



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

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निवन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-254/OA/2021

आदेश की तारीख/Date of Order:- 31.03.2022

जारी करने की तारीख/Date of Issue :- 31.03.2022

DIN NO: 20220364WT0000007E6E

द्वारा पारित/Passed by:-

मुकेश राठौर/ *MUKESH RATHORE*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 132/ADC/MR/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-380015को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

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

(1) उक्त अपील की प्रति।

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

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

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

विषय:- कारण बताओ सूचना/ Show Cause Notice F. No. **STC/15-254/OA/2021** dated **09.06.2021** issued to **M/s. GAJUMAL MULCHAND FRUITS PRIVATE LIMITED**, 24/NEW FRUIT MARKET/NARODA ROAD/NARODA, Ahmedabad.

BRIEF FACTS OF THE CASE :

M/s GAJUMAL MULCHAND FRUITS PRIVATE LIMITED, 24/NEW FRUIT MARKET/NARODA ROAD/NARODA, PAN: AAACG3970C (hereinafter referred to as the 'assessee') was engaged with providing taxable services without taking registration.

2. On perusal of the data received from CBDT, it was noticed that the said assessee had earned substantial service income by providing of taxable services, but has neither obtained Service Tax registration nor paid service tax thereon.

3. A letter dated 28.01.2021 was issued to the assessee with a request to produce the documents mentioned therein to this office within a week time from the date of receipt of that letter/Summons. In compliance the assessee submitted reply dated 10.02.2021 which is not sufficient.

4. 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.

5. The nature of activities carried out by the assessee as Service Provider appears to be covered under the definition of service and appears to be not covered under the Negative List as given in the Section 66D of the Finance Act, 1994, as amended from time to time. These services also appears to be not exempted under mega exemption notification No. 25/ 2012-S.T. dated 20-06-2012, as amended from time to time, and hence the aforesaid services provided by the assessee appears to be subjected to Service Tax.

6. 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 was required to be ascertained on the basis of income mentioned in the ITR 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.

7. The Service tax payable is calculated on the basis value of "sales of services under Sales/Gross Receipts From Services (Value from ITR)" or "Total Amount Paid/Credited Under Section 194C, 194I, 194H, 194J" as provided by the Income Tax Department for the financial year 2015-16. By considering the said amount as taxable income, the service tax liability is calculated as detailed below:-

TABLE-A

(Amount in Rs)

Sr. No.	F.Y.	Sales of services under Sales/Gross Receipts From Services (Value from ITR)" or "Total Amount Paid/Credited Under Section 194C, 194I, 194H, 194J	Service Tax rate	Service Tax Payable
2	2015-16	6,63,16,235/-	14.5%	96,15,854/-
TOTAL				96,15,854/-

8. No data was forwarded by CBDT, for the period 2016-17 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 this stage, at the time of issue of SCN, it is not possible to quantify short payment of Service Tax, if any, for the period 2016-17 & 2017-18 (upto June-2017).

9. 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 issue 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, 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.'

10. From the facts, 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 F.Y. 2016-17 & 2017-18 (upto June 2017) has not been disclosed thereof by the Income Tax Department, nor the reason for the nondisclosure was made known to this department. Further, the assessee has also failed to provide the required information even after the issuance of letters and summons from the Department. Therefore, the assessable value for the F.Y. 2016-17 & 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 & 2017-18 (upto June 2017) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.**

11. The government has from the very beginning placed full trust on the service provider so far 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 placed on the service provider, no matter how innocently. From the evidence, 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 breach of trust deposed on them. Such outright act in defiance of law, appear 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.

12. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the notice to **M/s GAJUMAL MULCHAND FRUITS PRIVATE LIMITED, 24/NEW FRUIT MARKET/NARODA ROAD/NARODA, PAN:**

AAACG3970C, have contravened the following 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) Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable service provided by them as discussed above;
- (iii) 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 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 ;
- (iv) Section 69(1) of the Finance Act, 1994 read with Notification No.33/2012-Service Tax dated 20.06.2012 in as much as they have failed to obtain Service Tax Registration.
- (v) 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. 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 failed to take registration and did not provide required data/documents as called from them.

13. The above said service tax liabilities of the assessee **M/s GAJUMAL MULCHAND FRUITS PRIVATE LIMITED, 24/NEW FRUIT MARKET/NARODA ROAD/NARODA, PAN: AAACG3970C**, 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.

14. It is observed that the assessee has neither obtained the Service Tax registration from the Department for the services provided by them for the period of F.Y.2015-16 nor responded to correspondence made by the department in order to ascertain the actual taxable service income. Therefore, it appears that the assessee had not paid actual service tax by way of willful suppression of facts and in contravention of provision of the Finance Act, 1994 relating to levy and collection of service tax and the rules made there under, with intent to evade payment of service tax. The service tax amounting to **Rs. 96,15,854/-** is therefore recoverable from them by invoking extended period of five years as per first proviso to sub-section (1) of Section 73 of finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No CBEC-20/06/08/2020-GST

14.1 For this reason applicable interest under Section 75 of the Finance Act, 1994 is also demandable & recoverable from the assessee and the assessee are also liable to penalty under Section 78 of Finance Act, 1994.

15. Further, the said assessee (a) who is liable to pay service tax or required to take registration, fails to take registration in accordance with the provisions of section 69; (b) failed to furnish information / documents called for from them, accordingly the said assessee is liable to penalty under the provisions of Section 77(1)(a), 77(1)(c) & 77(2) of Finance Act, 1994.

16. The said assessee was given opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 09.06.2021. Shri Pramod R Ajwalia, Accountant, appeared for the hearing and stated that they are dealing with trading of fruits which is an agriculture produce and is falling under negative list of Service Tax. Therefore, no service Tax is payable by them and requested not to issued Show Cause Notice. Since, they have not obtained Service Tax Registration, the taxability and category of Service provided by them is to be examined. Therefore, the argument of the party can not be accepted at this stage.

17. Therefore, **M/s GAJUMAL MULCHAND FRUITS PRIVATE LIMITED, 24/NEW FRUIT MARKET/NARODA ROAD/NARODA, PAN: AAACG3970C** called upon to show cause before the **Additional Commissioner**, Central Goods and Service Tax, Ahmedabad-North having his office situated at 1st Floor, Custom House, Nr. All India Radio, Opp. Juna High Court, Navrangpura, Ahmedabad – 380009 as to why:

- (i) Service Tax of Rs.96,15,854/- which was not paid for the financial year 2015-16 as per the above table, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of 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 & 2017-18 (up to June 2017), ascertained in future, as per paras no. 9 and 10 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 for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;
- (iv) Penalty under the provisions of Section 77(1)(a), 77(1)(c) & 77(2) of the Finance Act, 1994, as amended, should not be imposed on them.
- (v) Penalty under Section 78 of the Finance Act, 1994, as amended, should not be imposed on them for suppressing the full value of taxable services and material facts from the department resulting into non-payment of Service Tax as explained herein above.

18. **DEFENCE REPLY :**

The assessee vide letter dated 17.06.2021 in their defence reply stated that they are registered under companies Act; that the main business of their company is trading in Fruits and / or Fruit Commission Agent; that they attached copy of Shop and Establishment Certificate indicating the nature of their business; that Section 66D of the Finance Act, 1994 as amended from time to time, describes the activities as Negative List i.e Service Tax is not leviable on such activity. Clause d(vii) of the said Negative List provides that

“ Services relating to agriculture or agriculture produce by way of Services by any agricultural produce Marketing Committee or Board or Services provided by a Commission Agent for sale or purchase of agriculture produce”.

18.1 They further submitted that they have earned fruit commission income and considering the provision of Section 66D, the activity i.e. fruit Commission income is very well covered in the provision Negative List and therefore the Service Tax is not leviable on Fruit Commission Income; that they have submitted the details in the jurisdiction office and that they also informed during the Pre-Show Cause Notice

consultation about their activity and non leviable of Service Tax in their case being Negative List Services; that they attached the copy of Income Tax returns, copy of 26AS, Balance Sheet and Profit and Loss account alongwith the schedule. They also requested to drop the demand alongwith the Interest and penalty.

19. PERSONNEL HEARING :

Personnel Hearing was granted to the assessee on 09.02.2022 wherein Shri Keyut Bavishi, Chartered Accountant appeared before ment for personel hearing on behalf of the assessee. He-reiterated his written submission made on 17.06.2021 at the time of personnel Hearing and requested to drop the demand raised in Show Cause Notice.

20. DISCUSSION AND FINDINGS:

20.1 I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 17.06.2021 alongwith the documents submitted by the noticee. Further I have also carefully gone through the submission at the time of personeel hearing.

20.2 On going through the SCNs, I find that data of Sales /Gross receipt from services was shared by the CBDT with CBIC for FY 2015-16. The difference in value of service to the extent of Rs. 6,63,16,235/- the year 2015-16 was noticed and therefore, the subject SCNs was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the basis of ITR filed for the period 2015-16 on differential value of Rs. 6,63,16,235/- under proviso to section 73(1) of Finance Act, 1944 or not. 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.

20.3 I find that the assessee in their reply dated 21.06.2021 has stated that they are engaged is trading in Fruits and / or Fruit Commission Agent; Further, I also find that in support of their reply, the assessee have submitted the copy of Balance Sheet, P&L account, form 26AS for FY 2015-16. I find from the records submitted by the assessee that they are engaged in trading in fruit and fruit commission agent. I find that the Section 66 D of finance Act, 1994 specifically provides the list of negative services. I find that clause d (vii) of the Section 66D specifically provides that "Services Provided by a Commission Agent for sale or purchase of agriculture produce" under negative list. For ease of reference I reproduce the same herewith;

SECTION 66D. Negative list of services.— The negative list shall comprise of the following services, namely :—

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

20.4 I find from their financial records that the assessee have income of Rs. 6,63,16,235/- from the fruit commission income and discount received from their party. Therefore, I find from the registration certificate produce that the assessee is fruit commission agent and the entire income shown in the Show Cause notice is reflecting in their financial records as Fruit Commission income and discount received towards fruit business. Therefore, I find that the Clause VII of Section 66 (d) of the Financial Act, 1994 is rightly applicable to the assessee.

21. 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 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.

22. Keeping in view the aforementioned detailed discussions, I find that entire income shown in the Show Cause notice is reflecting in their financial records as Fruit Commission income and discount received towards fruit business. Therefore, I find that the Clause VII of Section 66 (d) of the Financial Act, 1994 is rightly applicable to the assessee. I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

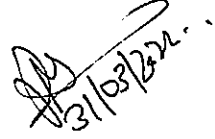
23. Further, on perusal of para 8 of SCN, I find that the levy of Service Tax for the financial year 2016-17 and 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of subject SCN, if he same was to be disclosed by the Income Tax department or any other source/agencies, against 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 leveled for the demand for the year 2016-17 and 2017-18 (Up to June 2017), in charging para of the SCN.

24. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. Accordingly, it is my considered view that the assessee has established their case quite unambiguously that the income received towards fruit commission business is covered under Negative List of Services they are not liable to pay Service Tax on the entire receipt and not obtained registration under the Service Tax.

25. 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 deal in 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 of imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

26. I drop the proceedings initiated for recovery of Rs. 96,15,854/- against M/s. GAJUMAL MULCHAND FRUITS PRIVATE LIMITED, 24/NEW FRUIT MARKET/NARODA ROAD/NARODA , (PAN: AAACG3970C) vide Show Cause Notice F.No. STC/15-254/OA/2020 dated 09.06.2021.



(MUKESH RATHORE)
Additional Commissioner,
Central GST and CX, Ahmedabad North

File No: STC/15-254/OA/2021

Dated: 31.03.2022

By RPAD/By Hand/By Speed Post:

To,

M/s. GAJUMAL MULCHAND FRUITS PRIVATE LIMITED,
24/NEW FRUIT MARKET/NARODA ROAD/NARODA
(PAN: AAACG3970C),

Copy for information to:

- 1 The Commissioner of CGST & C.Ex., Ahmedabad North.
- 2 The Deputy Commissioner Division-I, Central Excise & CGST, Ahmedabad North.
- 3 The Superintendent, Range-III, Division-I, Central Excise & CGST, Ahmedabad North
- 4 The Superintendent(system) CGST, Ahmedabad North for uploading on website.
- 5 Guard File

