


<p>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>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN-20210764WT0000555C14

फा.सं./F.No. STC/15-153/OA/2021-22

आदेश की तारीख/Date of Order :- 09.07.2021

जारी करने की तारीख/Date of Issue :- 09.07.2021

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 12/JC/ MT /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 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।

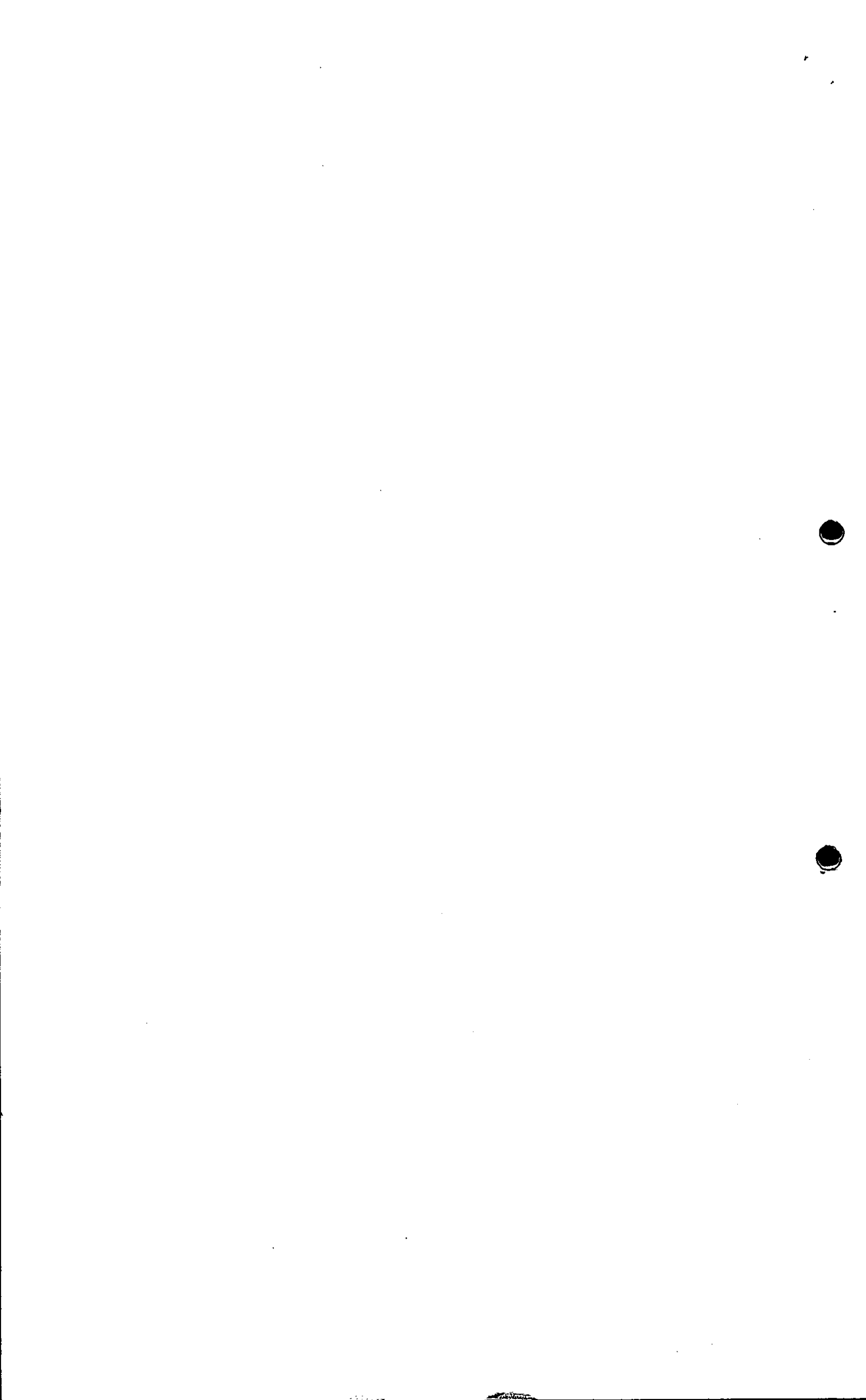
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5.00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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 No. STC/15-153/OA/2021-22 dated 23.04.2021 issued to M/s YOGESHWAR HEALTH CARE, 319, YOGESHWAR HEALTH CARE LTD, GREEN CITY, AHMEDABAD, Gujarat- 380058 .



Brief Facts of the case:

M/s YOGESHWAR HEALTH CARE, 319, YOGESHWAR HEALTH CARE LTD, GREEN CITY, AHMEDABAD, Gujarat- 380058 (hereinafter referred to as "the said assessee") were engaged in providing services and for the same was registered with Service Tax Department vide Registration No. AAACY0730GSD001.

2. An analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 to 2016-17. Details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

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

Sr. No.	Financial Year	VALUE DIFFERENCE in ITR & STR / TDS & STR) (Whichever is higher) (in Rs.)	Service Tax (in Rs.)
1.	2015-16	36194948	5049899
2.	2016-17	63608166	9488072
	TOTAL	99803114	14537972

4. It appeared that the said assessee had failed to pay/short paid/deposit service tax to the extent of Rs.14537972 /- on the difference of taxable value during the period 2015-16 to 2016-17 by declaring less value in their ST-3 Returns vis-a-s their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services received/provided by them with an intent to evade payment of service tax. Thus, it appeared that the said assessee have failed to discharge the service tax liability of Rs.14537972/- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) worked out on value of Rs. 99803114/- and therefore, service tax is required to be recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994 along with interest.

5. Therefore, it appeared that the assessee have contravened the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions

of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it appeared that the said assessee have contravened the provisions of Finance Act, 1994 and the rules made there-under.

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

7. Therefore, M/s YOGESHWAR HEALTH CARE, 319, YOGESHWAR HEALTH CARE LTD, -, GREEN CITY, AHMEDABAD, Gujarat- 380058 were called upon to show cause to the Commissioner, Central GST & Central Excise, Ahmedabad North, as to why;

(i) Differential amount of Service Tax amounting to Rs.14537972/- (Rupees One Crore Forty Five Lakh Thirty Seven Thousand Nine Hundred Seventy Two only) (inclusive of Edu. Cess and S&H Edu. Cess) short paid/not paid by them, should not be confirmed/demanded under proviso to Section 73(1) of the Finance Act, 1994.

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

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

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

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

Defence Reply:

8. Vide their letter dated 24.05.2021, 05.07.2021 and 19.06.2021 M/s.Yogeshwar Healthcare Ltd submitted that –

- Yogeshwar Healthcare Ltd, a subsidiary company of Shalby Ltd was in the business of providing Healthcare Services from its facility at Maninagar.
 - Healthcare services are exempt from Service Tax vide Notification No.25/2012-ST dated 20.06.2012. As per the said notification following taxable services have been exempted from the whole of the Service Tax leviable thereon under Section 66B of the Finance Act, 1994, namely;-
 - (2(i) Healthcare services by a clinical establishment, an authorised medical practitioner or para-medics;
 - (ii) services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above.
 - They stated that the SCN was issued to them without giving a proper opportunity of being heard.
 - Yogeshwar Healthcare Ltd was (Krishna Ghuma Division) was demerged with Shalby Ltd vide high court order dated 03.09.2013. After demerger, revenue of Krishna Ghuma units is merged with Shalby Ltd. However, customer has deducted and paid TDS under earstwhile PAN of the YHL.
 - Change of PAN in database of the customer is very time consuming task and by that time the customer had continued to deposit the TDS under PAN of the VHL instead of the PAN of the Shalby Ltd.
 - With this reason, gross revenue/amounts appearing in the form 26AS of YHL for FY 2015-16 and 2016-17 and that this income is not pertaining to VHL.
 - YHL has not claimed TDS in income tax return for 2015-16 and 2016-17 for the TDS appearing in the form 26AS.
 - Cited Circular No.137/47/2020-ST dated 23.04.2021 directing officers not to issue notices indiscriminately based upon difference between income tax and Service Tax data.
 - YHL was in business of providing healthcare business and its exempt from the service tax, so there is no case of any Service Tax has not been levied or paid or has been short levied or short paid by the reasons of wilful misstatement or suppression of facts.
- SCN under Section 73(1) is inapplicable as it is applicable only if the person has underpaid/not paid Service Tax or received excess refund.
- Requested to withdraw the show cause notice.
 - Requested for personal hearing at the earliest to explain their stand.

Personal Hearing

9. Personal hearing was fixed on 07.07.2021. Shri Viral Shah, DGM (Corporate) along with Abhijit Mangsule appeared for the personal hearing. They stated that on 03.09.2021 the unit of YHL (Krishna Division) was demerged with Shalby Ltd by Court

order. After demerger, revenue of Krishna is merged with Shalby Ltd. However, party has deducted and paid TDS under erstwhile PAN of YHL. They submitted documents viz. Financial Statements of YHL, High Court order, Form-26AS, ITR acknowledgement copy etc.

10. They submitted a letter dated 07.07.2021 they reiterated their earlier submissions and requested to consider favourably in this matter and submitted a copy of ST-3 Return for the financial year 2014-15 (October-March). They orally stated that no other ST-3 Returns are available with them. They also submitted a letter dated 08.07.2021 from M/s. Shalby Ltd wherein it is stated that-

"we would like to mention that the unit of YHL (Krishna Ghuma Division) was demerged with Shalby Limited vide high court order dated 03rd September 2013. After demerger, revenue of Krishna Ghuma units is merged with Shalby Ltd. However, customer has deducted and paid TDS under erstwhile PAN of the YHL. We would like to mention that to change of PAN in database of the customer is very time consuming task and by that time customer had continued to deposit the TDS under PAN of the VHL instead of the PAN of the Shalby Ltd. So, with this reason gross revenue/amounts appearing in the form 26AS of YHL for FY 2015-16 and FY 2016-17 however we would like to mention that this income is not pertaining to YHL.

Your kind office would appreciate that the YHL has not claimed TDS in income tax return for the FY 2015-16 and 2016-17 for the TDS appearing in the form 26AS.

Based on this your kind office would appreciate that Gross income and TDS appearing in the form 26AS is not the income and TDS of YHL. Said income has been recognised in Shalby Ltd.

Therefore, we request to you consider favourably in this matter."

Discussion and Findings:

11. I have carefully gone through the records of the case and submission made by the assessee in their written submission as well as during the course of personal hearing.

12. In this case, Show Cause Notice was issued to M/s. Yogeshwar Healthcare Ltd, Ahmedabad on the basis of data received from Income Tax authorities for difference in the value of ST-3 Return and ITR filed by them. In reply to the notice, the assessee stated that –

- Yogeshwar Healthcare Ltd, a subsidiary company of Shalby Ltd was in the business of providing Healthcare Services from its facility at Maninagar.

- Healthcare services are exempt from Service Tax vide Notification No.25/2012-ST dated 20.06.2012. As per the said notification following taxable services have been exempted from the whole of the Service Tax leviable thereon under Section 66B of the Finance Act, 1994, namely;-
- (2(i) Healthcare services by a clinical establishment, an authorised medical practitioner or para-medics;
- (ii) services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above.
- They stated that the SCN was issued to them without giving a proper opportunity of being heard.
- Yogeshwar Healthcare Ltd was (Krishna Ghuma Division) was demerged with Shalby Ltd vide high court order dated 03.09.2013. After demerger, revenue of Krishna Ghuma units is merged with Shalby Ltd. However, customer has deducted and paid TDS under earstwhile PAN of the YHL.
- Change of PAN in database of the customer is very time consuming task and by that time the customer had continued to deposit the TDS under PAN of the VHL instead of the PAN of the Shalby Ltd.
- With this reason, gross revenue/amounts appearing in the form 26AS of YHL for FY 2015-16 and 2016-17 and that this income is not pertaining to VHL.
- YHL has not claimed TDS in income tax return for 2015-16 and 2016-17 for the TDS appearing in the form 26AS.
- Cited Circular No.137/47/2020-ST dated 23.04.2021 directing officers not to issue notices, indiscriminately based upon difference between income tax and Service Tax data.
- YHL was in business of providing healthcare business and its exempt from the service tax, so there is no case of any Service Tax has not been levied or paid or has been short levied or short paid by the reasons of wilful misstatement or suppression of facts.
- SCN under Section 73(1) is inapplicable as it is applicable only if the person has underpaid/not paid Service Tax or received excess refund.

13. I have gone through the Order of the Hon'ble High Court of Gujarat in Company Petition No.153 of 2013 connected with Company Application No.91 of 2013 dated 3rd September 2013 produced by the assessee, wherein the Hon'ble High Court has ordered the De-merging of Yogeshwar Healthcare Ltd with Shalby Ltd. Para 1 to 6 of the Court order states that -

(1) "That all the property, rights and powers of the De-merged Undertaking, i.e. Ghuma Division of the De-merged Company specified in the first, second and third parts of the schedule hereto and all other property, rights and powers of the

said De-merged Undertaking be transferred without further act or deed to the Resulting Company and accordingly the same shall pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and vested in the Resulting Company for all the estate and interest of the said De-merged Undertaking, therein but subject nevertheless to all charges now affecting the same, and

- (2) That all the liabilities and duties of the De-merged Company arising out of the activities or operations of the De-merged Undertaking i.e. Ghuma Division of the De-merged Company be transferred without further act or deed to the Resulting Company and accordingly the same shall pursuant to Section 394(2) of the Companies Act, 1956, be transferred to and become the liabilities and duties of the Resulting Company.
- (3) That all the proceedings by or against the Demerged Company relating to Demerged Undertaking be continued by or against the Resulting Company.
- (4) That the Resulting Company do without further application allot so such members of the Demerged Company the shares in the Resulting Company to which they are entitled under the said compromise or arrangement; and
- (5) That the De-merged Company do within 30 days after the date of this order cause a certified copy of this order to be delivered to the Register of Companies for registration and on such certified copy being so delivered the De-merged Undertaking shall be vacated in the Resulting Company and the Registrar of Companies shall place all documents relating to Ghuma Division of the De-merged Company and registered with him on the file kept by him in relation to the Resulting Company and the files relating to the said two companies shall be consolidated accordingly; and
- (6) That any person interested shall be at liberty to apply to the Court in the above matter for any directions that may be necessary".

14. I have gone through the copy of ST-3 for the year 2014-15 (October-March) produced by the assessee wherein the 'Description of Taxable Services' has been mentioned as "Health services by a clinical establishment, health check-up/diagnosis, etc". Value of taxable service provided during the period has shown as nil and the Tax payable are also shown as nil. However, they paid Service Tax under RCM on the value Rs.53934/-, involving Service Tax of Rs.7111, Edu. Cess Rs.142/- and SHE Cess of Rs.71/- In the aforesaid ST-3 Return, exemption Notification has been mentioned as 25/2012-ST.

15. I have also gone through the Notification No.25/2012-ST dated 20.06.2012 wherein as per Sr.No.2 of the notification, the services provided for Health care services by a clinical establishment, an authorised medical practitioner or para-medics; are exempted. I find that in the present cases, the services provided by the service provider namely M/s.Yogeshwar Healthcare Ltd, falls under 'Health services by a

clinical establishment, health check-up/diagnosis, etc are fall under Notification No.25/2012-ST.

16. I also find that M/s.Shalby Ltd, vide their letter dated 08.07.2021, has stated that the figures reflected in the 26-AS of YHL for the year 2015-16 and 2016-17 is, in fact, belong to M/s.Shalby Ltd and not of M/s.Yogeshwar Healthcare Ltd. Further, M/s.Shalby Ltd has also stated that M/s.YHL has not claimed TDS in income tax return for 2015-16 and 2016-17 for the TDS appearing in the form 26AS., that the gross income and TDS appearing in the form 26AS is not the income and TDS of YHL. The said income has been recognised in Shalby Ltd.

17. In view of the discussion above, I find that in the present case, the Show Cause Notice issued for demanding Service Tax is not maintainable and not sustainable in the eyes of law and the demand is to be withdrawn. As the demand is not sustainable, interest and penalty proposed in the show cause notice is also not sustainable.

In view of the above, I pass the following orders:-

ORDER

18. I drop the proceedings initiated against M/s.Yogeshwar Healthcare Ltd, Ahmedabad, vide Show Cause Notice F.NO. STC/15-153/OA/2021-22 dated 23.04.2021.



(Manoj Tripathi)
Joint Commissioner
Central GST & Central Excise,
Ahmedabad North.

F. No.STC/15-153/OA/2021-22

Date: 09 /07/2021

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

To,

M/s YOGESHWAR HEALTH CARE
319, YOGESHWAR HEALTH CARE LTD, -, GREEN CITY, AHMEDABAD, Gujarat-
380058

Copy to:

- 1) The Commissioner, Central GST & Central Excise, Ahmedabad North.
- 2) The Deputy Commissioner, Central GST & Central Excise, Division-VI, Ahmedabad North.
- 3) The Superintendent, Central GST & Central Excise, Range-I , Division-VI, Ahmedabad North

4. Guard file.

