



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20220564WT000000C6E5

फा.सं./F.No. STC/15-149/OA/21-22

आदेश की तारीख/Date of Order :- 31.05.2022

जारी करने की तारीख/Date of Issue :- 31.05.2022

द्वारा पारित/Passed by:-

मुकेश राठौर / Mukesh Rathore

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 20/ADC/MR /2022-23

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।

(3) उक्त अपील की प्रति।

(4) 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:

(3) Copy of accompanied Appeal.

(4) 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/15-149/OA/21-22 dated 23.04.2021 issued to M/s Ekta Transport Company, 126/2, Ekta Shopping Centre, Opp. Old Octroi Naka, Nana Chiloda, Ahmedabad-382230.



BRIEF FACTS OF THE CASE :

M/s. EKTA TRANSPORT COMPANY (PAN- AAMPP2289G), 126/2 EKTA SHOPPING CENTER OPP. OLD OCTROI NAKA NANA CHILODA Ahmedabad 382330, (hereinafter referred to as the 'said service provider' for the sake of brevity) is un-registered in Service Tax despite being providing service during the year 2015-16 & 2016-17.

2. Ongoing through the data received from Income Tax department (CBDT data) for the Financial Year 2015-2016 & 2016-17 for un-registered service provider, it has been observed that the said service provider has shown 'Gross receipt from Service' in their Income Tax Return, however, the said service provider has neither obtained valid service tax registration nor paid Service Tax. The details of the value shown in Income Tax return for F.Y 2015-16& 2016-17 is as per table mentioned below: -

F.Y.	Basic value as per ITR/P&L account (Rs)	Resultant Service tax not paid (Rs.)
2015-16	Rs. 2,22,34,144/-	S.T- Rs. 32,23,950/-
2016-17	Rs. 2,78,17,231/-	S.T- Rs. 41,72,585/-

3. Letters/e-mail dated 09.04.2021 was issued requesting clarification regarding the service turnover as mentioned in the above table with certified documentary evidences by the jurisdiction office, but the said service provider has not replied the observations raised by 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. 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 period 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 the period from April, 2017 to June, 2017 will be recoverable from the said service provider accordingly.

6. As per Section 69 of the Finance Act, 1994 .— *“(1) Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.*

(2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed

In the instant case, it was noticed that the said service provider has failed to obtain Service Tax registration and thereby violated the provisions of Section 69 of the Finance Act, 1994.

7. Further, as per Section 68 of the Finance Act, 1994 *(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.*

(2) Notwithstanding anything contained in sub-section (1), in respect of [such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section [66B] and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service. 14 Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider. “

In the instant case, the said service provider has failed to pay the service tax on the taxable services provided by them and thereby contravened the provisions of Section 68 of the Finance Act, 1994.

8. In view of above, the said service provider has contravened the provisions of; (1) Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 and (2) Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994 in as much as they failed to take service tax registration and pay Service Tax to the extent of Rs. 32,23,950/- for F.Y. 2015-16 and Rs. 41,72,585/-for F.Y. 2016-17]as per their Income Tax Return/ Form 26AS/P&L account.

9. It has been noticed that at no point of time, the said service provider has disclosed or intimated to the Department regarding receipt/providing of Service, which 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 observed that the said service provider have knowingly suppressed the facts regarding receipt of/providing of services by them. It appears that the above act of omission on the part of the said service provider 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 is 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 read with the Notification issued on 27.06.2020 under Section 6 of The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 dated 31.03.2020, 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 said service provider constitute offence of the nature specified under Section 68 & Section 69 of the Finance Act, 1994, it appears that the said service provider has rendered themselves liable for penalty under Section 77 (1) (a) & Section 78 of the Finance Act, 1994.

10. Therefore, M/s. EKTA TRANSPORT COMPANY (PAN- AAMP2289G), 126/2 EKTA SHOPPING CENTER OPP. OLD OCTROI NAKA NANA CHILODA Ahmedabad 382330, called upon to show cause to the Additional Commissioner of Central Excise & CGST, Ahmedabad North having office at First floor, Custom House, Navrangpura, Ahmedabad- 380009, as to why:

a) The demand for Service Tax to the extent of Rs. 32,23,950/- for F.Y. 2015-16 and Rs. 41,72,585/-for F.Y. 2016-17] 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 77 (1) (a) of the Finance Act 1994, for failure to take Service Tax Registration;

d) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994, for non-payment of service tax by knowingly suppressing the facts from the department with intent to evade the payment of service tax

DEFENCE REPLY :

11. The assessee vide letter dated 13.05.2021 and 17.05.2022 has submitted their written submission wherein they stated that they are engaged in providing the services of Transportation of Goods by Road; that Section 66D of Finance Act, 1994 specifies the negative list of services i.e. services on which service tax is not leviable and

as per S. No. (p) Services by way of transportation of goods by road falls under negative list hence not liable for service tax; the Proceedings initiated in the show cause notice are incorrect and unsustainable in law; that the show cause notice is based on presumptions and assumptions and without any legal and factual basis; that the show cause notice was issued merely based on income tax return, form 26AS received by CGST department without knowing the facts i.e. nature business/work carried on by them and availability of exemption.; that Transportation of goods by Road, falls under negative list according to S. No. (p) of negative list as per section 66D of the finance act, 1994 and hence not liable to obtain Service Tax Registration and likewise has not violated the provisions of section 69 of the Finance Act, 1994; that they Submitted that the service provided by the assessee itself falls under Negative list as per Section 66D of the finance Act, 1994 hence not liable for Service tax.; that due to Corona Pandemic, they were facing some issue in gathering the details as the office was closed and they were working from home; that that they enclosed IT Returns, Balance sheet and profit and loss account and other details; that they are not liable to pay penalty and interest;

PERSONNEL HEARING :

12. Personnel Hearing was granted to the assessee on 24.04.2022, wherein Shri Ronak Shah, Chartered Accountant and authorized representative appeared for personnel hearing. He stated and reiterated their written submission made on 13.05.2021. He requested to consider the case on merits.

DISCUSSION AND FINDINGS :

13 The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding to adjudicate the SCN.

13.1 I have carefully gone through the records of the case, submission made by the assessee in reply to the show cause notice and also during the course of personal hearing. In the present case, Show Cause Notice has been issued to the assessee demanding Service Tax of Rs. 73,96,533/- for the financial year 2015-16 and 2016-17 on the basis of data received from Income Tax authorities. The said Service Tax demand has been issued on the basis total value for ITR/TDS provided for the year 2015-16 and 2016-17, as the assessee is not registered with Service Tax. 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.

13.2 In reply to the show cause notice, the said assessee submitted that they are engaged in providing the services of Transportation of Goods by Road without issuing consignment note and therefore the services provided by them falls under Section 66D of Finance Act, 1994 which specifies the negative list of services i.e. services on which service tax is not leviable and as per S. No. (p), Chapter V of Finance Act, 1994, the

details negative list of services have been notified. They have furnished the details of the parties to whom they have provided services for the year 2015-16 and 2016-17. They have provided party wise ledger for the financial year 2015-16 and 2016-17 of their vendors to whom they have provided services. They have also furnished the random invoices for the year 2015-16 and 2016-17 along with form 26AS for evidential support of their claim.

13.3 Now I would like to go through the legal aspects of the taxability of services of Transportation of Goods by Road without issuing consignment note.

Section 66D of Finance Act, 1994 specifies the Negative list of services i.e the Services on which Service Tax is not leviable. Section 66D is been inserted in Finance Act, 1994 by Finance Act, 2012 and been notified to be effective from 1st July 2012 vide Notification No. 19/2012-ST dated 5 June 2012.

(p) services by way of transportation of goods— (i) by road except the services of (A) a goods transportation agency; or (B) a courier agency;

13.4. Therefore, As per provisions contained in Chapter V of the Finance Act, 1994 and as notified vide Sr. No. (p) vide notification No. 19/2012 – ST dated 05.06.2012, the services by way of transportation of goods by road except the services of a goods transportation agency or a courier agency, is eligible for exemption and therefore no service tax is payable by the assessee as they are not providing services as GTA. The assessee has provided Services of goods transport to their various client for transportation of sand, special Metal, Kapchi etc, on issuing of invoices and the same are reflecting in their ledger and form 26AS. On verification of invoices and other documents provided, I find that they are not issuing any consignment note for the transportation of goods. I also find that they have not issued any consignment note and issued only invoices which reflects the cost of the goods they have transported. As they have not provided the services of GTA, as envisaged in the Service Tax Act and Rules made thereunder, I find that they are not liable to pay service tax and therefore the service tax demand of Rs. 32,23,950/- and Rs. 41,72,585/- for the financial year 2015-16 and 2016-17 respectively is not sustainable and therefore liable to be dropped.

13.5 For the sake of clarity, I herewith produce reconciliation statement as detailed below :

Description	Year 2015-16	Year 2016-17
Total income as per ITR and SCN	22334144	27817231
Less : exempted services Provided to their client as per Section 66D of Chapter V of finance Act, 1994	22334144	27817231
Difference	0	0

13.6 On perusal of the records of the case, submissions of the assessee, Audited Balance Sheet, 26 AS, ITR, copies of ledger accounts, random invoices and the above reconciliation statement for the year 2015-16 and 2016-17, I find that the assessee earned total income of Rs. 22334144/- and Rs. 27817231/- for the financial year 2015-16 and 2016*-17, the said income earned by way of providing services of transportation of goods by road to various clients and according to Section 66D of Chapter V of Finance Act, 1994, the assessee has provided exempted services to their client and therefore the assessee is not liable to pay Service Tax.

14. In view of the above facts, I find that the services rendered by the noticee are eligible for exemption from payment of service tax under negative list as provided under Section 66D of Finance Act 1994 as amended. As such, the assessee is not liable to pay Service Tax for the notice issued and the Service Tax demanded and the present show cause notices are not sustainable in law and liable to be dropped. As the show cause notice itself is not sustainable, interest and penalty proposed in the show cause notices are also not sustainable and liable to be dropped.

15. I find that the financial and other records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company/ individual during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated 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 at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the 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 of the company/ individual. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

16. Having considered above facts and discussion, I am of the view that the service provided by the assessee is appropriately classifiable under Section 66D of Finance Act, 1994 as amended being in Negative List Services and therefore, the assessee is not liable to pay demand raised in the subject Show Cause Notices.

17. Further as per para 5 of the SCN states that the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, same was to be disclosed by the Income Tax department or any other source/agencies, against the said noticee, action was to be initiated against noticee 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 and the service tax liability was to be recoverable from the noticee 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. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income from clearing and forwarding services. I, therefore, refrain from discussing the taxability on other income other than clearing and forwarding services.

18. In view of the above discussion and findings, I pass the following orders:-

: ORDER :

19. I drop the demand of Rs. 32,23,950/- and Rs. 41,72,585/- for the financial year 2015-16 and 2016-17 respectively and proceedings initiated against M/s. EKTA TRANSPORT COMPANY (PAN- AAMPP2289G), 126/2 EKTA SHOPPING CENTER OPP. OLD OCTROI NAKA NANA CHILODA Ahmedabad 382330 and accordingly Show Cause Notice F.No. STC/15-149/OA/2021-22 dated 23.04.2021 is hereby disposed off .

(Mukesh Rathore)
Additional Commissioner
Central Excise & CGST,
Ahmedabad North

F.No. STC/15-149/OA/2021-22

Date: 31.05.2022

By Regd. Post AD./Hand Delivery

To,
M/s. EKTA TRANSPORT COMPANY (PAN- AAMPP2289G),
126/2 EKTA SHOPPING CENTER
OPP. OLD OCTROI NAKA
ANA CHILODA Ahmedabad 382330.

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.

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