



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@oma.com

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

निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. **STC/15-175/OA/2020**

आदेश की तारीख/Date of Order -25 03 2022

जागी करने की तारीख/Date of Issue - 25 03 2022

DIN NO: 20220364WT000000A67E

द्वारा पारित/Passed by:-

आर गुलजार बेगम **IR. GULZAR BEGUM**

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 104/ADC/GB/2021-22

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 प्रतिलिपि में) 60 मिनट (दिनांक 25.03.2022) आयुक्त) अपील, (केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केंद्रीय उत्पाद शुल्क भवन, अंबावाडी, अहमदाबाद-380015) को प्रारूप संख्या इ.ए (1-A.E) 1-में दाखिल कर सकता है। इस अपील पर रु) 2 00 दो रुपये (का) का 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। इस पर केंद्रीय उत्पाद शुल्क) अपील (नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। इन प्रतियों 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 बनावी सूचना/ Show Cause Notice No. STC/15-75/OA/2020 dated 23.10.2020 issued to M/s. PADMAVATI MAN POWER SUPPLIER, 405, SAGAR APPT. B/H. ST. XAVIERS HIGH SCHOOL, MEMNAGAR ROAD, MEMNAGAR AHMEDABAD, GUJARAT-380052

Brief Facts of the Case

M/s. PADMAVATI MAN POWER SUPPLIER, 405, SAGAR APPT. B/H. ST. XAVIERS HIGH SCHOOL, MEMNAGAR ROAD, MEMNAGAR AHMEDABAD, GUJARAT-380052 (hereinafter referred to as "the service provider") are engaged in the business of providing taxable services and registered with Service Tax Department holding Service Tax Registration No. ACJPC3194LST001.

2. On preliminary verification of Third Party Data received from CBDT of the said service provider, 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 FY 2015-16. Further, it is observed that there is difference in Value of Services from ITR/TDS and Gross Value of Services provided in ST-3 returns which is to the tune of Rs. 38543965/-. From this, it appears that the service provider has less discharged their service tax liability of Rs. 5378160/- on the aforesaid difference amount of Rs. 38543965/- for the FY 2015-16.

3. Unquantified demand at the time of issuance of SCN

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

'2.8 Quantification of duty demanded. It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the notice are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI, 1982 (OIO) 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.'

4. From the facts, it is observed that the "Total Amount Paid/Credited under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts from Services (From ITR)" for the **F.Y. 2016-17 to FY2017-18 (up to 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 said 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 **F.Y. 2016-17 to FY 2017-18 (up to 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 F.Y. 2016-17 to FY2017-18 (up to June'2017)** covered under this Show Cause Notice, will be recoverable from the said assessee accordingly.

5. The service provider was requested to clarify the above said differential value by submitting the self-certified documentary evidences such as Audited Balance Sheet, copy of Profit & Loss Account, copy of Ledgers, Gross Trial Balance Sheet, ITR, Form 26AS, ST-3 returns, sample sales invoices along with details of all the sales invoices issued from financial year 2015-16 to FY2017-18 (up to June'2017) vide letter/email, but the service provider has neither produced any documentary evidences of the differential value nor submitted any reply.

6. It is observed that the service provider has not discharged their service tax liability on the actual value received towards taxable services provided by them, hence, there was a short payment of Service Tax of Rs. 5378160/- during the material period. Further, it appears that the service provider has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994, inasmuch as they failed to pay Service Tax to the extent of Rs. 5378160/- as per their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services provided/received 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.

7. In view of the above, it is observed that the service provider has short paid/non-payment Service Tax of Rs. 5378160/- on the actual value received towards taxable services provided which appears to be recoverable under proviso to Section 73(1) of the said Act along with interest under Section 75 *ibid* not paid by them under Section 68 of the said Act read with Rule 6 of Service Tax Rules, 1994, inasmuch as the said service provider has suppressed the facts to the department and contravened the provisions with intent to evade payment of service tax.

8. Further, in terms of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, every person providing taxable service to any person is required to pay Service Tax at the rate specified in Section 66 in such manner and within such period as may be prescribed. In the present case, on the basis of Third party Data/information of CBDT for the FY 2015-16, it however appears that the service provider has less discharged their service tax liability on the actual value received towards taxable services provided at the rate prescribed under Section 66 of the said Act. Further, it appears that all these acts of contravention on the part of the service provider is committed by way of suppression of the facts by not declaring/not considering the correct value of taxable services provided by them for payment of service tax to the Central Government for the period in question, with intent to evade payment of Service Tax and therefore the service tax which was not paid at the material time is required to be demanded under the proviso to Section 73(1) along with interest as per provision of Section 75 of the said Act.

9. All the above acts of contravention as discussed in above paras on the part of the service provider appears to be punishable, therefore, they are liable for penalty under Section 76 of the said Act. Further, as per Section 70 of the said Act, the person liable to pay service tax shall himself assess the tax due on the services provided by him and shall furnish a prescribed return as per Rule 7 of the Service Tax Rules, 1994. As they have failed to do so, they appear to be liable to penalty in

terms of Section 77 of the said Act. Further, the penalty under Section 78 of the said Act also appears to be invocable in the instant case as they have suppressed the taxable value.

10. The provisions of the repealed Central Excise Act, 1944, the Central Excise Tariff Act, 1985 and amendment of the Finance Act, 1994 have been saved vide Section 174(2) of the CGST Act, 2017, and therefore the provisions of the said repealed/amended Acts and Rules made thereunder are enforced for the purpose of demand of duty, interest, etc. and imposition of penalty under this notice.

11. Therefore, M/s. PADMAVATI MAN POWER SUPPLIER, 405, SAGAR APPT., B/H. ST. XAVIERS HIGH SCHOOL, MEMNAGAR ROAD, MEMNAGAR AHMEDABAD, GUJARAT- 380052 called upon to show cause to the Additional Commissioner of CGST & Central Excise, Ahmedabad-North, having their office situated at **FIRST FLOOR, CUSTOM HOUSE**, NR. All India Radio, Navrangpura, Ahmedabad, Gujarat 380009, as to why :

- a) The demand of Service tax to the extent of Rs. 5378160/- (Service Tax of Rs. 5282106/- + Education Cess of Rs. 15459/- + SHEC of Rs. 7729/-) not paid/short paid by them should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- b) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- c) Penalty should not be imposed upon them under the provisions of Section 76 of the Finance Act, 1994, for failure to assess Service Tax as required under Section 70 of the Finance Act, 1994 and make the payment of Service Tax within the period and in the manner prescribed under Section 68 of the Finance Act, 1994 read with rule 6 of the Service Tax Rules;
- d) Penalty should not be imposed upon them under the provisions of Section 77 of the Finance Act, 1994.
- e) Penalty should not be imposed upon them under the provisions of 78 of the Finance Act, 1994.

12. **PERSONNEL HEARING :**

Personnel hearing was granted to the assessee on 09.03.2022, wherein Shri Babulal Shreeram Chauhan, authorized representative of M/s Padmavati Manpower Supplier appeared for personnel hearing and submitted reconciliation statements and requested to drop all further proceedings.

13. **DEFENCE REPLY :**

The assessee vide their submission dated 22.11.2021 has furnished their defence reply wherein they stated that they are basically providing Manpower supply Services to M/s Kalpatru Power Transmission Limited & M/s Epsilon Engineering Pvt Ltd. Further, they also submitted that as per Govt Notification No. 30/2012 dated 20.06.2012 amended vide Not. No. 07/2015 dated 01.03.2012 applicable from 01.04.2015, service recipient is liable to pay Service tax under reverse charge mechanism(RCM) for manpower supply service.

DISCUSSION AND FINDINGS

14. I have carefully gone through the records of the case, SCN, defence replies, audited Balance sheet, copy of Income Tax Returns for the FY 2015-16 as well as oral submissions made by the said assessee during the proceedings. In the instant case, I find that the said assessee is registered with Service Tax Department under Registration No. ACJPC3194LST001 and is engaged in providing "Manpower Recruitment/Supply Agency Service". They were also paying service tax and filing ST 3 returns accordingly. On going through the third party CBDT data for the Financial Years 2015-16, I find that the assessee has declared less taxable value in their Service Tax Return (ST-3) for the 2015-16 as compared to the Service related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS.

15. On perusal of case records and SCN, I find that for calculation and demand of the Service Tax, the maximum amount of difference between (i) Value of Services declared in ITR filed by the assessee & Value of Services provided as per Service Tax Returns or (ii) Value of Total Amount paid/Credited Under 194 C, 194 H, 194 I, 194 J & Value of Services provided as per Service Tax Returns i.e. the highest difference between these two is considered and the highest applicable rate is applied for Non-Payment/Short-Payment of Service Tax (Including Cess) for Financial Year 2015-16 accordingly SCN was issued to the said assessee to recover the short paid Service Tax of Rs.53,78,160/- for the financial year 2015-16 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 78 of the Finance Act, 1994.

16. The said assessee in their reply to SCN submitted that services of Manpower Supply Agency are taxable under Reverse Charge from levy of service tax as per Noti.30/2012. Therefore, in case man power supply agency, 100% service tax payable by service receiver for F.Y.2015-16. Therefore, the question of non payment of differential amount for providing Manpower supply Agency not arise.

17. 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 "*service*" means any activity carried out by a person for another for

consideration, and includes a declared service. The manpower supply services does not cover in negative list as defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), In view of the above, I find that the activity carried out by the assessee i.e. Manpower Recruitment/Supply Agency Service falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List the Manpower Supply service provided by the assessee does not fall under category of negative list of services under the provisions of Section 66D of the Finance Act. Therefore, I find that the said service provider is liable to pay Service Tax on income earned from provision of Manpower Recruitment/Supply Agency Service for the period 2015-16. Further the liability to pays service tax has been notified at Sr.No.8 of Noti.30/2012 provides that the extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable service specified in (I) shall be as specified in the following table.

| Sl.No. | Description of Services | Percentage of service tax payable by the person providing service 01.04.2015 onwards | Percentage of service tax payable by the person receiving service 01.04.2015 onwards |
|--------|---|--|--|
| 1 | In respect of services provided or agreed to be provided by way of supply of manpower for any purpose | NIL | 100% |

19. Further, I find that as per Noti.No.30/2012-ST dated 20.06.2012 vide Sr.No.8 Service Tax shall be payable in respect of service provided or agreed to be provided in the case of Manpower Supply service by service provider to the extent of service tax on 25% of value of taxable service and balance service tax on 75% of value of taxable service to be paid by the person receiving the service under partial reverse charge mechanism, if service are provided by any individual/HUF/proprietary concern/partnership firm to the business entity registered as Body corporate. Subsequently the said Noti. No. 30/2012-ST dated 20.06.2012 was amended through Noti.7/2015 dated 01.03.2015 and according to which if the service provider is individual/HUF/Proprietor/partnership Firm and service receiver is business entity registered as body corporate, entire (100%) service Tax is payable by service receiver with effect from 01.04.2015.

20. 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 optioned 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.

21. The said assessed has submitted balance sheet, copies of ledger account, profit and loss account, copy of ITR in support of their claim. On perusal of books of accounts, I find that the assessee is providing manpower Recruitment/supply agency service to his two clients only namely M/s Kalpatru Power Transmission Limited & M/s. Epsilon Engineering Pvt Ltd. Accordingly from the financial records and ledger furnished by the assessee. They are business entity registered as body corporate and therefore entire (100%) service Tax is payable by service receiver with effect from 01.04.2015.

22. I find that during the year 2015-16, total income as per their accounting records i.e profit and loss account is Rs. 3,85,43,965/- and the SCN is proposed for demanding service tax on differential income of Rs. 3,85,43,965/- as the Service Tax return filed by the assessee is NIL for the respective period. Relying on the same financial records alongwith the ledger, I find that assessee has income of Rs. 3,85,26,440/- from the services provided for Manpower Supply to the only two units under RCM i.e M/s. Kalpatru Power Transmission Ltd of Rs.3,70,47,656/- and to M/s Epsilon Engineering Pvt Ltd of Rs. 14,78,984/-as stated above. As these service receivers are falling under the category of corporate body and therefore the liability to pay service tax on these service is falling on the service receiver as per sl no. 8 of Noti.30/2012 was amended through Noti.7/2015 dated 01.03.2015 for the year under consideration, I reproduce below the said notification:

Notification 30/2012 Service Tax dated 20.6.2012 (Incorporating the amendments till 30.06.2017) GSR.....(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i),vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004- Service Tax, dated the 31st December, 2004, published in the Gazette of

India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

“(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following table, namely: -”]

| Sl. No. | Description of a service [Substituted by the Notification No. 10/2014-ST, dated 11-7-2014 w.e.f. 11-7-2014.] | Percentage of service tax payable by the person providing service | Percentage of service tax payable by any person liable for paying service Tax other than the service provider [Substituted by the Notification No. 7/2015-ST, dated 1-3-2015 w.e.f. 1-3-2015.] |
|---------|---|---|---|
| 8 | in respect of services provided or agreed to be provided by way of supply of manpower for any purpose [or security services] [Notification No.45/2012-ST,dated 7-8- 2012 inserted the words or security services] | NIL [Substituted for “25%” by Notification No.7/2015-ST, dated 1-3-2015 w.e.f.1-4-2015.] | 100 % [Substituted for “75%” by Notification No.7/2015-ST, dated 1-3-2015 w.e.f.1-4-2015.] |

24. Further, I find from the above that as per Notification No. 30/2012-ST dated 20.06.2012 as amended, service tax on Manpower supply service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) or the rules made there under is payable in RCM by the service recipient. The Noticee has claimed RCM tax liability under above categories in reconciliation. I find that the status of the service recipient as body corporate and has been verified from the documents submitted by the assessee. Therefore, in the above backdrop I accept bifurcation of Manpower Supply service provided by noticee to the body corporate and the Manpower Supply service provided by the noticee to above extent are liable to be paid in RCM by the service recipients. Accordingly, reconciliation for the period 2015-16 is tabulated as under:

2015-2016

(Amt in Rs.)

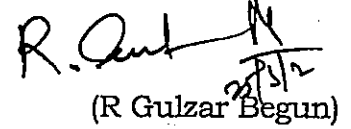
| Description | 2015-16 |
|--|-------------|
| Total income as per ITR | 3,85,26,440 |
| Total income declared as per ST3 | 0 |
| Differential value on which service tax demanded(value considered) | 3,85,26,440 |
| Manpower Supply services provided to body corporate under RCM | 3,85,26,440 |
| Difference | 0 |

25. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, ITR, I find that the service tax demand of Rs.53,78,160/- for the period 2015-16 is not sustainable and accordingly Show Cause Notice F.No.STC/15-175/OA/2020 dated 23.10.2020 is 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.

Accordingly, I pass the following order;

ORDER

22. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 53,78,160/- along with interest and penalties against M/s. PADMAVATI MAN POWER SUPPLIER, 405, SAGAR APPT., B/H. ST. XAVIERS HIGH SCHOOL, MEMNAGAR ROAD, MEMNAGAR AHMEDABAD, GUJARAT-380052 vide SCN No. STC/15-175/OA/2020 dated 23.10.2020.


(R Gulzar Begun)

Additional Commissioner
Central Excise & CGST,
Ahmedabad North

By Regd. Post AD./Hand Delivery
F.No. STC/15-175/OA/2020

Date: 25/03.2022

To,
M/s. PADMAVATI MAN POWER SUPPLIER,
405, SAGAR APPT., B/H. ST. XAVIERS HIGH SCHOOL,
MEMNAGAR ROAD, MEMNAGAR AHMEDABAD,
GUJARAT-380052.

Copy for information to:

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