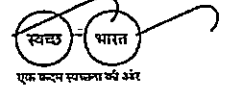




आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH
पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद - 380009
FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD - 380009
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-85/OA/2020

आदेश की तारीख/Date of Order:-31.03.2022

जारी करने की तारीख/Date of Issue :- 31.03.2022

DIN NO: 20220364WT00000FD8E

द्वारा पारित/Passed by:- आर गुलजार बेगम **IR. GULZAR BEGUM**

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 139/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 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/15-85/OA/2020 dated 29.09.2020, issued to M/s. Alpesh Manilal Patel, Shantaram Complex, A 2 And 3, Opp Nirnaynagar Garnala, Nirnaynagar, Ahmedabad Gujarat

Brief Facts of the Case;

M/s. Alpesh Manilal Patel, Shantaram Complex, A 2 And 3, Opp Nirnaynagar Garnala, Nirnaynagar, Ahmedabad Gujarat-(hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.- AIJPP6169LSD001.

2. Ongoing through the third party CBDT data for the Financial Year 2014-2015, 2015-16 and 2016-17 it has been observed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) as compared to the Service related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

| (Amount in Rs.) | | | | | |
|-----------------|---|--|--|---|------------|
| F. Y. | Total Amount paid/Credited Under 194C, 194H, 194I, 194J | Gross_Value _Service_Pro vided (as per ST-3 returns. | Difference Between Total paid/Credited and Gross Value in Service Tax Provided | Resultant Service Tax short paid (including Cess) | |
| 1 | 2014-15 | 149283/- | 0/- | 149283/- | 18451/- |
| 2 | 2015-16 | 3,41,94,438/- | 0/- | 3,41,94,438/- | 4958194/- |
| 3 | 2016-17 | 43612932/- | 0/- | 43612932/- | 6541940/- |
| Total | | | | | 11518585/- |

3. To explain the reasons for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form: 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns. Letters dated 14.02.2018, 12.06.2019 and 17.07.2020 were issued to the said assessee. However, the said assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner. For this reason, no further verification can be done in this regard.

4. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said notice had not paid service tax as worked out as above in Table.

5. Further, as per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appears that the said service provider has not assessed the tax dues properly, on the services received by him, as discussed above, and failed to file correct ST-3 Returns thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

6. Further, as per Section 75 ibid, every person liable to pay the tax in accordance with the provisions of Section 68 ibid, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the noticee along with interest under Section 75 of the Finance Act, 1994.

7. 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.11518585/- (including Cess), by filing ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

8. Further, 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 differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2014-2015, 2015-16 and 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it appears that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs.11518585/-(including Cess). 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(1) of the Finance Act, 1994 by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appears that the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994, and penalty under provisions of Rule 7C of the Service Tax Rules, 1994.

9. Therefore, M/s- Alpesh Manilal Patel, Shantaram Complex, A 2 And 3, Opp Nirnaynagar Garnala, Nirnaynagar, Ahmedabad, Gujaratis called upon to show cause to the Addl. Commissioner, CGST & CX, Ahmedabad North as to why :

- (i) The demand for Service tax to the extent of Rs.1,15,18,585/- (Rupees One Crore Fifteen Lakh Eighteen Thousand Five Hundred Eighty Five Only) 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;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty should not be imposed upon them for late filing ST-3 return for the period April'2014-September'2014 under the provisions of Rule 7C of the Service Tax Rules, 1994.
- (v) Penalty should not be imposed upon them under the provisions of Section 77(1)of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Service Tax Act,1994.
- (vi) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act,1994 read with Rule 7 of the Service Tax Rules, 1994.

DEFENCE REPLY

10. The assessee Dr. Alpesh Manilal Patel vide letter dated 28.03.2022 inform that he is a registered medical practitioner as a Doctor and doing his practice as Orthopedic Surgeon; that he attached copy his medical practice certificate; that he is running his clinic in the name of Trisha Trauma Center & Diagnostic Centre during the period 2014-15, 2015-16 & 2016-17; they submitted that during the FY 2014-15, 2015-16 & 2016-17 they have total receipts for healthcare services of Rs. 3,14,83,958/-, Rs. 3,41,94,438/- and Rs 4,36,12,932/- respectively, which are shown as sale of service in ITR. Further, he also submitted that the fees for professional or technical services provided u/s 194J as shown in form 26AS for FY 2014-15, 2015-16 & 2016-17 is Rs. 1,49,17,796/-, Rs. 1,34,17,949 and Rs. 2,45,19,582/-, which is the value of healthcare services provided to the patients having medical insurance and the payments are made by third party agency on behalf of the patients. Further, he stated vide their submission dated 28.03.2022. that as per the Not. No. 25/2012-ST dated 20.06.2012, the health care services rendered by the clinical establishment or authorized Medical practitioner of para medics were exempt from service tax.

11. The assessee vide letter dated 28.03.2022, he stated that they do not want personal hearing in the matter and requested to conclude further proceedings on the basis of their submission.

DISCUSSION AND FINDINGS

12. I have carefully gone through the records of the case, SCN, defence reply, duly audited Balance sheet for the FY 2014-15, 2015-16 and 2016-17, as well as oral documents produced 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. ALJPP6169LSD001 and was engaged in providing "Healthcare Services". On going through the third party CBDT data for the Financial Years 2014-2015, 2015-16 and 2016-17, it was observed that the assessee has less declared taxable value in their Service Tax Return (ST-3) for the F.Y.2014-2015, 2015-16 and 2016-17 as compared to the Service related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS and accordingly SCN was issued to the said assessee to recover the short paid Service Tax of Rs.1,15,18,585/- 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.

13. In the instant case, I find that the assessee vide their reply dated 28.03.2022 contended that the receipts are from healthcare services and healthcare services is exempted under entry No.2(i) of Noti.25/2012 dated 20.06.2012 and therefore he is not supposed to pay any service tax on their receipts. Now, I consider necessary to look into the definition of "Health Care Service" provided under the Act as the assessee has claimed their service to be Health Care Service. I find that the definition of "Health Care Service" is provided under the Notification No. 25/2012-ST dated 20.06.2012 at Sr. No. (2) (i), the same is reproduced for better comprehension: *"health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;*"

14. The said assessee vide their letter dated 28.03.2022 submitted that he is registered medical practitioner as a Doctor and doing his practice as Orthopedic Surgeon and is running Trisha Trauma Centre & Diagnostic Centre. As mentioned in SCN, the difference in value of service as per ITRS and gross value of services provided

in ST 3 returns is Rs. 7,79,56,653 /- for the period under reference. They contented that the above receipts are from healthcare services and healthcare services is exempted under entry No.2(i) of Noti.25/2012 dated 20.06.2012 and therefore he is not supposed to pay any service tax on their receipts. They have also submitted audit report and Balance sheet 2014-15 to 2016-17.

15. On perusal of defence reply dated 28.03.2022 and other documents available on record, I find that the assessee have rendered Health Care Services which is rightly an exempted service as provided vide Sr.No. 2(i) of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 and Sr. No. (l) of negative list of service specified under Section 66D of the Act. Hence, I find that the activities being carried out by the assessee for a consideration are squarely covered under the definition of "Service" as defined under Section 65B (44) of the Act and I also find that there is no dispute in this regard. The assessee has also submitted the Independent Auditors' Reports for FY 2014-15, 2015-16 and 2016-17. I find that the Independent Auditor is appointed by the Company under Section 139 of the Company Act, and auditor has to make a report, in accordance with Section 143 of Company Act, to the members of the company on the accounts examined by him and on every financial statements which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made there under or under any order made under section 143(1) and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

16. I find from the available records in the file that the total Gross Value provided in their STR for the respective years are the income received from 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.

17. In the instant case, on perusal of Balance Sheet, I find that the assessee earned an income by way of providing health services as mentioned above. Further, on perusal of audited Balance Sheet, I find that the assessee's revenue from operations i.e OPD patients income & health checkup income as per their balance sheet for FY 2014-15 to 2016-17.

18. Having considered above facts and discussion, I find that the service provided by the assessee is appropriately classifiable under the Health Care Service and the assessee is not liable to pay Service Tax on the income received from Providing Health Care Service as provided under entry No.2(i) of Noti.25/2012 dated 20.06.2012. 191

19. From the SCN, I find that the SCN has not questioned the taxability on any income other than the income from sale of services. I therefore refrain from discussing the taxability on other income other than the sale of service.

20. Further, 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.

21. I find that the Notification No. 25/2012 -ST dated 20.06.2012 issued under Section 93(1) of the Act, grants exemption to the taxable services enlisted therein from whole of Service Tax leviable under section 66B of the Act. I find that the assessee has contested the demand of service tax on services rendered by them being Health Care Service and has claimed the exemption from levy of service tax under Sr. No. 2(i) of Notification No. 25/2012-ST dated 20.06.2012.

22. On perusal of various records and documents available, I find that the assessee is a Hospital which is engaged in business of providing Health Care Service and is rightly covered under the above definition of clinical establishment. Keeping in view the aforementioned detailed discussions, I find that the services rendered by the assessee is squarely covered under the Sr.No. 2(i) of the Notification No. 25/2012-ST dated 20.06.2012 and find that the exemption is quite clearly available to the assessee as claimed by them. As they are eligible for exemption as discussed herein above, I hold that no service tax is payable by the assessee as demanded in the subject SCN. I find and observed that the assessee has received income under head 194 J for rendering Healthcare services. For the sake of clarity, the consolidated worksheet are tabulated and reconciled as under:

| Financial Year | 2014-15 | 2015-16 | 2016-17 |
|--|---------------|---------------|---------------|
| Income as per Audited Balance Sheet/ITR | 3,14,83,958/- | 3,41,94,438/- | 4,36,12,932/- |
| Income as per ST 3 Return from clinical and research expenses on which Service Tax paid | 0 | 0 | 0 |
| Difference | 3,14,83,958/- | 3,41,94,438/- | 4,36,12,932/- |
| Services covered under Noti.No.25/2012 dt.20.06.212 (exempted) as discussed aboveas the same are appearing under head 194 J | 3,14,83,958/- | 3,41,94,438/- | 4,36,12,932/- |
| Difference | 0 | 0 | 0 |

23. In view of the above discussion and findings and also on perusal of SCN, audited Balance Sheet for the year 2014-15 to 2015-16, 2016-17 ITR as well as submissions made by the said assessee, I find that the difference in value of service by comparing the value of services in ITR/TDS and gross value of services provided in ST-3 Returns is basically on account of the services exempted vide Sr.No. 2(i) of the Notification No. 25/2012-ST dated 20.06.2012 being the Health Care Service rendered by the assessee as discussed hereinabove which was not shown in ST-3 Returns. As

the income received from medical services is exempted from taxable services by above Exemption Notification, I find that the service tax demand of Rs. 1,15,18,585/- is not sustainable and accordingly Show Cause Notice dt. 29.09.2020 is liable to be dropped. Further, as the SCN itself is not sustainable there is no reason to charge interest u/s.75 of Finance Act, 1994 or to impose penalty u/s.78 of Finance Act, 1994 upon the said assessee on this count.

24. In view of the above I pass the following order;

ORDER

25. I hereby order to drop the proceedings initiated against M/s. Alpesh Manilal Patel, Shantaram Complex, A 2 And 3, Opp Nirnaynagar Garnala, Nirnaynagar, Ahmedabad Gujarat for recovery of service tax of Rs. 1,15,18,585/- along with interest and penalties vide SCN No. STC/15-85/OA/2020 dated 29.09.2020.

R. Gulzar Begum
R. Gulzar Begum

(R.GULZAR BEGUM)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North

By Regd. Post AD./Hand Delivery
F. No.STC/15-85/OA/2020

Date:31/03/2022

To

M/s.- Alpesh Manilal Patel
Shantaram Complex, A 2 And 3,
Opp Nirnaynagar Garnala,
Nirnaynagar Ahmedabad Gujarat

Copy to :

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