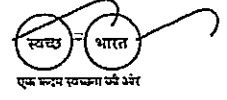




आयुक्त का कार्यालय

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
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-141/OA/2021-22

आदेश की तारीख/Date of Order: - 31.03.2022

जारी करने की तारीख/Date of Issue :- 31.03.2022

DIN NO: 20220364WT000061666F

द्वारा पारित/Passed by:-

मुकेश राठौर/ *MUKESH RATHORE*
अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 135/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 No. STC/15-141/OA/2021-22 dated 23.04.2021 issued to M/s. PAYAL PACKAGING PRIVATE LIMITED, 71, DIAMOND PARK, OPP HITENDER NAGAR , NARODA ESTATE, AHMEDABAD, Gujarat- 382340.

BRIEF FACTS OF THE CASE :

M/s PAYAL PACKAGING PRIVATE LIMITED, 71, DIAMOND PARK, OPP HITENDER NAGAR, NARODA ESTATE, AHMEDABAD, Gujarat- 382340, (hereinafter referred to as the 'assessee' for the sake of brevity) is registered under Service Tax Department vide Registration No. AAICP0757GSD001.

2. Ongoing through the data received from Income Tax department (CBDT data) for the Financial Year 2015-2016 & 2016-17, it has been observed that the assessee has not filed the ST-3 returns despite being the service turnover as shown in ITR/P&L account for F.Y 15-16 & 16-17. The details of the value of I.T return for F.Y 15-16 & 16-17 is as per table mentioned below: -

F.Y.	Basic value as per ST-3 Returns (Rs.)	Basic value as per ITR/P&L account (Rs)	Difference of value (Rs.)	Resultant Service tax short paid (Rs.)
2015-16	0/-	Rs. 24450245.26/-	Rs. 24450245.26/-	S.T-3545285.56/-
2016-17	0	Rs. 34266915.55/-	Rs. 34266915.55/-	S.T.-5140037.33/-
Total	0	Rs. 58717160.81/-	Rs. 58717160.81/-	S.T. -8685322.89/-

3. The department requested assessee for clarification regarding the differential value as mentioned in above table with certified documentary evidences vide letter dated 09.04.2021, but the said service provider has not replied the observations raised by Jurisdictional Range office with supporting documents till the issuance of this notice.

4. 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, 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. Form 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 period from April, 2017 to June, 2017 has not been disclosed by the Income Tax Department and the service provider has also, even after the issuance of letters and reminders from the Department, not submitted the same. Therefore, the assessable value for the period from April, 2017 to June, 2017

is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by any other sources / agencies, against the same service provider, action will be initiated against the said service provider 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 period from April, 2017 to June, 2017 will be recoverable from the said service provider accordingly.

6. As per Section 68 of the Finance Act, 1994 : Payment of Service Tax :-
“(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section [66B] in such manner and within such period as may be prescribed....”

7. It was observed that the assessee failed to pay service tax, as detailed above, during the year 2015-16 & 2016-17 and thereby contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994.

8. As per Section 70 of the Finance Act, 1994 : (1) “Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise a return....”

9. It was observed that the assessee has failed to assess the service tax on the taxable amount received by them and also failed to furnish periodical returns and thereby contravened the provisions of Section 70 of the Finance Act, read with Rule 2 (1)(d) of the Service Tax Rules, 1994

10. In view of above, it was observed that the assessee has 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. 3545285.56/- for F.Y. 2015-16 and Rs. 5140037.33/-for F.Y. 2016-17]** as per their ITR/ Form 26AS/P&L account, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 read with Rule 2(1)(d) of Service Tax Rules, 1994.in as much they failed to properly assess their service tax liability and failed to furnish periodical returns.

11. It has been noticed that at no point of time, the assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the value, that has come to the notice of the Department only after going through the CBDT Data generated for the Financial Year 2015-2016 & 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 appears that the said assessee has knowingly suppressed the facts and not filed the returns regarding receipt of/providing of services by them -. It appears that the above act of omission on the part of the assessee resulted into non-payment of Service tax on account of

suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appears to be recoverable from them under the provisions of Section 73 of the Finance Act, 1994 by invoking proviso under sub-section (1) of Section 73, 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 77(2) and 78 of the Finance Act, 1994, it appears that the assessee has rendered themselves liable for penalty under Section 77(2) and 78 of the Finance Act, 1994 for the contravention of the Section 70 of the Finance Act, 1994 read with Rule 2(1)(d) of the Service Tax Rules, 1994 and Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 respectively..

12. Therefore, M/s PAYAL PACKAGING PRIVATE LIMITED, 71, DIAMOND PARK, OPP HITENDER NAGAR, NARODA ESTATE, AHMEDABAD, Gujarat-382340, called upon to show cause to the Additional Commissioner of Central Excise & CGST, Ahmedabad North having office at 1st Floor, Customs House, Navrangpura, Ahmedabad as to why:

- a) The demand for Service tax to the extent of **Rs. 3545285.56/- for F.Y. 2015-16 and Rs. 5140037.33/-for F.Y. 2016-17]** short paid /not 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 78 of the Finance Act, 1994.
- d) Penalty should not be imposed upon them under the provisions of Section 77(2) of the Finance Act, 1994.

PERSONNEL HEARING :

13. Personnel hearing was granted to the assessee on 07.03.2022, wherein Shri Rakesh Bharvad, appeared for personnel hearing on behalf of M/s. Payal Packaging. He reiterated his written submission made on 07.03.2022 at the time of personnel hearing.

WRITTEN SUBMISSION :

14. The assessee vide letter dated 07.03.222 and 29.03.22 submitted that they are providing manpower supply services and the demand of Service Tax to the extent of Rs. 35,45,285/- for the financial year 2015-16 and Rs. 51,40,037/- is falls under RCM vide notification No. 30/2012 dated 20.06.2012.

DISCUSSION AND FINDINGS

15. I have carefully gone through the records of the case, SCN, defence replies, audited Balance sheet, copies of Income Tax Returns for the FY 2015-16 and 2016-17, Form 26AS 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. AAICP0757GSD001 and was engaged in providing "Man Power Supply service". On going through the third party CBDT data for the Financial Years 2014-2015, 2015-16 and 2016-17, I find that the assessee has 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.

16. 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 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 and 2016-17 accordingly SCN was issued to the said assessee to recover the short paid Service Tax of Rs. 86,85,322.89/- alongwith interest and penalty. 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.

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 and 2016-17.

18. Further the liability to pay 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	NIL	100%

<i>provided by way of supply of manpower for any purpose</i>		
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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. GSP Crop Science Pvt. Ltd & M/s. Shreeji Pesticides Pvt. Ltd. Accordingly from the financial records and ledger furnished by the assessee, I find that 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. 24450245.26/- and the SCN is proposed for demanding service tax on differential income of Rs. 24450245.26/- and during the year 2016-17, total income as per their accounting records i.e profit and loss account is Rs. 34266915.55/- and the SCN is proposed for demanding service tax on differential income of Rs. 34266915.55/- 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. Rs. 24450245.26/- and Rs. 34266915.55/- for the year 2015-16 and 2016-17 respectively from the services provided for Manpower Supply to the only two units under RCM i.e M/s. GSP Crop Science Pvt. Ltd & M/s. Shreeji Pesticides Pvt. Ltd. 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 with effect from 01.04.2015. For the sake of clarity,

23. Further, on perusal of para 5 of 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 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 2017-18 (Up to June 2017), in charging para of the SCN.

FINANCIAL YEAR 2015-16 & 2016-2017 (Amt in Rs.)

Description	2015-16	2016-17
Total income as per ITR/SCN	24450245.26/-	34266915.55/-
Total income declared as per ST3	0	0
Differential value on which service tax demanded(value considered)	24450245.26/-	34266915.55/-
Manpower Supply services provided to body corporate under RCM	24450245.26/-	34266915.55/-
Difference	0	0


24. 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. 86,85,322.89/- for the period 2015-16 and 2016-17 is not sustainable and accordingly Show Cause Notice F. No. STC/15-141/OA/2021-22 dated 23.04.2021 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.

25. Accordingly, I pass the following order;

ORDER

26. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 86,85,322.89/- along with interest and penalties against M/s. PAYAL PACKAGING PRIVATE LIMITED, 71, DIAMOND PARK, OPP HITENDER NAGAR , NARODA ESTATE, AHMEDABAD, Gujarat- 382340 vide SCN No. STC/15-141/OA/2021-22 dated 23.04.2021.

o/c

 (Mukesh Rathore)

Additional Commissioner
 Central Excise & CGST,
 Ahmedabad North

By Regd. Post AD./Hand Delivery
 F.No. STC/15-141/OA/2021-22

Date: 31.03.2022

To,
M/s. PAYAL PACKAGING PRIVATE LIMITED,
71, DIAMOND PARK, OPP HITENDER NAGAR ,
NARODA ESTATE, AHMEDABAD,
Gujarat- 382340

Copy for information to:

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

