

आयुक्त का कार्यालय,
केंद्रीय जी. एस. टी. एवं
केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर,
कस्टम हाँउस, प्रथम तल,
नवरंगपुरा, अहमदाबाद- 380009



OFFICE OF COMMISSIONER
CENTRAL GST & CENTRAL EXCISE,
AHMEDABAD- NORTH
CUSTOM HOUSE, 1ST FLOOR,
NAVRANGPURA, AHMEDABAD-380009

फ़ोन नंबर/ PHONE No.: 079-27544557

फैक्स/ FAX : 079-27544463

E-mail:- oaahmedabad2@gmail.com

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN-20230464WT0000056480

फा.सं./F.No. STC/15-162/OA/21-22

आदेश की तारीख/Date of Order :- 17.04.2023
जारी करने की तारीख/Date of Issue :- 17.04.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor
सयुक्त आयुक्त /Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 01/JC/ LD /2023-24

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

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

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

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

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

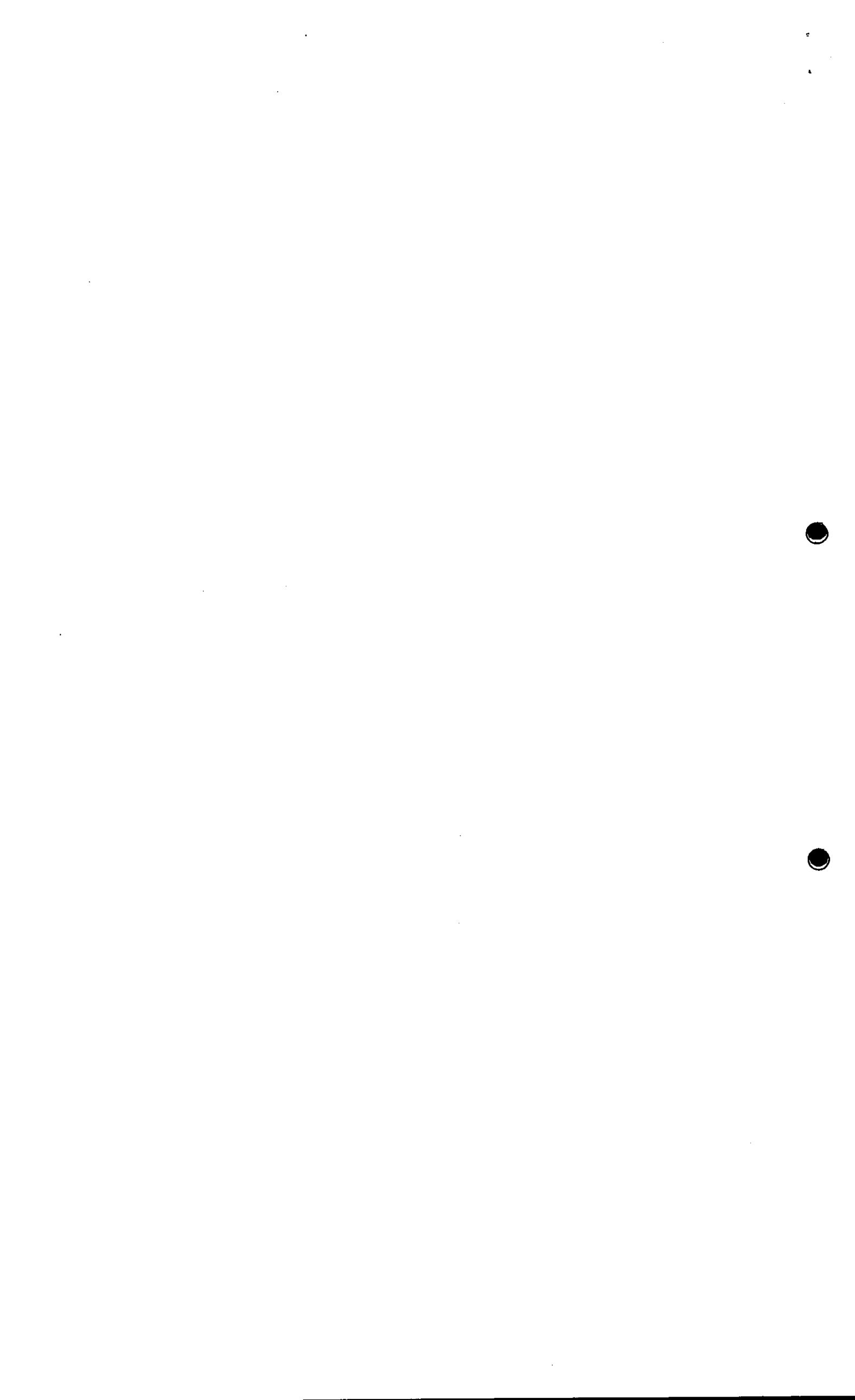
उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

- (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 .5 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए)।

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

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

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. F.No. STC/15-162/OA/2021-22 dated 23.04.2021 issued to M/s Manoj Agrawal, C-301, Signature-2, Sanand Road, Sarkhej, Ahmedabad-382210.



BRIEF FACTS OF THE ACASE

M/s. Manoj Agarwal, C-301, Signature - 2, Sanand Road, Sarkhej, Ahmedabad, Gujarat- 382210 (hereinafter referred to as "the said assessee" for the sake of brevity) are engaged in providing services and for the same was registered with Service Tax Department having Service Tax Registration No. AEGPA2239BSD001.

2. An 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" was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 to 2016-17, and details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. On going through the Third party Data received from CBDT of the said assessee for the F.Y. 2015-16 to 2016-17, the Sales/Gross Receipt from Services (Value from ITR) are not tallied with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16 to 2016-17. It was noticed that the said assessee have declared less/not declared any taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 to 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16 to 2016-17. The details of difference as per CBDT data for the F.Y. 2015-16 to 2016-17 are as under :

| Sr. No. | Financial Year | VALUE DIFFERENCE in ITR & STR / TDS & STR) (Whichever is higher) (in Rs.) | Service Tax (in Rs.) |
|---------|----------------|--|-------------------------|
| 1. | 2015-16 | 70130938 | 9784630 |
| 2. | 2016-17 | 40638112 | 6061759 |
| | TOTAL | 110769051 | 15846389 |

Therefore, the said assessee has less discharged their Service Tax liability and thus is liable to pay Service tax including Cess [@ 12.36% for F.Y. 2015-16 & from 01-04-2015 to 31-05-2015] ; [@ 14% from 01-06-2015 to 14-11-2015] ; [@ 14.50% from 15-11-2015 to 31-05-2016] and [@15% from 01-06-2016 to 31-03-2017] for amounting to Rs.15846389/- on the differential value amounting to Rs. 11,07,69,051/- along with applicable interest and penalty for the F.Y. 2015-16 to 2016-17.

4. As per the provisions of Section 72 of the Finance Act, if any person, liable to pay service tax having made a return, fails to assess the tax, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

5. As per the provisions of Section 73(1) of the Finance Act where any service tax has not been levied or paid or has been short levied or short paid by the 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 notice on the person chargeable with service tax which has not been levied or paid of which has been short levied or short paid requiring him to show cause why he should not pay amount specified in the notice.

6. As per Rule 6 of the Service tax Rules, 1994, the service tax shall be paid to the credit of the Central Government by 5th day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that assessee shall submit their service tax returns in the form of ST-3 within the prescribed time.

7. Whereas, from the foregoing paras, it appears that the said assessee have failed to pay/short paid/deposit service tax to the extent of Rs. 1,58,46,389 /- on the difference of taxable value during the period 2015-16 to 2016-17 by declaring less value in their ST-3 Returns vis-a-s their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services received/provided by them with an intent to evade payment of service tax. Thus, it appears that the said assessee have failed to discharge the service tax liability of Rs. 1,58,46,389/- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) worked out on value of Rs. 11,07,69,051/- and therefore, service tax is 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.

8. In view of above, the said assessee have contravened the provisions of :

- (a) Section 66 of the Finance Act, 1994 in as much as they have failed to collect and pay the service tax as detailed above, to the credit of Central Government.
- (b) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they have not paid the service tax as mentioned above to the credit of the Government of India within the stipulated time limit;
- (c) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, as amended, in as much as they had failed to properly assess their Service Tax liability under Rule 2(1)(d) of Service Tax Rules, 1994 and failed to declare correct value of taxable services as well as exempted services to the department in the prescribed return in Form ST-3.

9. It has been noticed that at no point of time, the said assessee has disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Service of the differential value that has come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 to 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc., based on mutual trust and confidence are in place. From the evidences, it appeared that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 1,58,46,389 /-. Thus, it appeared that there is a deliberate withholding of essential and material information from the department about service provided

and value realized by them. All these material information have been concealed from the department deliberately, consciously and purposefully to evade payment of service tax.

10. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (as 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. It appears that the said assessee has short paid/non-payment of Service Tax of 1,58,46,389/- on the actual value received towards taxable services provided which appears to be recoverable under proviso to Section 73(1) of the Finance Act alongwith interest under Section 75 ibid not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee has suppressed the facts to the department and contravened the provisions with an intent to evade payment of Service Tax. The said assessee has not discharged their Service tax liability and hence is liable to pay interest under Section 75 of the Finance Act.

11. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax appears to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of service tax as discussed in the foregoing paras and therefore, the said amount of service tax amounting to Rs. 1,58,46,389 /- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) not paid is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

12. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appear to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, the said assessee have contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee appear to have rendered themselves liable to penalty under Section 76 & Section 77 of the Finance Act.

13. Moreover, in addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appears that the said assessee has willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of service tax rendering themselves liable for penalty under Section 78 of the Finance Act, 1994.

14. Therefore Show Cause Notice No.STC/15-162/OA/2021-22 dated 23.04.2021 was issued to M/s.Manoj Agarwal called upon to show cause as to why;

(i) Differential amount of Service Tax amounting to Rs.1,58,46,389/- (Rupees One Crore Fifty Eight Lakh Forty Six Thousand Three Hundred Eighty Nine only) (inclusive of Edu. Cess and S&H Edu. Cess) short

paid/not paid by them, should not be confirmed/demanded under proviso to Section 73(1) of the Finance Act, 1994.

(ii) interest at the appropriate rates should not be recovered from them as prescribed under Section 75 of the Finance Act, 1994 from the due date on which the Service Tax was liable to be paid till the date on which the said Service Tax is paid.

(iii) penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for the failure to make payment of service tax payable by them within prescribed time-limit.

(iv) penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for the failure to assess the correct tax liability.

(vi) penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 as amended for suppressing and not disclosing the value of the said taxable service provided by them before the department with an intent to evade payment of service tax.

DEFENCE REPLY

15. The assessee vide letter dated 29.06.2021 submitted that they have filed ST 3 return for the FY 2015-16 declaring Rs.5,84,79,846/- against the differential value of Rs.7,01,30,938/- and for FY 2016-17 declaring taxable income of Rs.4,09,79,663/- against the differential value of Rs.4,06,38,112/- . For the FY 2015-16, there is a difference in their reconciliation due to deduction of TDS on Rs.96,18,238/- during the FY 2016-17 even though the bills are raised during the FY 2014-15 and the said amount is accounted for the FY 2014-15. Similarly an amount of Rs.16,47,181/-, the bills were raised and income is accounted for the FY 2016-17, however the said TDS has been deducted during the FY 2015-16. Further an amount of Rs.13,15,673/- has been shown in the Form 26AS as service tax, however while deducting the TDS, the deductor has deducted the TDS on service tax of Rs.13,15,673/- also . As the said amount is of service tax, it is not a part of income.

PERSONAL HEARING

16. In the instant case, Personal Hearing was granted to the assessee on 23.02.2023. Shri Tarunkumar P Tulsyani, CA, authorised representative, attended the P.H on behalf of the assessee and reiterated their written submissions dated 22.06.2021. Further, he requested to decide the matter on merits.

DISCUSSION AND FINDINGS

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

18. I have carefully gone through the Show Cause Notice, reply to SCN, ST 3 Returns, copies of challan, reconciliation statement, ledger accounts, invoices and Form 26AS for the F.Y. 2015-16 & 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.1,58,33,390/- for the Financial Years 2015-16 & 2016-17 on the basis of data received from Income Tax authorities. The Show Cause Notice alleged

non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 1,58,33,390/- for the financial years 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

19. On perusal of the reply to SCN and other related documents, I find that the assessee have receipt from providing services related to supply of tangible services and GTA services. Here I would like to go the definition of service on which service tax is payable. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified according to the different category of services. Further after introduction of negative list with effect from 01.07.2012, service has been defined as:

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

- (a) an activity which constitutes merely,—*
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the constitution or*
 - (iii) a transaction in money or actionable claim.*
- (b) A provision of service by an employee to the employer in the course of or in relation to his employment.*
- (c) fees taken in any court or tribunal established under any law for the time being in force.*

From the definition it is evident that any activity carried out by any person to another person for any consideration is covered under the above definition of service. Further the term "taxable service" is defined under Section 66B(51) of the Finance act, 194 as under:

(51) taxable service means any service on which service tax is leviable under Section 66B.

It is clear that the service tax is levied under Section 66B of the Finance Act, 1994 which reads as under:

Section 66B : Charge of service tax on and after Finance Act, 2012- There shall be levied a tax (hereinafter referred to as the service tax) at the rate fourteen percent on the value of all services other than those services specified in negative list, provided r agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed"

According to which service tax is levied on all services other than those specified in negative list (Section 66 D of Finance act, 1994) in the taxable territory by one person to another. In this context the services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,

SECTION 66D. Negative list of services.— The negative list shall comprise of the following services, namely :—

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) transport of goods or passengers; or 9
- (iv) Any service, other than services covered under clauses (i) to (iii) above, provided to business entities;

(b) services by the Reserve Bank of India;

(c) services by a foreign diplomatic mission located in India;

(d) services relating to agriculture or agricultural produce by way of—

- (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or [* * *] testing;
- (ii) supply of farm labour;
- (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
- (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
- (v) loading, unloading, packing, storage or warehousing of agricultural produce;
- (vi) agricultural extension services;
- (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

(e) trading of goods;

(f) [****].;

(g) selling of space for advertisements in print media;

(h) service by way of access to a road or a bridge on payment of toll charges;

(i) betting, gambling or lottery; Explanation. - For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in Explanation2 to clause (44) of section 65B;

(j) [* * * *]

(k) transmission or distribution of electricity by an electricity transmission or distribution utility; 10

(l) [* * * *]

(m) services by way of renting of residential dwelling for use as residence;

(n) services by way of—

- (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
- (ii) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;

(o) service of transportation of passengers, with or without accompanied belongings, by—

- (i) [* * * *]
- (ii) railways in a class other than— (A) first class; or (B) an air-conditioned coach;
- (iii) metro, monorail or tramway ,
- (iv) inland waterways;
- (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
- (vi) metered cabs or auto rickshaws

(p) services by way of transportation of goods—

- (i) by road except the services of— (A) a goods transportation agency; or (B) a courier agency;
- (ii) [* * *]
- (iii) by inland waterways;

(q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

20. Thus with effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the negative list are exempted. It is not disputed that the assessee has provided taxable service and the service provided by them are not mentioned in the negative list given under Section 66D of the Finance Act, 1994. In view of the above the services provided by the assessee are covered under service tax and they are also liable to pay service tax on the said services.

21. In this case, I have carefully gone through the Show Cause Notice, reply to SCN, ST 3 Returns, copies of challan, reconciliation statement, ledger accounts, invoices, Form 26AS and other records for the F.Y. 2015-16 & 2016-17 and find that the said assessee is engaged in providing supply of tangible goods services as well as GTA services. They have registered with Department under Registration No.AEGPA2239BSD001 and have paid service tax and also filed ST 3 Returns for the FY 2015-16 declaring Rs.5,75,49,846/- & for the FY 2016-17 declaring Rs.4,09,79,663/- as their taxable income accordingly. In the instant case, the Service tax payable is arrived at on the basis of value of "gross receipts from services (value from ITR/26AS) for the Financial year 2015-16 and 2016-17. By considering the said amount as taxable income, the service tax liability is calculated as tabulated in Table-A supra. For the sake of clarity, I would like to discuss the issue Financial Year wise.

FINANCIAL YEAR 2015-16

18. On perusal of the SCN, reply to SCN, ledger accounts, copy of 26AS, copy of ST 3 Returns, reconciliation statement and other records for the FY 2015-16, I find that the service tax of Rs.97,84,630/- is demanded on the differential value of Rs.7,01,30,938/-. In response to this demand, the assessee stated that they have already paid service tax and filed ST 3 return for the FY 2015-16 declaring taxable income of Rs.5,75,49,846/-. I have gone thorough the ST3 Returns for the FY 2015-16 and find that they have declared Rs. 5,75,49,846/- as their taxable income and paid appropriate service tax on the said income. I have also gone through the SCN and find that the demand is raised on the basis of the income credited in Form 26AS which comes to Rs. 7,01,30,938/-.

19. In this connection, I find that during the FY 2015-16 the turnover as per Form 26AS is Rs.7,01,30,938/- on which service tax of Rs.97,84,630/- is demanded. The assessee in their reply to SCN stated that there is a difference is their reconciliation due to deduction of TDS on Rs.96,18,238/- during the FY 2015-16 even though the bills are raised during the FY 2014-15 and the said amount is accounted for the FY 2014-15. Similarly an amount of Rs.16,47,181/-, the bills were raised and income is accounted for the FY 2016-17, however the said TDS has been deducted during the FY 2015-16. Further an amount of Rs.13,15,673/- is the service tax portion which is included in the gross income and shown in the Form 26AS, therefore the said income is of service tax, it is not a part of income.

20. In this connection, I have gone through the audited balance sheet, Form 26AS, ST 3 Return for and other documents for FY 2015-16 submitted by the assessee and find that the value difference between TDS & STR is

7,01,30,938/- on which service tax of Rs. 97,84,630/- is demanded. Against the said differential value of Rs.7,01,30,938/-, the assessee has declared Rs.5,75,49,846/- in their ST 3 Return for the relevant period which resulted a difference of Rs.1,25,81,092/-. On perusal of audited balance sheet of the assessee, I find that they have Rs.5,84,79,846/- only for the FY 2015-16. Further the assessee stated that out of the differential amount of Rs.1,25,81,092/-, an amount of Rs.96,18,238/- is the turnover of which bill raised by the assessee in FY 2014-15 but TDS has been deducted during the FY 2015-16, hence it was credited in the 26AS for the FY 2015-16. Further an amount of Rs.16,47,181/- is the turnover of which bill raised by the assessee in F.Y.2016-17 but TDS has been deducted during the FY 2015-16 hence it was credited in the 26AS for the FY 2015-16. In this connection, on perusal of Profit & Loss account and audited balance sheet of the assessee, I find that the claim of the assessee was also explained the details of difference on notes on accounts by their Chartered Accountants, M/s.Kankani .Somani & Co. In view of the above facts, I find that these amounts are not forming part of income for the FY 2015-16 and therefore the same is considered as a deduction for the FY 2015-16. Further an amount of Rs.13,15,673/- is the service tax portion which is included in the gross income and shown in the Form 26AS, therefore, I find that the said income is of service tax and is not a part of income and therefore the same is also considered as a deduction for the differential income of Rs. 1,25,81,092/-

21. On perusal of the records, I find that this the explanation given by the assessee on the differential amount of Rs.1,25,81,092/- is acceptable as out of which Rs.96,18,238/- has already booked in FY 2014-15 but reflected in 26AS of 2015-16 and Rs.16,47,181/- has already booked in FY 2016-17 but reflected in 26AS of 2015-16, therefore the said income is not taxable for the FY 2015-16. Similarly the amount of Rs.13,15,673/- credited during the FY 2015-16 is the service tax amount which is included in the total credit. On consideration of these deductions of Rs.1,25,81,092/- from the gross receipts of Rs.7,01,30,938/-, the assessee's taxable income comes to Rs. 5,75,49,846/- which was already declared by the assessee in their ST3 Returns for the FY 2015-16 and paid appropriate service tax also. In view of the above facts, the service tax of Rs.97,84,630/- demanded on differential value of Rs.7,01,30,938/- for the FY 2015-16 is not sustainable and therefore the same is required to be dropped.

FINANCIAL YEAR 2016-17

22. On perusal of the SCN, reply to SCN, ledger accounts, copy of 26AS, copy of ST 3 Returns, reconciliation statement for the FY 2016-17, I find that the service tax of Rs.60,61,759/- is demanded on the differential value of Rs.4,06,38,112/-. In response to this demand, the assessee stated that they have already paid service tax and filed ST 3 return for the FY 2016-17 declaring taxable income of Rs.4,09,79,663/-. I have gone through the ST 3 Returns for the FY 2016-17 and find that they have declared Rs. 4,09,79,663/- as their taxable income and paid appropriate service tax also. I have also gone through the SCN and find that the demand is raised on the basis of the income credited in Form 26AS which comes to Rs. 4,06,38,112/-. On perusal of the income reconciliation statement, I find that they have declared more income than the income credited/paid as shown in their 26AS. As the assessee have already declared more income of Rs. 4,09,79,663/- in their ST 3 Return than the differential value of Rs. 4,06,38,112/-, I find that there is no

service tax is recoverable from the assessee on the differential value. Accordingly, I do not find any ground to confirm the demand of Rs.60,61,759/- demanded on the differential value of Rs. 4,06,38,112/- vide the instant SCN for the FY 2016-17 and therefore the same is also liable to be dropped. For the sake of clarity I reconcile the figures as under:

| Sl.No. | Particulars | 2015-16 | 2016-17 |
|--------|---|-------------|-------------|
| 01 | Differential value on which ST demanded as per 26/AS and SCN | 7,01,30,938 | 4,06,38,112 |
| 02 | Less: Declared in their ST 3 Return | 5,75,49,846 | 4,09,79,663 |
| 03 | Less: Income booked during 2014-15 but reflected in 2015-16 26AS as discussed | 96,18,238 | 0 |
| 04 | Less: Income booked during 2016-17 but reflected in 2015-16 26AS as discussed | 16,47,181 | 0 |
| 05 | Less: Service Tax portion which is included in TDS gross income as discussed | 13,15,673 | 0 |
| 06 | Difference | 0 | (-)3,41,551 |

23. In view of the above reconciliation, I find that the assessee declared more income in their ST 3 Returns than the difference for the FY 2016-17 and also explained the reasons for difference for the FY 2015-16 and therefore I find that there is no service tax liability arising during both the years. Therefore, the service tax demand of Rs.1,58,46,389/- demanded vide SCN dated 23.04.2021 is not sustainable and therefore required to be dropped.

24. The Balance sheet and profit and loss account of an assessee is vital statutory records. Such records are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for evincing true financial position. Assessee was legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in unorganized method. The statute provides mechanism for supervision and monitoring of financial records. It is mandate upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive fair conclusion in respect of the balance sheet and profit and loss accounts. It is also onus upon auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs. The Chartered Accountant, who audited the accounts of the assessee, being qualified professional has given declaration that the balance sheet and profit and loss accounts of the noticee reflect true and correct picture of the transaction and therefore, I have no option other than to accept the classification of incomes under profit and loss account as true nature of the business and to proceed to conclude instant proceedings accordingly

25. Further, as mentioned in the SCN, I find that the levy of Service Tax for the financial year 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under proviso to Section 73(1) read with master Circular No. 1053/02/2017-CX dated 10.03.2017, the service tax liability was to be recovered from the assessee accordingly, I however, do not find any charges leveled for the demand for the year 2017-18 (Up to June 2017), in charging para of the SCN, hence I refrain from discussing the taxability of any income for the period 2017-18 (upto June 2017). I further find that the SCN has not questioned the taxability on any income other than the value difference in ITR & STR/TDS & STR (whichever is higher). I, therefore, refrain from discussing the taxability on other income other than the said income.

26. In view of the above discussion and findings and also on perusal of SCN, reply to SCN, Form 26AS, ST3 returns, reconciliation statement, copy of ledger accounts and submissions made by the said assessee and other documents, I find that demand of Rs. 1,58,46,389/- demanded vide above referred SCN is not tenable in law. Accordingly, I do not consider it necessary to delve on the merits of the case by invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise for imposing any penalty or interest.

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

ORDER

27. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 1,58,46,389/- along with interest and penalties against M/s. Manoj Agrawal vide SCN No. STC/15-162/OA/2021 dated 23.04.2021.


(Lokesh Damor)

Joint Commissioner
Central GST & Central Excise
Ahmedabad North

By RPAD
F.No. STC/15-162/OA/2021

Date: 17.04.2023

To,
M/s. Manoj Agarwal,
C-301, Signature - 2, Sanand Road,
Sarkhej, Ahmedabad, Gujarat- 382210

Copy to:

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