



<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क,अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा ,अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20230564WT000000B873

फा.सं./F.No. STC/15-02/OA/2021-22

आदेश की तारीख/Date of Order :- 30.05.2023

जारी करने की तारीख/Date of Issue :- 30.05.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

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

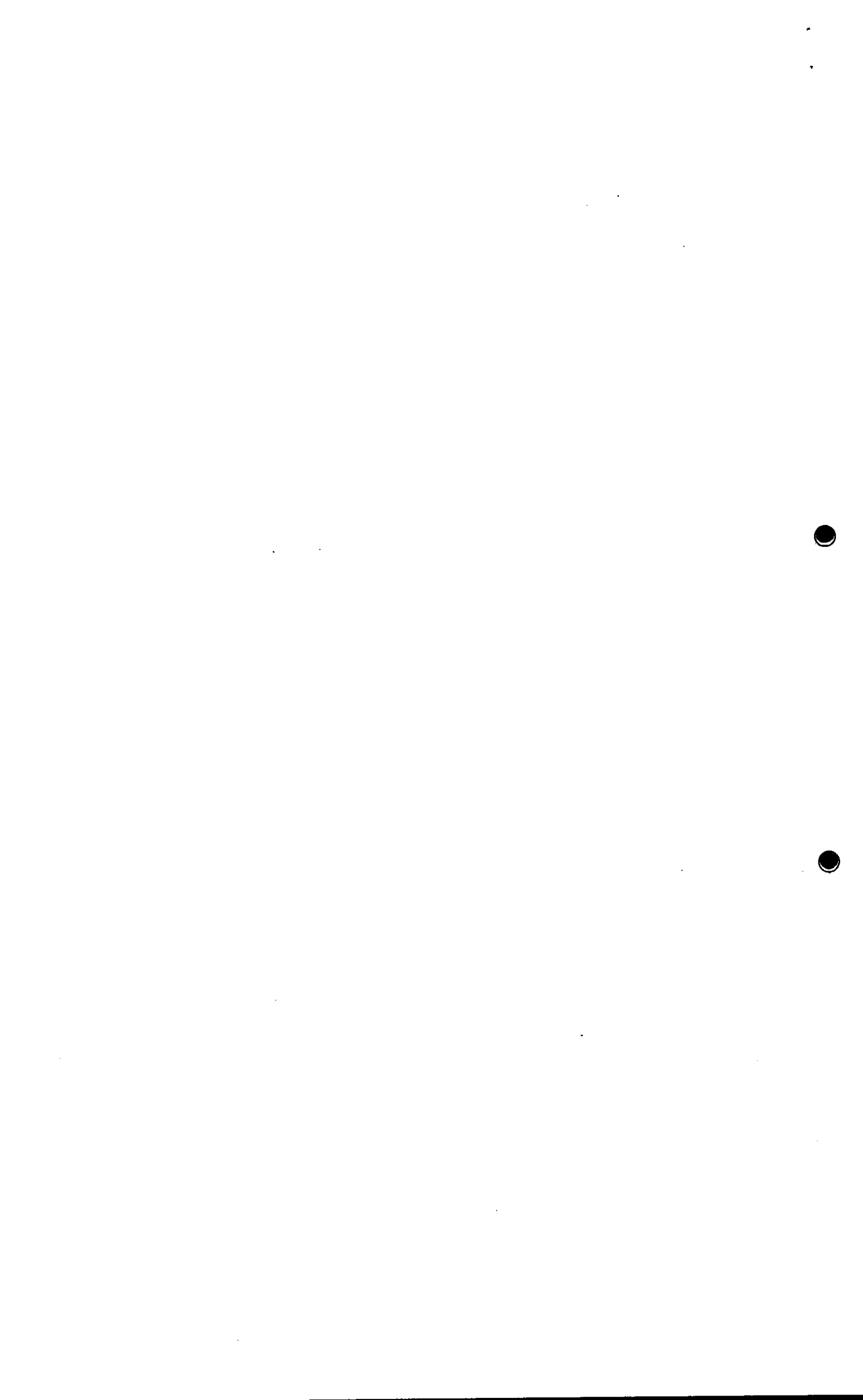
The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(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. STC/15-02/OA/2021-22 dated 23.04.2021 issued to M/s Varun Tradelink Pvt. Ltd., 108, Sarita Com, Jain Temple Line, Off. CG Road, Ahmedabad, Gujarat-380009.



BRIEF FACTS OF THE CASE :

M/s. Varun Tradelink Private Ltd, 108, Sarita Com, Jain Temple Line , Off.CG Road, Ahmedabad, Gujarat 380 009 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. AAACV4994MST001 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 was observed that the Assessee had 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 as per ST-3 returns (In Rs.)	Gross Receipts Services (Value from ITR/26AS)(In Rs.)	Diff. 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	3587670	28433975	24846305	3602714
2	2016-17	3538530	32060127	28521597	4278240
TOTAL					7880954

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 assessee 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 had 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). 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-3 Returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appeared that the said service provider had not assessed the tax dues properly, on the services provided 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 had 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 assessee along with interest under Section 75 of the Finance Act, 1994.

7. In view of above, it appeared that the Assessee had 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.78,80,954/-, 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(l)(d) of Service Tax Rules, 1994.

8. It has been noticed that at no point of time, the Assessee had 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 appeared that the said assessee had 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. 78,80,954/-. It appeared that the above act of omission on the part of the Assessee resulted into nonpayment 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 appeared 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 appeared that the Assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

9. The said assessee was given an 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.

10. Therefore, a Show Cause Notice bearing F.No.STC/15-2/OA/2021 dated 23.04.2021 was issued to M/s. Varun Tradelink asking them to show cause as to why:

- (i) The demand for Service tax to the extent of Rs. 78,80,954/- 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

11. The said assessee vide letter dated 27.03.2023 submitted their reply to SCN, wherein they stated that the assessee company is involved in manufacture of black (CTC) tea from green tea leaves in its own factory premises. The raw material i.e. green tea leaves is supplied by principal manufacturer and the company used to convert such tea leaves into black tea using its own machinery and man power at its factory premises and finally finished products is delivered to principal manufacturer. In other words during captioned financial year the company was involved in job work on behalf of principal manufacturer which amounts to processing of agricultural produce to make it marketable for primary market.

12. They have also stated that as per clause d(iii) of Negative List of service inserted by Finance Act, 2012 and notified from 01.07.2012 vide Notification No.19/2012-ST dated 5 June 2012 "services relating to agriculture or agriculture produce byway of 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 agriculture but make it only marketable for the primary market" is not subject to service tax.

13. The further stated that as per clause 30 of Mega Exemption No.25/2012 amended from time to time "services by way of carrying out- (i) any process amounting to manufacturer or production of goods excluding alcoholic liquor for human consumption" is wholly exempt from service tax leviable thereon under section 66 B of the said act.

14. Tea being an agricultural produce, the activity carried on by the company essentially relates to processing of agricultural produce to make it marketable for primary market which amount to manufacture and is wholly exempt from service tax net. This is also evident from the fact that, the company has duly deposited duty of cess on tea @ 0.50 per kg on quantity

cleared from factory and submitted form ER 1 return under central excise on monthly basis during the whole period. Accordingly, turnover declared by the company in the ST 3 return for the captioned period was shown as NIL. However entire turnover was correctly reported in company's ITR. They have also submitted reconciliation statement wherein it was explained the mismatch of the figures.. In view of the above there is no question of suppression and accordingly tax payable in NIL and requested to decide the matter on merits.

PERSONNAL HEARING

15. In the instant case, Personal Hearing was granted to the assessee on 03.04.2023. Shri Anil Kardia, C.A, duly authorised representative, attended the P.H. on behalf of the assessee and reiterated their written submissions dated 27.03.2023, also submitted additional submissions during the P.H and requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

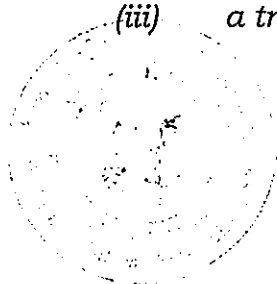
16. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding further.

17. I have carefully gone through the SCN, reply to SCN, submission made by the assessee, copy of Audited Balance Sheet, Form 26AS, copy of ER 1, copies of ledger accounts and copies of invoices for the Financial Year 2015-16 & 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.78,80,954/- for the Financial Year 2015-16 & 2016-17 on the basis of data received from Income Tax authorities. The Show Cause Notice alleged non-payment of Service Tax, interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. Accordingly to which the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 78,80,954/- for the Financial Year 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

18. 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, 1994 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 as agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed"

19. 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—

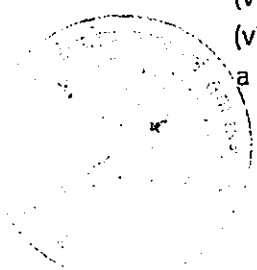
- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) transport of goods or passengers; or
- (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. On perusal of SCN, reply to SCN, records of the case, submission made by the assessee, copy of Audited Balance Sheet, Form 26AS, copies of ledger account, agreement and copies of sample bills for the Financial Year 2015-16 & 2016-17, I find that the assessee company is involved in manufacture of black (CTC) tea from green tea leaves in its own factory premises. The raw material i.e. green tea leaves is supplied by principal manufacturer and the assessee company used to convert such tea leaves supplied by principal manufacturer into black tea using its own machinery and man power at its factory premises and finally finished products is delivered to principal manufacturer. In other words during captioned financial years the company was involved in job work on behalf of principal manufacturer which amounts to manufacturing of black tea from green tea leaves.

22. In their reply to SCN, they have also stated that as per clause d(iii) of Negative List of service inserted by Finance Act, 2012 and notified from

01.07.2012 vide Notification No.19/2012-ST dated 5 June 2012 "services relating to agriculture or agriculture produce by way of 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 agriculture but make it only marketable for the primary market" is not subject to service tax.

23. They further stated that as per clause 30 of Mega Exemption No.25/2012 amended from time to time "services by way of carrying out- (i) any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption" is wholly exempt from service tax leviable thereon under section 66 B of the said act. Accordingly the job work activity of conversion of tea leaves into black tea at their factory premises is covered under clause 30 of Noti.No.25/2012 dated 20.06.2012, therefore the activity is exempted from the payment of service tax. In this connection I have gone through the relevant notification and related definition to examine the claim of the assessee that their activity is exempted from the ambit of service tax. The relevant para of the said Notification is as under:

Notification No.12/2012 dated 01.07.2013 for ready reference.

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17 th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17 th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

30. Services by way of carrying out,-

(i) any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption; or

(ii) any intermediate production process as job work not amounting to manufacture or production in relation to -

(a) agriculture, printing or textile processing;

(b)...

According to which services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption is exempted from payment of service tax. In this connection, I have gone through the definition of the "process amounting to manufacture" which reads as under:

"process amounting to manufacture or production of goods" means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944), or the Medicinal and Toilet Preparation (Excise Duties) Act, 1955(16 of 1955) or any process amounting to manufacture of opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force" Inserted vide Notification 7/2017 to be effective from the day the Finance Bill 2017 receives the assent of the president.

According to which a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944), is process amounting to manufacture. Further duties of excise is defined as under:

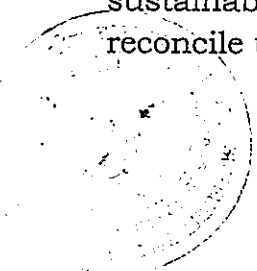
"duties of excise means duties of excise levied under any Central Act whether as such or as additional duties of excise or auxiliary duties of excise or special duties of excise or by any other name".

In view of the above definitions, I find that the activity i.e. conversion of tea leaves into black tea is amounting to manufacture and therefore the activity is eligible for exemption from service tax in view of clause 30 of Noti.No.25/2212 dated 20.06.2012. It is also noted that in the instant case the appropriate cess on tea has been paid and ER1 returns has also been filed and have submitted copies of the said ER 1 returns also. In view of the above facts, I accept the claim of the assessee that the job work of conversion of tea leaves into black tea is amounting to manufacture and therefore the activity is no covered under service tax in view of clause 30 of Noti.No.25/2212 dated 20.06.2012.

24. In this connection, the assessee contended that the service tax of Rs.78,80,954/- is demanded on the basis of the value taken from ITR/26AS) as per Show Cause Notice for the FY 2015-16 & 2016-17. They stated that the said value taken is from 26AS and said income is derived from providing job work services to M/s. Satynarayan Tea Company P.Ltd & M/s.KPR Enterprises and therefore the said income is exempted from service tax in view of clause 30 of Notification No.25/2012-ST dated 20.06.2012. On perusal of the agreement, I find that the agreement is made for conversion of green leaf to made tea. They have also furnished copies of invoices wherein the details of work done by them are explained and have not collected any service tax on them.

25. I have also gone through the ledger account of M/s.Satynarayan Tea Company P.Ltd & M/s.KPR Enterprises and Form 26 AS and find that the service provider received an amount of Rs.2,79,82,894/- as jobwork charges for FY 2015-16 and Rs.3,11,66,027/- for the FY 2016-17 from their lone service receiver. I have also gone through the audited balance sheet of the service provider for both the FY and find that the said income is reflected in their audited balance sheet also. On perusal of the above documents, I find that the service provider is providing job work to the principal manufacturers i.e. M/s. Satynarayan Tea Company P.Ltd & M/s.KPR Enterprises.

26. In view of the above facts, I accept the contention of the assessee that the gross income of Rs.2,79,82,894/- for the FY 2015-16 and Rs.3,11,66,027/- for the FY 2016-17 are received against the job work done as discussed above accordingly they are eligible for exemption from payment of service tax in view of clause 30 of Notification No.25/2012 dated 20.06.2012 and accordingly the gross income of Rs. 2,79,82,894/- for the FY 2015-16 & Rs.3,11,66,027/- for the FY 2016-17 received in lieu of job is exempted from the ambit of service tax. In view of the above, I find that the service tax demand of Rs.78,80,954/- demanded vide above referred SCN is not sustainable and therefore required to be dropped. For the sake of clarity, I reconcile the figures as under:



(Amt. in Rupees)

Sl.No.	Particulars	2015-16	2016-17
01	Gross receipts from services (value from ITR/26AS and as per SCN)	28433975	32060127
02	Less: Value declared in ST3 as discussed	3587670	3538530
03	Difference	24846305	28521597
04	Less: Value of services exempted vide Para 30 of Noti.No.25/2012 as discussed	27982894	31166027
05	Difference	(+)3136589	(+)2644430

From the above reconciliation, it is clear that the assessee more income from job work, an exempted service, than the differential value between the value shown in their ITR/26AS and the value declared in their ST 3. As the job work income is exempted from the ambit of service tax, as discussed, I find that the service tax demand of Rs.78,80,954/- demanded vide above referred SCN is not sustainable and therefore required to be dropped.

27. 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 also onus upon assessee to verify and make a report on 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 assessee have 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.

28. 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, 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 2016 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). On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the difference between

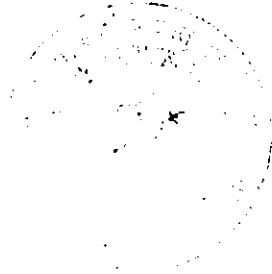
value of services from 26AS/ITR and gross value in service tax return provided. I, therefore, refrain from discussing the taxability on other income other than the difference between value of services from 26AS/ITR and gross value in service tax provided.

29. In view of the above discussion and findings and also on perusal of SCN, reply to SCN, Form 26AS, reconciliation statement, agreement, ledger accounts, copies of invoice, and audited balance sheet for the FY 2015-16 & 2016-17, I find that demand of Rs.78,80,954/- 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.

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

ORDER

31. I hereby order to drop proceedings initiated for recovery of service tax of Rs.78,80,954/- along with interest and penalties against M/s. Varun Trade link Private Ltd vide SCN No.STC/15-2/OA/2021-22 dated 23.04.2021.



(Signature)
30/05/2023
(Lokesh Damor)

Joint Commissioner
Central GST & Central Excise
Ahmedabad North
Date:

F.No. STC/15-2/OA/2021

To,
M/s. Varun Tradelink Private Ltd,
108, Sarita Com, Jain Temple Line ,
Off.CG Road, Ahmedbad,
Gujarat 380 009.

Copy to:

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