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/15-152/OA/2020** आदेश की तारीख़/Date of Order:-29.04.2022

जारी करने की तारीख़/Date of Issue :- 29.04.2022

DIN NO: 20220464WT000062146A

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

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 04/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 विरूद्ध 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 विरूद्ध 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.

विषयः- कारण बताओ सूचना/ Show Cause Notice No. STC/15-152/OA/2020 dated 22.10.2020 issued to M/s LINC DIGITAL SYSTEMS PVT.LTD., 10TH FLOOR, 10TH FLOOR, ELANZA VERTEX, NR ZAINOBIYA, SINDHU BHAVAN ROAD, AHMEDABAD, Gujarat- 380059.

BRIEF FACTS OF THE CASE :

M/s. LINC DIGITAL SYSTEMS PVT.LTD, 10TH FLOOR, 10TH FLOOR, ELANZA VERTEX, NR ZAINOBIYA, SINDHU BHAVAN ROAD, AHMEDABAD, Gujarat- 380059, (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.- AAACL6998FST001 & are engaged in the business of Providing Taxable Services.

2. On perusal of the data received from CBDT, it was noticed that the assessee had declared different values in Service Tax Return (ST-3) and Income Tax Return (ITR/Form 22AS) for the Financial year 2015-16.

3. On scrutiny of the above data, it was noticed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2015-16 as compared to the Service related taxable value declared by them in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

(Amount in Rs.)

Sr No	F. Y.	Total Sale of Service as per ITR	TOTAL GROSS VALUE PROVIDED (STR)	TOTAL VALUE for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	VALUE DIFFERENCE in ITR and STR	VALUE DIFFERENCE in TDS and STR	HIGHER VALUE (VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	DUTY @ 14.5%
1	2015-16	50974857	50312936	96438455	661921	46125519	46125519	6688200

4. It was requested to explain the reasons for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form: 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns for the Financial Year 2015-16 vide letter dated 06.10.2020 by the Jurisdiction office. However, the said assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner. For this reason, no further verification could be done in this regard by the department.

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

6. No data was forwarded by CBDT, for the period 2016-2017 and 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 the time of issue of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

7. 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."

8. From the data received from CBDT, it was observed that 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 to 2017-18 (upto June-2017) has not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. Further, the assessee has also failed to provide the required information even after the issuance of letters from the Department. Therefore, the assessable value for the year 2016-17 and 2017-18 (upto June-2017) is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action will be initiated against the said assessee 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 to 2017-18 (upto-June 2017) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

9. The government has 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 are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust by the service provider, no matter how innocently. From the evidence on record, it appears that the said assessee 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 appears to have made deliberate efforts to suppress the value of taxable service to the department and appears to have not paid the liable service tax in utter disregard to the requirements of law and the trust deposed in them. Such outright act in defiance of law, appears to have rendered them liable for stringent penal action as per 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.

10. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the noticee, M/s. LINC DIGITAL SYSTEMS PVT.LTD., have committed the following contraventions of the provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004:

(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 as discussed above;

(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 to 2017-18 (upto June-2017).

(iv) All the above acts of contravention on the part of the said assessee appear to have been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid is required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years.

(v) All 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 appears to be publishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

(vi) The said assessee is also 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.

(vii) Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

11. The above said service tax liabilities of the assessee, M/s. LINC DIGITAL SYSTEMS PVT.LTD has been worked out on the basis of limited data/ information received from the Income tax department for the financial years 2015-16. Thus, the present notice relates exclusively to the information received from the Income Tax Department.

12. 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 to 2016-17. From the evidences, it was observed 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. 6688200/-(including Cess). 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 is to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

13. Therefore, M/s. LINC DIGITAL SYSTEMS PVT.LTD.,10TH FLOOR, 10TH FLOOR, ELANZA VERTEX, NR ZAINOBIYA, SINDHU BHAVAN ROAD, AHMEDABAD, Gujarat- 380059 called upon to show cause before the Principal Commissioner, Central Goods and Service Tax, Ahmedabad North having his office situated at Ist Floor, Customs House, Opposite Old High Court, Income Tax Cross Road, Navrangpura, Ahmedabad -380009 as to why :

(i) The Service Tax to the extent of Rs. 6688200/- 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 above, 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 :

14. The assessee vide letter dated 19.04.2022 has submitted their defence reply wherein in addition to their written submission, they have provided Audit

Report No. 1615/Service Tax/2018-19 dated 24.04.2019 issued by Dy. Commissioner, Circle VII, Office of the Commissioner of Central Tax Audit, Ahmedabad and they stated that Audit for the period October 2013 to June 2017 has been undertaken in January and February 2019. They stated that in the Audit Report issued, there was short fall of Rs. 1127/- in payment of Service Tax on reconciliation of Income. They further stated that, in view of the Audit Report, there is no shortfall of payment of Service Tax as worked out in the show cause notice and therefore they are not liable for any Interest and penalty etc. They also requested to drop the demand raised vide the subject Show Cause Notice.

PERSONNEL HEARING :

15. Personnel hearing was held on 21.04.2022, wherein Shri Rajesh Shah, Chartered Accountant on behalf of the assessee appeared for personnel hearing. He reiterated the written submission and requested to drop all further proceedings.

DISCUSSION AND FINDING :

16 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.

16.1 I have carefully gone through the records of the case, submission made by the assessee in reply to the show cause notice and also during the course of personal hearing and the Final Audit Report No1615/Service Tax/2018-19 dated 24.04.2019 issued by Dy. Commissioner, Circle VII, Office of the Commissioner of Central Tax Audit, Ahmedabad. In the present case, Show Cause Notice has been issued to the assessee demanding Service Tax of Rs. 66,88,200/- for the financial year 2015-16 on the basis of data received from Income Tax authorities. In the present case said Service Tax demand has been issued on the basis of higher difference of Rs. 4,61,25,519/- with regards to total value for TDS and gross value provided in STR for the year 2015-16. 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.

16.2 In reply to the show cause notice, the said assessee submitted their written submission on 19.04.2022 and enclosed all the relevant documents. The assessee alongwith the other documents also has furnished the Audit Report No1615/Service Tax/2018-19 dated 24.04.2019 issued by Dy. Commissioner, Circle VII, Office of the Commissioner of Central Tax Audit, Ahmedabad covering the period from October 2013 to June 2017. The assessee has also stated that the Audit for the period 2015-16 has already been completed by the Audit Commissionerate. I find from the Audit Report that the assessee is engaged in providing erection Commissioning & Installation Services, maintainance and Repair Services.

16.3. I have gone through the Audit Report No. 1615/Service Tax/2018-19 dated 24.04.2019 covering the period from October 2013 to June 2017 where in para 4 of the said Audit Report, Service Tax of Rs. 1127/- alongwith the interest and penalty has been recovered in respect of Difference of Service Tax on reconciliation statement of Income recovered and para settled accordingly. I reproduced herewith the said para for reference;

"Revenue para No.4 : Short payment of Duty noticed on reconciliation of Income :

During the course of audit, on verification of revenue reconciliation with ST-3 returns for the period 2015-16, it was noticed that the assessee has short paid Service Tax. The assessee short paid Service Tax amounting to Rs. 1127/- on A. Value of Rs. 7775/-

On being pointed out, the assessee is agreed on the objection. The assessee created liability as per Section 142(8) of CGST Act, 2017 in form GST DRC-03 in their GSTIN No. 24AAACL6998F1Z8 ON 21.02.2019 and paid the Service Tax of Rs. 1127/- alongwith interest of Rs. 508/- and penalty of Rs. 169/- (Total Rs. 1804/-) from cash ledger vide debit entry No. DC2402190316057 dated 21.02.2019 voluntarily.."

16.4 Further, while going through the Audit report, I find that the Audit Report No. 1615/Service Tax/2018-19 dated 24.04.2019 covering the period from October 2013 to June 2017 must be considered. I find that the Audit of the assessee was under taken on January/February 2019. However, the Audit has observed many revenue paras out of which Para No. 4 is with reconciliation with their Financial records, as stated above and therefore differential revenue has been recovered based on the reconciliation statement.

16.5 Therefore, it is apparent from the Final Audit Report that the reconciliation of Income booked/ shown in the books of accounts of the assessee, for the period October 2013 to June 2017 was carried out with Taxable value disclosed in their ST-3 Returns filed by the assessee. It is also evident that the audit of records of assessee by the department had already been conducted before the issuance of the subject SCN. Despite of 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 had 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 find that there is no short payment on the part of the assessee. The SCN issued to the assessee after audit of the assessee is beyond the law and is not justified. Thus, the subject SCN is liable to be dropped on merits being incorrect and legally not sustainable.

16.6 Further, on perusal of para 6 of SCN, I find that the levy of Service Tax for the financial year 2016-17 and 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 level for the demand for the year 2016-17 and 2017-18 (Up to June 2017), in charging para of the SCN. I find that the SCN had not questioned the taxability on any income other than the income from sale of services shown in ITR/Form 26AS. I therefore refrain myself from to enter in to the taxability on other income other than the sale of service.

17 In view of the facts and circumstances pertaining to the case, the demand is not tenable in law. Accordingly, I do not consider it necessary to delve on the merits of 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 penalty.

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

: ORDER :

20 I drop the demand of Rs. Rs. 66,88,200/- and proceedings initiated against M/s LINC DIGITAL SYSTEMS PVT.LTD., 10TH FLOOR, 10TH FLOOR, ELANZA VERTEX, NR ZAINOBIYA, SINDHU BHAVAN ROAD, AHMEDABAD, Gujarat- 380059 and accordingly Show Cause Notice F.No. STC/15-152/OA/2020 dated 22.10.2020 is hereby disposed off .

(R. Gulzar Begum)
Additional Commissioner
Central Excise & CGST,
Ahmedabad North

F.No.STC/15-152/OA/2020

Dated: 29.04.2022

BY REGD. POST A.D./SPEED POST/Hand Delivery

To
M/s LINC DIGITAL SYSTEMS PVT.LTD.,
10TH FLOOR, 10TH FLOOR, ELANZA VERTEX, NR ZAINOBIYA, SINDHU BHAVAN ROAD, AHMEDABAD, Gujarat- 380059

Copy for information to:

1. The Commissioner, CGST & CX, Ahmedabad North.
2.. The Dy. /Assistant Commissioner, DIV-VII, CGST & CX, Ahmedabad North.
3. The Superintendent, Range-III, Division-VII, CGST & CX, Ahmedabad North
4. The Superintendent, Systems, CGST & CX, Ahmedabad North
5. Guard File.