate, Ahmedabad proposing the following:

- i. Service Tax of Rs.99,16,059 /- should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994 and Service Tax amounting to Rs.37,45,722/-, deposited and debited into the Government account under DRC-03, after initiation of audit, should not be appropriated against the demand of Rs.99,16,059 /- under the proviso to sub-section (1) Section 73 of the Finance Act, 1994;
- ii. Interest at the appropriate rate should not be charged and recovered from them under Section 75 of the Finance Act, 1994 on the Service Tax demand of Rs.99,16,059 /-;
- iii. Penalty should not be imposed on them under Section 78(1) of the Finance Act, 1994 for suppressing the value of taxable services provided/received by them with an intent to evade payment of Service Tax.

Defence Reply:

23. Vide their letter dated 16.07.2019, the assessee requested for extension of time by another sixty days so as to enable the filing of a detailed reply. However, they had not submitted the reply within the said period.

Personal Hearing:

24 Personal hearing was offered to the assessee on 19.08.2020, 13.10.2020, 22.12.2020, 31.12.2020 and 28.01.2020. The assessee kept on asking for adjournments but did not appear even for the hearing offered to them for the 5th time on 28.01.2020. It may be mentioned here that the assessee was also offered virtual hearing as per CBIC's Circular No.390/Misc/3/2019-JC dated 27.04.2020. I, therefore, take up the case for decision, ex-parte, on the basis of evidences on record.

Discussion and Findings

25 I have carefully gone through the facts of the case and the submissions made by the assessee in writing.

26 I find that a total of 8 objections were raised in the audit verification against the assessee. The objections related to short payment of duty/tax on legal and professional services received from non taxable territory, short payment of service tax on GAM expenses, short payment of service tax on agency services, short payment of service tax on repair & maintenance services, short payment of service tax on rent-a-cab services, short payment of service tax on manpower supply services, short payment of service tax on GTA services and lastly short payment of service tax on legal services. For all these objections, except the one on short payment of service tax on agency services, the assessee have debited the entire amount of service tax, as stated in their letter dated 15.4.2018. They have also debited an amount of Rs 9,72,746/- on the objection relating to agency services out of the total demand of Rs 44,10,950/- for this issue. They have not paid the interest and penalty for any of the 8 objections.

27 I take up the case for non-payment of interest and penalty for the 7 objections, except the one of agency services.

28 I find that the audit had raised 7 objections on different issues as detailed above and also tabulated at Para 15 of the notice. For all the objections, the assessee have agreed and paid the entire service tax liability.

29 Section 75 of the Act reads as under:

“SECTION 75. [Interest on delayed payment of service tax. — Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest [at 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”

30 It is considerably clear that interest automatically gets accrued when the demand is accepted and also paid in this case. The assessee have not provided any reasons or law for exemption from payment of interest when they have accepted and paid the duty themselves.

Therefore, interest is recoverable from them on the delayed payment of service tax against the 7 objections.

31 I find that a reconciliation of the value shown in their financial records and those in their ST3 returns filed by them was carried out. There was a difference found in the value shown in the ST3 returns as compared to their financial records. They had shown lower values on their ST3 returns in comparison to their financial records. Therefore, there was a short payment of service tax detected in each of the services mentioned above. I find that despite their knowledge, the assessee have short paid the service tax on all of the services mentioned above. They have suppressed the value of the services provided by them and shown lesser value in their ST3 returns. Therefore, the case for suppression is established. Hence, the assessee cannot escape its liability for penal action under the provisions of Section 78(1) of the Act on the 7 objections in discussion.

32 I now come to the issue relating to short payment of service tax pertaining to agency services. I find that there is no dispute of payment of service tax for the period from 2015-16 to 2016-17. The assessee have paid the service tax amounting to Rs 9,72,746/- for these periods. The period of 2014-15 is in dispute where the remaining service tax of Rs 34,38,204/- has not been paid by the assessee.

33 It is the contention of the assessee that for the period prior to 1.10.2014, the place of provision could not be determined as per the provisions of Rule 9 of the Place of Provision Rules, 2012 ('POPR'). It had to be determined under the provisions of Rule 3 of POPR where the location for the provision of intermediary services was outside India. Therefore, they were not liable to discharge service tax for the period 2014-15.

34 I find that the issue on merits is not disputed by the assessee. In fact, they have paid the service tax for the period from 2015-16 to 2016-17. The dispute is only related to the period 2014-15.

35 As per Rule 2 (f) of POPR, "*intermediary*" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (*hereinafter called the 'main' service*) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account. Generally, an "*intermediary*" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus an intermediary is involved with two supplies at any one time, (1) The supply between the principal and the third party; and (2) The supply of his own service (agency service) to his principal for which a fee or commission is usually charged. The definition of intermediary under Rule 2(f) of the POPR was amended vide Notification No 14/2014-ST dated 11.7.2014 to include 'supply of goods'. Prior to such amendment, only agent or intermediary engaged in providing of services was covered under the definition.

36 As per Rule 9(c) of POPR, the place of provision of service for intermediary service shall be the location of service provider. The assessee is providing agency services to M/s Bosch Rexroth AG, Germany and is facilitating the provision of composite services such as supply of goods as well as supply of services to the customers on the behalf of their Principal in the taxable territory of India. Rule 14 of the POPR lays down the order of the application of Rules and states that where the provision of a service is, *prima facie*, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration. In the present case Rule 9 of the POPR occurs later among the rules and therefore, this Rule would be applicable for determining the place of provision of intermediary service. As per Rule 9 of the POPR, the place of provision of intermediary services would be the location of the service provider, *i.e.*, the assessee. Moreover, the definition of intermediary, as defined under Rule 2(f) of the POPR, had been amended vide Notification No14/2014-ST dated 11.7.2014 to include supply of goods, which would effectively cover the assessee, who is under a contractual agreement to supply goods to customers in India on behalf of their Principal. Accordingly, Rule 3 of the POPR would not come into play in this case. It is clear that the Agency Services has been provided by the assessee against consideration in the form of commission received from the Principal, M/s Bosch Rexroth AG, Germany. Hence, the assessee as the service provider in terms of the provisions of Rule 9(c) of the POPR would be liable to pay service tax under the provisions of Section 66B of the Act. In view of the above discussion, I find that the assessee is liable to pay service tax of Rs 34,38,204/- on such agency Services provided to their Principal during the period 2014-15 in addition to the payment of Rs 9,72,746/- which they have already paid.

37 It is considerably clear that interest automatically gets accrued when the demand is confirmed and also, the amount of Rs. 9,72,746/- has already been paid in this case. The assessee has not provided any reasons or law for exemption from payment of interest when they have accepted and paid the partial tax themselves. Therefore, interest is recoverable from them on the delayed payment of service tax against the confirmed demand on agency charges for the entire period from 2014-15 to 2016-17.

38 I find that a reconciliation of the value shown in their financial records and those in their ST3 returns filed by them was carried out. There was a difference found in the value shown in the ST3 returns as compared to their financial records. They had shown lower values on their ST3 returns in comparison to their financial records. Therefore, there was a short payment of service tax detected for agency services from 2014-15 to 2016-17. It is an admitted fact that they have paid the service tax for the period from 2015-16 and 2016-17 and therefore, there was a clear knowledge that service tax was leviable on the agency services provided by them. They have suppressed the value of the services provided by them and shown lesser value in their ST3 returns. Therefore, the case for suppression is established. Further, they have wrongly claimed the provisions of Rule 3 of the POPR when Rule 9(c) of the POPR read with Rule 14 of the POPR were applicable to the case. The Rules alongwith the definition of 'intermediary' effective from 11.7.2014 are clear and explicit in saying that the place of provision would be the

location of the service provider i.e. the assessee. Therefore, the assessee cannot escape its liability for penal action under the provisions of Section 78(1) of the Act on the issue relating to agency services.

39 Having considered my above findings, I pass the following order.

Order

- i. I confirm the demand of Service Tax and order to recover the Service Tax amounting to Rs. 99,16,059/- (Rupees Ninety nine lacs sixteen thousand fifty nine only), under the proviso to Section 73(1) of the Finance Act, 1994. As the assessee have debited the service tax amounting to Rs. 37,45,722/-, vide DRC 03, I order to adjust and appropriate the said amount of Rs. 37,45,722/- against the confirmed demand.
- ii. I order to charge and recover interest on the confirmed demand, under the provisions of Section 75 of the Finance Act, 1994; and
- iii. I impose a penalty of Rs. 99,16,059/- (Rupees Ninety nine lakhs sixteen thousand and fifty nine only) on the assessee, under the provisions of Section 78(1) of the Finance Act, 1994..
- iv. In terms of the proviso to Section 78(1), where service tax and interest is paid within a period of thirty days of —

the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent of the service tax so determined :

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period.

40. Show Cause Notice No.VI/1(b)CTA/Tech-20/SCN/Bosch Rexroth/2018-19 dated 17.06.2019 is disposed-of in the above manner.



F.No: STC/15-35/OA/2019

(M/L. Meena)
Additional Commissioner
Central GST & Central Tax
Ahmedabad North 19/3

Date:19.03.2021.

By Regd. Post AD

To
M/s. Bosch Rexroth India Pvt. Ltd.,
Survey No.206/2,207,214/2P,211,212, 213/4,213/3P,213/1P
Sanand-Viramgam Highway
Iyava, Sanand, Ahmedabad-382170.

Copy to:

1. The Commissioner of Central GST & Central Tax, Ahmedabad North.
2. The Deputy/Assistant Commissioner Division-III, Central GST & Central Excise Tax, Ahmedabad North.
3. The Superintendent of Central GST & Central Excise, AR IV, Division-III, Ahmedabad North.
4. Guard File.