



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर  
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद – 380009

FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD – 380009

ई-मेल/E-Mail : ofadjhq-cgstamdnorth@gov.in, oaahmedabad2@gmail.com

फ़ोन/Phone : 079-27544599 फैक्स/Fax : 079-27544463



निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-54/OA/2021

आदेश की तारीख/Date of Order:-28.04.2022

जारी करने की तारीख/Date of Issue :- 28.04.2022

**DIN NO: 20220464WT000050675A**

द्वारा पारित/Passed by:- आर गुलजार बेगम **IR. GULZAR BEGUM**

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 03/ADC/GB/2022-23

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-380015को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

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

(1) उक्त अपील की प्रति।

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

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

- (1) Copy of accompanied Appeal.
- (2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice No. STC/15-54/OA/2021 dated 23.04.2021 issued to M/s ASIAN SYSTEMS, D/7, KALPATARU, -, FLATS, MIRAMBICA ROAD,, -, AHMEDABAD, Gujarat- 380013.

## BRIEF FACTS OF THE CASE

M/s ASIAN SYSTEMS, D/7, KALPATARU, -, FLATS, MIRAMBICA ROAD,, -, AHMEDABAD, Gujarat- 380013 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. ALIPS8957RST001 and was engaged in Taxable Services.

2. On going through the third party CBDT data for the Financial Year 2015-16 and 2016-17, it has been observed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 and 2016-17 as compared to the Service related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

Sr. No.	F.Y.	Taxable Value as per ST-3 returns (In Rs.)	Gross Receipts From Services (Value from ITR/26AS) (In Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax short paid (in Rs.)
1	2015-16	0/-	44934652/-	44934652/-	6515525/-
2	2016-17	0/-	52076533/-	52076533/-	7811480/-
TOTAL					14327005/-

3. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said notice had not paid service tax as worked out as above in Table for Financial Year 2015-16 and 2016-17.

4. No data was forwarded by CBDT, for the period 2017-18 (upto June-2017) and the assessee has also failed to provide any information regarding rendering of taxable service for this period. Therefore, at this stage, at the time of issue of SCN, it is not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

Whereas, with respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies 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."*

5. As per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appears that the said service provider has not assessed the tax dues properly, on the services received by him, as discussed above, and failed to file correct ST-3 Returns thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

6. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the noticee along with interest under Section 75 of the Finance Act, 1994.

7. In view of above, the Assessee has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of Rs. 14327005/-, by declaring less value in their ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

8. It has been noticed that at no point of time, the Assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2015-16 and 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 appears 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. 14327005/-. It appears that the above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appears to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appears that the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994. The said assessee was given opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 22.04.2021 but the said assessee did not appear for the same.

9. Accordingly Show Cause Notice was issued to M/s ASIAN SYSTEMS, called upon to show as to why:

- (i) The demand for Service tax to the extent of Rs. 14327005/- short paid /not paid by them in F.Y. 2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

## DEFENCE REPLY

10. The assessee vide letter dated 25.05.2021 submitted their reply to SCN wherein they denied all the allegations and averments made against the noticee firm and traversed and submitted that whatever that is it specifically denied herein after shall not be taken as admitted. They submitted that they are well established reputed ad law abiding company in existence since 1997 and engaged into trading of IT hardware products, electronic products etc. and during the said period there was not service provided hence issue of levy of service tax does not arise at all.

11. They prefers to reply para wise to the entire SCN, but directly state that they are into trading business and its related VAT Returns alongwith audited balance sheet have been attached for perusal. They submitted the Audited Balance Sheet and copies of VAT Return filed for the even period, wherein it is established that total turnover as per Audited Balance Sheet and VAT Returns are reconciling thereby leaving no space for any other income which is chargeable to service tax. They further stated that the impugned SCN is faulty and there is no suppression on the part of the noticee as all required details have been shown in returns filed with Govt. of Gujarat.

12. They further submitted that there is no suppression on the part of them that there is no service involved and entire turnover is in relation to trading of goods and hence issue of suppression before service tax authorities does not arise at all and therefore the SCN is not sustainable. Similarly interest and penalty are also not imposable. In view of the above they requested to drop the proceedings.

## PERSONNEL HEARING

13. Personnel Hearing was granted to the assessee on 27.04.2022 and Shri Amit Raiyani C.A., duly authorised representative, attended on behalf of the assessee. He reiterated the written reply submitted on 27.05.2021 and submitted VAT return and copies of purchase order given by various Govt. agencies in addition to said reply dated 27.04.2021.

## DISCUSSION AND FINDINGS

14. 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.

15. I have carefully gone through the Show Cause Notice, submission made by the noticee, Balance Sheet, VAT Returns, and copies of invoices for the year 2015-16 and 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.1,43,27,005/- for the financial year 2015-16 and 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. 1,43,27,005/- for the financial year 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1994 or not.

16. On perusal of the reply to the SCN and other documents submitted by the assessee, I find that they are engaged in the business of trading of computer hardware products and electronic items. Most of their clients for purchase of these items are various Government agencies such as Various District Panchayat Offices, Modasa Nagarpalike, Chief District Health Officer of various districts, Sardar Sarovar Narmada Nigam Ltd, Family welfare branch of various districts etc and other customers. On perusal of their 26AS, I find that their main buyers of the computer system are these government departments, the TDS has been deducted as per Income Tax Act & Rules and accordingly reflected in their Form 26AS. They have also produced copies of orders given by various above referred Government departments

for purchase of Desktop computer, printer, LED TV, Scanner etc. They have also provided copy of VAT in Form 205 for both the years wherein the details of purchase and sales of various items as well as details of purchasers have been furnished. They have also furnished copies of invoices issued by them to various clients showing the description of goods traded by them wherein they have charged the applicable VAT from the customers also.

17. Now, I discuss the relevant provisions with regard to trading of goods; As per the extant provisions of Chapter V of the Finance Act, 1994 activity of trading in Goods is not taxable. Levy of Service tax as per Section 66B is on Services only, said section reads as under:

**66B.** *There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.*

Term 'Service' as defined in section 2 (44) excludes the activity of transfer title in goods by of sale, which is nothing for Trading.

*(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*

18. Further after introduction of negative list with effect from 01.07.2012 "service" means any activity carried out by a person for another for consideration, and includes a declared service. 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.,

- (a) Service by the Government/Local Authority*
- (b) Service by RBI*
- (c) Service by Foreign Diplomatic Mission located in India*
- (d) Service in relation to agriculture*
- (e) Trading of goods*
- (f) Manufacture of goods*
- (g) Selling of space/time for advertisement*
- (h) Services by access to road or bridge on a payment of Toll charges*
- (i) Betting, gambling or lottery*
- (j) Admission to Entertainment Events & Amusement Facilities*
- (k) Transmission or distribution of electricity*
- (l) Educational Services*
- (m) Renting of Residential dwelling for use as residence*
- (n) Financial services by way of extending deposits, loans or advances and inter se sale or purchase of foreign currency*
- (o) Transportation of Passenger with or without accompanied belongings*
- (p) Transportation of goods.*
- (q) Mortuary/Funeral services*

19. On perusal of the Section and definitions, I find that trading of goods is falls under the negative list of services specified in Section 66D of Finance Act, 1994 and therefore the said activity is out of purview of taxable service.

20. Further, I find from the records available in the file that Sale of goods is taxable under the Gujarat Value Added Tax Act and assessee has paid the requisite VAT on the Sales and submitted VAT returns for the period 2015-16 & 2016-17. Therefore, in

view of the above provisions, I find that the assessee is not liable to pay Service Tax on the trading of goods as stated above for the period 2015-16 and 2016-17. For the sake of clarity, I would like to discuss the issue year wise.

#### FINANCIAL YEAR 2015-16

21. On perusal of SCN, audited balance sheet, ledger account and other related documents of F.Y.2015-16, I find that the value shown in SCN is Rs.4,49,34,652/- as gross receipt from services (value from ITR/26AS (in Rs.)). However on perusal of audited Balance sheet, I find that total sale/income is Rs.7,92,54,891/- as per balance sheet. As the income shown in the audited Balance sheet is on higher side, I consider Rs.7,92,54,891/- as the income for the year 2015-16 for adjudication purpose also. I have gone through the VAT return filed by the assessee for the year under consideration and find that Sale of goods is taxable under the Gujarat Value Added Tax Act and assessee has paid the requisite VAT on the Sales and submitted VAT returns for the period 2015-16 on the total sale. Therefore, in view of the above provisions, I find that the assessee is not liable to pay Service Tax on the trading of goods as stated above for the year 2015-16. As the trading activity is covered under the negative list of services specified in Section 66D of Finance Act,1994, the income derived from the activity of trading amounting to Rs.7,92,54,891/- is also not taxable under the Service tax and therefore the service tax demand of Rs.65,15,525/- is not sustainable and therefore required to be dropped.

#### FINANCIAL YEAR 2016-17

22. On perusal of SCN, audited balance sheet, ledger account and other related documents of F.Y.2016-17, I find that the value shown in SCN is Rs.5,20,76,533/- as gross receipt from services (value from ITR/26AS (in Rs.)). However on perusal of audited Balance sheet, I find that total sale/income is Rs.8,27,65,303/- as per balance sheet. As the income shown in the audited Balance sheet is on higher side, I consider Rs.8,27,65,303/- as the income for the year 2016-17 for adjudication purpose also. I have gone through the VAT return filed by the assessee for the year under consideration and find that Sale of goods is taxable under the Gujarat Value Added Tax Act and assessee has paid the requisite VAT on the Sales and submitted VAT returns for the period 2016-17 on the total sale. Therefore, in view of the above provision, I find that the assessee is not liable to pay Service Tax on the trading of goods as stated above for the year 2016-17. As the trading activity is covered under the negative list of services specified in Section 66D of Finance Act,1994, the income derived from the activity of trading amounting to Rs. 8,27,65,303/- is also not taxable under the Service tax and therefore the service tax demand of Rs.78,11,480/- is not sustainable and therefore required to be dropped.

23. The financial and other records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company/ individual during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated 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 at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the 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 of the company/ individual. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

24. Having considered above facts and discussion, I am of the view that the assessee was engaged in trading of computer hardware and parts thereof and

electronic items to various Govt.offices and other customers FY 2015-16 & 2016-17. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. I am, therefore, of the view that the assessee has established their case quite clearly and therefore I hold that no service tax is payable by the assessee as demanded in the subject SCN.

25. Further, on perusal of 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 he 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. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income from clearing and forwarding services. I, therefore, refrain from discussing the taxability on any other income.

26. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, ITR, reconciliation statement, I find that the service tax demand of Rs.1,43,27,005/- for the period 2015-16 to 2016-17 is not sustainable and accordingly Show Cause Notice No.STC/15-54/OA/2021 dated 23.04.2021 is not sustainable and liable to be dropped. Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty upon assessee on this count.

27. Accordingly, I pass the following order;

**: ORDER :**

28. I drop the demand of Rs.1,43,27,005/- and proceedings initiated against M/s. Asian Systems and accordingly Show Cause Notice F.No. STC/15-54/OA/2021 dated 23.04.2021 is hereby disposed off.

*R. Gulzar Begum*

(R.GULZAR BEGUM)  
Additional Commissioner  
Central GST & Central Excise  
Ahmedabad North

Dated: 28.04.2022

F.No. STC/15-54/OA/2021

To,  
M/s.Asian Systems,  
D/7, Kalptaru Flats,  
Mirambika Road,  
Ahmedabad, Gujarat 13

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The D.C/A.C, Division-VII, Central Excise & CGST, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Central Excise & CGST, Ahmedabad North
4. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
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