


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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं./ STC/15-113/OA/2020

DIN- 20220364WT0000666CAD

आदेश की तारीख / Date of Order :10.03.2022
जारी करने की तारीख / Date of Issue : 11.03.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 7b/2021-22

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

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

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

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

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)



3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से क) प्रतियाँ संलग्न की जाएंगीम एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 00.1रुपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 00.4 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice No. STC/15-113/OA/2020 dated 21.10.2020 issued to M/s. Deep Industries Limited, Opp. Suryanarayan Bunglows, State Highway, Motera, Sabarmati, Ahmedabad.

ORDER IN ORIGINAL NO. AHM-EXCUS-002-COMMR- /2021-22.

M/s. Deep Industries Limited, Opp. Suryanarayan Bunglows, State Highway, Motera, Sabarmati, Ahmedabad, were issued SCN No.STC/15-113/OA/2020 dated 21.10.2020 by the Principal Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/s. DEEP INDUSTRIES LIMITED, OPP. SURYANARAYAN BUNGLOWS, STATE HIGH WAY, MOTERA, SABARMATI, AHMEDABAD, ARE AS FOLLOWS;

M/s. Deep Industries Limited, Opp. Suryanarayan Bunglows, State Highway, Motera, Sabarmati, Ahmedabad (hereinafter referred to as the "noticee" for the sake of brevity) are engaged in providing taxable services, and are holding Service Tax Registration No. AAACD6915EST001.

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

3. As per the records available with the Divisional Office of Division-VII and on going through the Third Party Data provided by CBDT of the said noticee for the F.Y.2015-16, the total sales of service (Value from ITR/ Form 26AS) were found to be not tallying with Gross Value of Service Provided vis-à-vis as declared in ST-3 Return of the F.Y.2015-16. Therefore, it appeared that the said noticee had declared less taxable value in their Service Tax Returns (ST-3) for the F.Y.2015-16 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16. The difference in value as observed for F.Y. 2015-16 was found to be as under:

(Amount in Rs.)

Sr No	F. Y.	TOTAL GROSS VALUE PROVIDED (STR)	Sale of Service (ITR)	TOTAL VALUE for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	HIGHER VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Resultant Service Tax short paid (including Cess)
1	2015-16	1601293965	1690717240	1862012733	260718768	37804221

Therefore, it appeared that the said noticee had short paid service tax to the extent of Rs.3,78,04,221/- (including Cess) on the differential value of Rs.26,07,18,768/-.

4. The noticee were requested to provide explanation to the department vide letter dated 06.10.2020 for difference in value shown in ST-3 Returns vis-à-vis

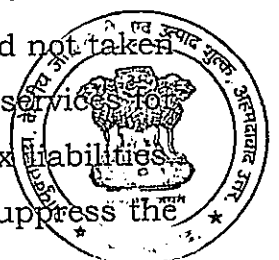


that shown in Income Tax return filed for FY 2015-16. It was also requested to furnish the documents viz. Balance Sheet, Profit & Loss account, Income Tax Returns, Form 26AS, Service Income and Service Tax Ledger and Service Tax (ST3) Returns for FY 2015-16. But, the noticee neither produced any documentary evidences nor submitted any reply in the matter.

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

6. From the documentary evidence available at the relevant time, it appeared that the said noticee had failed to pay/short paid/deposit Service Tax to the extent of Rs. 3,78,04,221/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 2015-16 vis-à-vis their ITR/Form 26AS. The said short payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said noticee had failed to discharged the Service Tax liability of Rs. 3,78,04,221/- (including Cess) worked out on differential value of Rs. 26,07,18,768/-, and therefore, Service Tax was required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

7. The government had from the very beginning placed full trust on the service provider so far as service tax is concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence were in place. Taxable service provider was not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust was placed on the service provider and private records maintained by him for normal business purposes were accepted, practically for all purposes of Service tax. These operated on the basis of honesty of the service provider; however the governing statutory provisions created an absolute liability when any provision was contravened or a breach of trust was done by the service provider, no matter how innocently. It appeared that the noticee had not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider appeared to have made deliberated efforts to suppress the

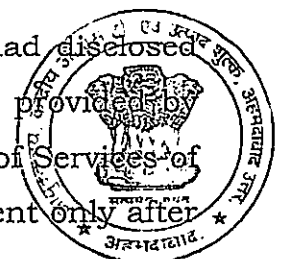


value of taxable service to the department and appeared to have not paid the liable service tax in utter disregard to the requirements of law and the trust reposed in them. Such outright act in defiance of law, appeared to have rendered them liable for stringent penal action under the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

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

9. Therefore, it appeared that the said noticee had (i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994; (ii) Failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994; (iii) Failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have not paid service tax as worked out in the Table for Financial Year 2015-16; (iv) by these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 made themselves liable to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (v) made themselves liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994; (vi) contravened Section 77 of the Finance Act, 1994 in as much as they had not provided required data /documents as called for, from them.

10. It had been noticed that at no point of time, the noticee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value, that had come to the notice of the Department only after



going through the Third Party data generated by CBDT, and shared with CBIC for the Financial Year 2015-16. From the evidences gathered/ available at the relevant time, it appeared that the said noticee had knowingly suppressed the facts regarding receipt of/providing of services by them, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 3,78,04,221/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the noticee which were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government. It appeared that the same had to be recovered from the noticee under the provisions of Section 73(1) of the Finance Act,1994 readwith Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST by invoking extended period of time, alongwith interest under the provisions of Section 75 of Finance Act,1994 and penalty under Section 78 of the Finance Act,1994.

11. No data was shared by the CBDT with CBIC, for the period 2016-17 & 2017-18 (upto June-2017) and the noticee also had failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of issuance of SCN it was not possible to quantify short payment of Service Tax, if any, for the period 2016-17 & 2017-18 (upto June-2017).

Unquantified demand at the time of issuance of SCN.

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issue by the CBEC, New Delhi clarified that:

'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'

12. The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2016-17& 2017-18 (upto June-2017) had not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. The noticee had also failed to provide the required information even after the issuance of letters from the Department, and the assessable value for the year 2016-17 & 2017-18 (upto June-2017) was not

ascertainable at the time of issuance of this Show Cause Notice. If any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said noticee, action was to be initiated against the said noticee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period 2016-17 & 2017-18 (upto June-2017) covered under subject Show Cause Notice, was to be recovered from the noticee.

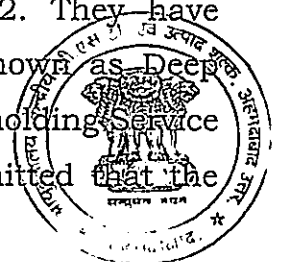
13. The proceedings proposed and action that may be taken against the said noticee, under the aforementioned provisions of the Central Excise Act, 1994 and the Central Excise Rules, 2002 or the Finance Act 1994 read with the Service Tax Rules, 1994 framed there under, were saved by the Section 174(2) of the CGST Act, 2017 and therefore the provisions of the Chapter V of the Finance Act, 1994 and the Rules made thereunder were applicable for the purpose of demand of Tax, Interest etc. and imposition of penalty under the subject SCN.

14. Therefore, Show Cause Notice F. No. STC/15-113/OA/2020 dated 21.10.2020 was issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North to M/s. Deep Industries Limited, asking them as to why:

- (i) The Service Tax to the extent of Rs. 3,78,04,221/- (including cess) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;
- (ii) Service Tax liability not paid during the financial year 2016-17 and 2017-18 (upto June-2017), ascertained in future, as per paras no. 7 and 8, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iv) Penalty under the provisions of Section 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.
- (v) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

DEFENCE REPLY:

15. The noticee have tendered their written submission dated 11.12.2020 which was submitted to the Commissionerate on 11.02.2022. They have submitted that M/s. Deep Energy Resources Ltd (Formerly known as Deep Industries Limited), were registered under Service Tax and were holding Service Tax Registration Number AAACD6915EST001. They have submitted that the



subject SCN had been issued based on the difference of income between value of Balance Sheet/P&L/ Form 26AS and the value declared in ST 3 Returns.

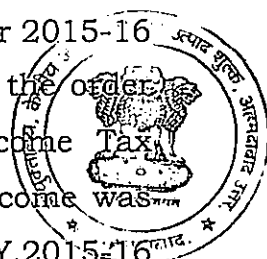
- They have submitted that the SCN had been issued merely based on the difference between value as per TDS Statement (Form 26AS) and ST-3 returns; that Form 26AS was generated on the basis of the information supplied by the Service Recipients to the Income Tax Department for the year F.Y.2015-16.
- They have submitted that thier books of accounts for the period 2015-16 & 2016-17 had been audited under EA-2000 by the Service Tax Department and Final Audit Report (FAR) No. 755/2017-18 dated 27/12/2017 was also issued to them.
- They have submitted that their books of accounts and other records like Form 26AS were already audited and duly reconciled with the periodical service tax returns filed by them under the EA2000 audit; that the departmental audit had been performed as per the procedure prescribed under the Audit Manual. They have submitted that the service tax department had already verified their books of accounts, reconciled the required figures and had issued proper Final Audit Report. That, no unreconciled figures were noticed by the department. Therefore, even after such verification and audit, Show Cause Notice was issued without any investigation or verification of any documents or data, and no demand should be confirmed based on such Show Cause Notice.
- They have submitted the reconcilations statement for the F.Y.2015-16 & 2016-17 as under;

Particulars	2015-16	2016-17 (for reference)
Taxable Value as per Service Tax Return	1,43,00,31,540	2,61,74,57,665
Exempted Services Declared in ST Returns	17,12,62,424	7,84,74,266
Total Value as per ST-3 returns	1,60,12,93,964	2,69,59,31,931
Add:Unbilled Amount - Closing	19,58,97,536	27,37,70,597
Less: Unbilled amount -Opening	(-)10,64,74,270	(-)19,58,97,536
Total	1,69,07,17,230	2,77,38,04,992
INCOME AS PER FINANCIAL STATEMENT	1,69,07,17,240	2,77,38,04,995
DIFFERENCE ANY	-10	-5

- They have submitted that value shown of Rs.1,86,20,12,733/- in para-3 of the SCN, was the value on which TDS was deducted by various service receipt against the total income of Rs.1,69,07,17,240/- declared in audited financial statement for F.Y.2015-16; that there was difference approximately of Rs.17 Crore which was reported in Form 26AS on the higher side. They have submitted that in ST3 value declared of Rs.160 Crore, against Rs. 169 Crore declared in audited financial returns for F.Y.2015-16. *Thus, there is around Rs. 17 cr. approximately highly*

reported in the Form 26AS. Further, in ST-3 around Rs. 160 cr. is declared against Rs. 169 cr declared in audited financial and thus there is difference of Rs. 9 cr. Thus, total difference of Rs. 26 cr (Rs. 17 cr + Rs. 9 cr.) is there and Service tax of Rs. 3. 78 cr. being 14.5% on Rs. 26 Cr is demanded in SCNⁿ.(SIC)

- They have submitted that, in ST-3 returns value of Rs. 160 Crore was declared against Rs.169 Crore in the audited financial for F.Y.2015-16 and thus there was difference of Rs. 9 Crore. They have submitted that at year ending of March-2016 unbilled amount was around Rs. 19.59 Cr. against closing balance of unbilled amount of Rs. 10.65 Crore. Thus, there was difference of Rs. 9 Crore, which was the difference between amount declared in ST-3 returns and audited financial statements for F.Y.2015-16. They have submitted in next year i.e.2016-17, service tax on Rs. 19.59 Crore was paid by them, which could be verified from the reconciliation statement submitted by them for the year 2016-17.
- They have submitted that on Rs. 1,86,20,12,733/- TDS was deducted by the various service recipient against the total income of Rs.1,69,07,17,240/- declared in the audited financial statement for F.Y.2015-16. That there was a difference of Rs.17 Crore approximately on the higher side reported in the Form 26AS. They have submitted that figures reported in the Form 26AS were reported by the service recipients, the figures reported in 26AS represent the value on which TDS was deducted by the service recipient, not the taxable value of service tax. In many cases, service recipient had deducted TDS on total value of invoice raised by them including service tax. They have submitted that during the FY 2015-16, services was provided by them to Oil and Natural Gas Corporation (ONGC) for Rs. 92.88 crore, however, against this ONGC have deducted TDS and reported Rs. 106 crore in Form 26AS. They have submitted that ONGC had deducted TDS not only on value of service provided to them but including the value of service tax also and total bill amount including service tax was reported by ONGC to the income tax department. They have submitted 8 sample invoices raised to ONGC for the F.Y. 2015-16, which reveals that ONGC had deducted TDS on total invoice value including service tax.
- They have submitted that their books of accounts were subject to Scrutiny under Section 143(3) of the Income Tax Act for the year 2015-16 (Assessment Year 2016-17). They have submitted the copy of the order dated 10/12/2018 passed for such proceeding by the Income Tax Department; that it can be confirmed and verified that no income was added to income shown in audited financial statement for F.Y.2015-16



based on the figures reported by the service recipient. They have submitted that the Income Tax department, from whom data of Form 26AS was obtained by the Service Tax Department, had also not considered this amount as additional income and had also ignored the figures after due scrutiny.

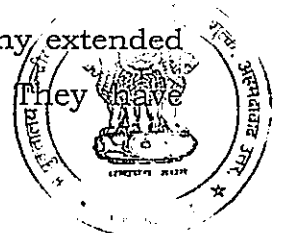
➤ **ISSUANCE OF SCN WITHOUT "PRE SCN CONSULTATION" IS INVALID AND NOT SUSTAINABLE:**

- They have submitted that no opportunity of "Pre-SCN Consultation" was given to the noticee, as per Para 5 of the Master Circular No. 1053/2/2017-CX., dated 10-3-2017 and as clarified through C.B.I. & C. Circular No. 1076/02/2020-CX., dated 19-11-2020. The issuance of such notice was invalid and the same was issued in violation of instructions from CBIC and the SCN should be quashed merely on this ground. They have relied upon the following case laws;

- a. Amadeus India Pvt. Ltd. Versus Pr. Commr. Of C. Ex., S.T. & Central Tax [2019 (25) G.S.T.L. 486 (Del.)]
- b. Tube Investment of India Vs. Union of India [2018 (16) G.S.T.L. 376 (Mad.)]
- c. Hitachi Power Europe GMBH Vs. CBIC [2019 (27) G.S.T.L. 12 (Mad.)]
- d. Freight Systems (India) Pvt. Ltd. Vs. Commr. Of CGST & C. Ex., Chennai [2019 (368) E.L.T. 506 (Mad.)] and requested to set aside the subject SCN.

➤ **CHARGE OF SUPPRESSION AND INVOKING EXTENDED PERIOD NOT APPLICABLE:**

- They have submitted that SCN had been issued by invoking of extended period under Section 73(1) of the Finance Act, 1994. They have submitted that they were not liable to pay service tax, hence, charging suppression and invoking extended period and levying of service tax was not valid. They have submitted that the entire demand was raised invoking extended period of limitation. There was not an iota of evidence as to how noticee had suppressed any fact. The entire notice was issued merely based on assumption and presumptions which have no legs to stand. They have submitted that SCN had been issued, to save the expiring time limit for investigation, at the last moment, without conducting any investigation and baseless allegation of suppression was invoked merely based on mechanically drafted wording. They have submitted that their books of accounts were duly audited by the Service Tax department and in such circumstances, invocation of any extended period for demand in subject SCN was not warranted. They have requested to drop the subject SCN.



15.1 The noticee has further tendered additional written submission dated 24.02.2022, with reconciliation statement between the audited profit & loss account and periodical service tax returns filed by them for the period of 2015-16, 2016-17 & 2017-18 (Q1). They have also submitted the copies of audited profit and loss accounts for F.Y.2015-16, 2016-17 & 2017-18 (Q1), copy of ledger Account "2512003-Income Receivable" for the period 01.04.2014 to 30.06.2017, Copies of ST3 returns filed by them for the period of 2015-16, 2016-17 & 2017-18 (Q1) and copies of 26AS for the period of 2015-16 & 2016-17.

16. PERSONAL HEARING:

Personal Hearing on the subject matter was granted to the noticee on 28.02.2022. Shri Punit Prajapati, C.A., appeared for personal hearing on behalf of the noticee. He tendered written submission dated 24.02.2022 during personal hearing. He also submitted that the noticee's book of account had already been audited by the department and majority of the noticee's income was derived from the services provided to government entities. He also submitted a reconciliation statement to buttress his arguments that the noticee had no duty liability whatsoever towards the department.

DISCUSSION AND FINDINGS:

17. I have carefully gone through the facts of the case, records available in the case file, which include the SCN, the defence reply submitted on 11.02.2022 & 24.02.2022, documents and oral submission made by the noticee during the personal hearing.

18. On going through the SCN, I find that basically the essence of the case is that the data of Sales/Gross receipt from services/ Total Amount Paid/Credited under 194C, 194H, 194I, 194J" were shared by the CBDT with CBIC for FY 2015-16. The difference in the taxable value of services of the noticee was worked out after comparing the income declared in their ITR/Form 26AS vis-à-vis taxable value disclosed in ST-3 Returns for F.Y.2015-16. The difference in taxable value of Rs.26,07,18,768/- was observed by the department for FY 2015-16, therefore, it appeared that the noticee had short paid the service tax of Rs. 3,78,04,221/- on such differential value of



Rs.26,07,18,768/- for providing the taxable service. Therefore, the subject SCN demanding service tax of Rs. 3,78,04,221/- was issued to the noticee. Accordingly, I find that the issue which requires determination as of now is whether the noticee is liable to pay service tax of Rs. 3,78,04,221/- on the differential taxable value of Rs. 26,07,18,768/- for the Financial Year 2015-16 under proviso to section 73(1) of Finance Act, 1994 or not. I also find that the issuance of subject SCN is for the difference of income received from sales of services declared in ITR/Form 26AS only; therefore, I am not entering into other issues which are outside the purview of the subject SCN.

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

18.2 I discern that the noticee in his defence reply dated 12.12.2020 submitted on 11.02.2022 has contested that as per Para 5 of Master Circular NO.1053/02/2017-CX dated 10th March,2017 issued by the Central Board of Excise and Customs, that they were not granted any pre-SCN consultation letter for discussion/submission and therefore the SCN issued is liable to be dropped. In support of their argument, they have relied upon the case laws of;

- a) Amadeus India Pvt. Ltd. Versus Pr. Commr. Of C. Ex., S.T. & Central Tax [2019 (25) G.S.T.L. 486 (Del.)].
- b) Tube Investment of India Vs. Union of India [2018 (16) G.S.T.L. 376 (Mad.)].
- C). Hitachi Power Europe GMBH Vs. CBIC [2019 (27) G.S.T.L. 12 (Mad.)] &
- d) Freight Systems (India) Pvt. Ltd. Vs. Commr. Of CGST & C. Ex., Chennai [2019 (368) E.L.T. 506 (Mad.)].

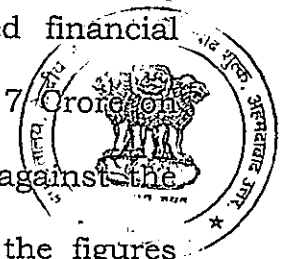
On going through the documents/records available in the case file, I find that Draft SCN was received for issuance by the Commissioner, CGST, Ahmedabad North from Division-VII of Ahmedabad North on 20.10.2020 and because of that there was no time to scrutinize its details. However, in order to protect government revenue, the subject SCN was issued by the SCN issuing authority on 21.10.2020 itself. It is on account of this exigency that the SCN issuing



authority had to dispense with the formality of pre-SCN consultation and issue the SCN on the same day to protect government revenue. It is regretted that pre-SCN consultation could not be offered to the noticee. The fact however remains, that the issuance of SCN without offering pre-SCN consultation has in no way jeopardised the interest of the noticee beyond a point and the SCN issued is ultimately going to be decided on the merits of the case in view of the allegations leveled in the SCN and the evidences tendered by the noticee in its favour through written submissions and defence put forth at the time of personal hearing.

19. I discern that the noticee in his defence reply dated 11.02.2022, has stated that M/s. Deep Energy Resources Ltd (Formerly known as Deep Industries Limited), were registered under Service Tax department and were holding Service Tax Registration Number AAACD6915EST001 and SCN had been issued on the difference noticed between the values shown in Form 26AS and ST-3 returns. I find that Form 26AS of the noticee have been generated on the information supplied by the Service Recipients to the Income Tax Department. I find that the books of account of the noticee had been audited by the department under EA-2000 and the department had issued Final Audit Report (FAR) No. 755/2017-18 dated 27/12/2017 which was issued by the Assistant Commissioner (Cir-VII), Central Tax Audit, Ahmedabad. I also find that the department had conducted audit of the noticee on 10.11.2017, 11.11.2017, 17.11.2017, 23.11.2017 & 28.11.2017 for the period 2015-16 & 2016-17 and issued Audit Report NO.755/2017-18 dated 27.12.2017.

20. I find that the noticee in their aforementioned reply dated 11.02.2022, has stated that the TDS on total amount paid to the noticee was of Rs.1,86,20,12,733/-, and the same has been reflected in form 26AS for F.Y.2015-16. I find that the noticee has total income of Rs.1,69,07,17,240/- from Oil & Gas services for the year 2015-16 as per audited financial statement. Therefore, I find that difference of approximately Rs. 17,00,00,000/- the higher side was reported in the Form 26AS of the noticee against the income shown in their audited financial statement. I find that the figures



reported in the Form 26AS of the noticee represents the value on which TDS was deducted by the service recipient from the noticee. In many cases, service recipient e.g. M/s. ONGC had deducted TDS on total value of invoices which are inclusive of the service tax. I am in agreement with the noticee that, during the FY 2015-16, the noticee have provided services to M/s. Oil and Natural Gas Corporation (ONGC) for Rs. 92.88 crore, against which ONGC had reported Rs. 106 crore in Form 26AS. ONGC had deducted TDS not only on value of services provided by the noticee to them, but on service tax which was charged in invoice also, and the total bill amount including service tax was reported by ONGC in Form 26AS. I find that the noticee has submitted 8 sample invoices raised to M/s. ONGC for the F.Y. 2015-16, and on going through the said invoices it is observed that M/s. ONGC has deducted TDS on total value of invoices including service tax. One sample invoice No. INV/DIL/GND GGSIV/GC/168/14-15 dated 01.04.2015 is placed herewith for ease of ready reference;

TAX INVOICE

Invoice No: INV/DIL/GND GGSIV/GC/168/14-15
Date 01.04.2015

To,
The General Manager (P) Sam III
Oil & Natural Gas Corporation Limited
New Building
Ankleshwar Asset
Ankleshwar

Sub: Monthly invoice for the month of MARCH-15
Ref: LOA No. ANK/MM/P4/09/GAS COMPRES/GGSIV/NOV/2014-15/A16V814010
Dated 24.11.2014

Given below the detail of Natural Gas Compression charges for the period from 01.03.2015 TO 31.03.2015 at GANDHAR GGS IV.

PO NO. 5060091199
Contract No. 9010020781

Vendor Code 814297

Sr.No.	Particulars	Quantity Compressed (SCM)	Amount in Rupees
1	Natural Gas Compression Charges @ 1.47 SCM with service tax	5549290.00	81,57,455.20
2	Additional Gas Compressed above 18000 SCMD charges @ 0.735 SCM with service tax	122241.00	94,257.14
Total:			82,51,713.44


(Rupees Eighty Two Lacs Fifty One Thousand Seven Hundred Thirteen & Forty Four Paise Only)

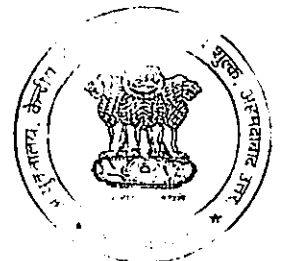
Service Tax No. AAACD6915EST001

PAN No. AAACD6915E

We request you to deposit the cheque in our Bank State Bank of India in our cash credit account No. 30376035396 under intimation to us.

For Deep Industries Ltd


Anish Shah
Authorized Signatory



On going through the invoice I find that the noticee had raised invoice for Rs. 82,51,713/- including service tax charges to M/s. ONGC and M/s.ONGC has deducted TDS on the bill amount of Rs.82,51,713/- which includes service tax charged in the invoice. Therefore, I am in agreement with the argument put forth by the noticee that value shown in Form 26AS are inclusive of service tax charged in bills raised by the noticee.

Further, I find that noticee's books of accounts were subject to scrutiny by the Income Tax department under Section 143(3) of the Income Tax Act for the F.Y.2015-16. The Assistant Commissioner of Income Tax,Circle (1)(2), Ahmedabad has issued assessment order NO.ITBA/AST/S/143(3)/2018-19/1014174315(1) dated 10.12.2018, which confirmed that no additional income was added to income shown in the assessee's audited financial statement of F.Y.2015-16 based on the figures reported by the service recipient in Form 26AS. I find that income tax department has also not considered income of 26AS as additional income during scrutiny of income tax return filed by the assessee and ignored income of 26AS in scrutiny. Therefore, I find that the noticee's income from Oil and Gas services of Rs. 1,69,07,17,240/-declared in books of accounts for F.Y. 2015-16 is considered as taxable income under the Finance Act,1994 for F.Y.2015-16.

20.1 I find that and noticee had filed ST-3 returns for the period 2015-16 & 2016-17, and paid the legitimate service tax thereon for providing taxable Services by the noticee for F.Y.2015-16 & 2016-17. The details of ST3 returns filed by the noticee are as under:

2015-16					
	Gross Amount	Exempted service	Net Taxable value	S.Tax. Payable	S. Tax paid
As per ST3 returns	1601293964	171262424	1430031540	200491540	200491540

2016-17					
	Gross Amount	Exempted service	Net Taxable value	S.Tax. Payable	S. Tax paid
As per ST3 returns	2695931931	78474266	2617457665	383682336	383682336

21. I also find that the noticee vide letter dated 11.02.2022 has contended that their records had already been audited by the department. The noticee has submitted the copy of the Final Audit Report No. 755/2017-18 dated 27/12/2017 issued by the Assistant Commissioner (Cir-VII), Central Tax Audit, Ahmedabad in support of the arguments put forth by them.

21.1 In view of the submission made by the noticee, I find that the Final Audit Report No. 755/2017-18 dated 27/12/2017 issued by the department needs to be looked at. On perusing the Final Audit Report No. 755/2017-18 dated 27/12/2017 issued by the Assistant Commissioner (Cir-VII), Central Tax Audit, Ahmedabad, I find that the audit was conducted in November, 2017 by the audit party of Circle VII, CGST, Audit, Ahmedabad, which have covered the period of 2015-16 & 2016-17. The Audit Report was issued by the Assistant Commissioner, Circle-VII, CGST Audit, Ahmedabad. I find that audit team had raised 6 revenue paras and all the paras have been closed by the department. I find that, as per audit report No. 755/2017-18 dated 27/12/2017 the noticee had paid total revenue of Rs. 51,90,839/- (Rs.40,62,091/- S.Tax + Rs.5,19,434/- interest + Rs. 6,09,314 penalty) against the liability pointed by the audit party. The summary of audit results of M/s. Deep Industries Limited, Audit Report NO.755/2017-18 is reproduced hereinunder for ease of ready reference:

**SUMMARY OF AUDIT RESULTS OF
M/s. Deep Industries LIMITED.
Audit Report No. 755 /2017-18**

Provide an outline of all objections, which involve short/non levy/collection of the tax. Details of objections of technical/procedural in nature without involving revenue/interests amounts should also be mentioned. Indicate whether the taxpayer has agreed to the objections and if so, has made spot payment (if so, details thereof).

Summary of major audit objections from the working paper

Sr. No.	Gist of Objection	Revenue Implication, If any (In Rs.)	Assessee Agreement Yes/No. If no, reasons for disagreement	Department's Conclusion with reasons
1	Credit availed upon receipt of invoice, but no payment has been made within 03 Months from the date of Invoice as per Rule 4(7) of CCR-2004(ST-SSR021)	S. Tax Rs. 289198/- Interest Rs. 18075/- Penalty Rs. 43380/- Total Rs. 350653/-	Yes, agreed and paid	Approved by MCM-Accepted by party and para closed.
2	Nonpayment of Service Tax on Rent a Cab under RCM (ST-SR030)	S. Tax Rs. 58565/- Interest Rs. 14457/- Penalty Rs. 8785/- Total Rs. 81807/-	Yes, agreed and paid	Approved by MCM-Accepted by party and para closed.
3	Wrong avallment of Convat Credit on Education Cess on Import(ST-CSR073)	S. Tax Rs. 1428782/- Interest Rs. 89288/- Penalty Rs. 214317/- Total Rs. 1732397/-	Yes, agreed and paid	Approved by MCM-Accepted by party and para closed.
4	Nonpayment of Service Tax on Import of Services under RCM (ST-VSR030)	S. Tax Rs. 172136/- Interest Rs. 69253/- Penalty Rs. 25820/- Total Rs. 267209/-	Yes, agreed and paid	Approved by MCM-Accepted by party and para closed.
5	Nonpayment of Service Tax on Works Contract Services under RCM (ST-VSR030)	S. Tax Rs. 38846/- Interest Rs. 8782/- Penalty Rs. 5785/- Total Rs. 51198/-	Yes, agreed and paid	Approved by MCM-Accepted by party and para closed.
6	Short payment of Service Tax on Ocean Freight under RCM (ST-VSR030)	S. Tax Rs. 2074770/- Interest Rs. 321589/- Penalty Rs. 311216/- Total Rs. 2707575/-	Yes, agreed and paid	Approved by MCM-Accepted by party and para closed.
	TOTAL	S. Tax Rs. 4062091/- Interest Rs. 519434/- Penalty Rs. 609314/- Total Rs. 6190839/-	Yes, agreed and paid	

(K.N. Makwana)
Assistant Commissioner,
Central Tax Audit, Ahmedabad



23. I find that books of account of the noticee had already been audited by the department and duly reconciled with the periodical service tax returns filed by the noticee for the period of 2015-16 & 2016-17, and other records under the EA-2000 audit, which was being performed by the department as per the procedure prescribed under the Central Excise and Service Tax Audit Manual. There remains no doubt that the service tax department had already verified books of accounts, reconciled the required figures and had issued proper Final Audit Report No. 755/2017-18 dated 27/12/2017. Therefore, it is also apparent from the Final Audit Report that the reconciliation of Income booked/ shown in the books of accounts of the noticee, for the period of 2015-16 & 2016-17 was carried out by the department with the Taxable value disclosed in ST-3 Returns filed by the noticee. It is also seen that the noticee had already paid the legitimate service tax as observed by the audit team. It is also evident that the audit of records of noticee by the department had already been conducted before the issuance of the subject SCN. Despite the above fact the SCN seeks demand of the service tax on differential value worked out by comparing the Income as per ITR/ Form 26AS vis-à-vis Taxable value disclosed in ST-3 Returns. I find that apart from the differences noticed in the figures reported in ST-3 returns and in ITR/Form 26AS, the department has not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non payment of service tax. Having considered these factual and documentary evidences available on records, and relying on the Final Audit Report, I have no option but to conclude that there was no short payment on part of the noticee. The SCN issued to the noticee after audit of the noticee is bad in law, is absolutely incorrect and is not justified. Thus, the subject SCN is liable to be dropped on merits being incorrect and legally not sustainable.

23.1 As mentioned above, I find that the assessee had been audited by the department and had been issued proper final Audit report No.755/2017



dated 27.12.2017, and the subject SCN has been issued on 21.10.2020 which is much after the completion of departmental audit and accordingly it is clear that extended period is not invocable in the present case. In support of the above argument, I rely upon the following case laws;

- i.) Hon'ble CESTAT, Ahmedabad in the matter of Commissioner of Central Excise, Vs. MIDCO Ltd., reported at 2011 (274) E.L.T. 463 (Tri. - Ahmd.) ;

Demand - Limitation - Duty short-paid - Expenses for freight, insurance, raw material not accounted in invoices - Show cause notice demanding dues from 2000-2001 onwards issued on 15-2-2005 - Audit report made available in 2002 and RT-12 and ER-1 returns filed periodically without any delay - Submission of invoices not mandatory during the material period when audit report made available - Absence of any convincing reason in issuance of SCN beyond limitation period - Extended period not invocable - Demand time- barred - Section 11A of Central Excise Act, 1944. [1989 (40) E.L.T. 276 (S.C.) and 1995 (78) E.L.T. 401 (S.C.) relied on] [paras 2, 4, 5, 6]

Appeal rejected (Emphasis supplied)

- ii.) The Hon'ble Supreme Court in the case of M/s. Nizam Sugar Factory Vs. Commissioner of Central Excise, A.P., reported 2006 (197) E.L.T. 465 (S.C.) ;

Demand - Limitation - Suppression of facts - All relevant facts in knowledge of authorities when first show cause notice issued - While issuing second and third show cause notices, same/similar facts could not be taken as suppression of facts on part of assessee as these facts already in knowledge of authorities - No suppression of facts on part of assessee/appellant - Demands and penalty dropped - Sections 11A and 11AC of Central Excise Act, 1944. [paras 9, 10]

Appeals disposed off (Emphasis supplied)

- iii.) The Hon'ble CESTAT, Mumbai reported in 2015 (40) S.T.R.490 (Tri.-Mumbai), appeal filed by M/s. Trans Engineers India Pvt. Ltd., Vs. Commissioner of C.Ex., Pune:

Demand - Limitation - Extended period, invocation of - Demand based on second audit report for period in question - HELD : Revenue authority not to invoke extended period of limitation, when records of assessee audited by officers once and short-payment not found - Second audit party, doing audit of same period or overlapping period, not to allege misstatement or suppression of facts - In view of authoritative judicial pronouncements in MTR Foods Ltd. [2012 (282) E.L.T. 196 (Kar.)] and Rajkumar Forge Ltd. [2010 (262) E.L.T. 155 (Bom.)], extended period cannot be invoked - Demand being beyond period of limitation, set aside - Interest and penalties imposed also set aside - Impugned order set aside - Section 73 of Finance Act, 1994. [paras 9, 10, 11, 12]

Appeal allowed (Emphasis supplied)

24. I find that for the period 2017-18 (upto June,2017), no data/details are available in the case file, and the same have also not been provided by the department or noticee, therefore, I refrain myself from entering into any discussion for the period 2017-18 (upto June,2017) to determine Service Tax liability.

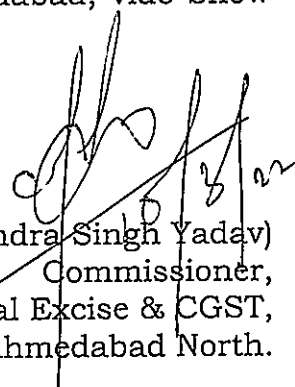


25. In view of the facts and circumstances pertaining to the case, the demand is found to be not tenable in law as the same is found to be incorrect and unsustainable.

26. In view of the above discussion and findings, I pass the following order:

ORDER

I drop the proceedings initiated against M/s. Deep Industries Limited, Op. Suryanarayan Bunglows, State Highway, Motera, Ahmedabad, vide Show Cause Notice F.No. STC/15-113/OA/2020 dated 21.10.2020.


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

By Regd. Post AD./Hand Delivery
F.No. STC/15-113/OA/2020

Date: 10.03.2022.

To,

M/s. Deep Industries Limited,
Opp. Suryanarayan Bunglows,
State Highway, Motera,
Sabarmati,
Ahmedabad



Copy for information to:

- 1 The Principal Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
- 2 The Deputy/Assistant Commissioner, CGST & C. Ex., Division-VII, Ahmedabad North.
- 3 The Superintendent, Range-IV, Division-VII, Ahmedabad North.
- 4 The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- 5 Guard File.