



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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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. **STC/15-04/OA/2021**

आदेश की तारीख/Date of Order: - 23.11.2021

जारी करने की तारीख/Date of Issue :- 23.11.2021

DIN NO: 20211164WT000000BD6C

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

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 24/JC/GB/2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है ,उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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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/15-04/OA/2021 dated 23.04.2021** issued to **M/s Yash Construction** situated at 410-411, Vrajbhoomi Complex, Off. C.G. Road, Navrangpura, Ahmedabad, Gujarat-380009.

BRIEF FACTS OF THE CASE :

M/s YASH CORPORATION, 410-411, VRAJBHOOMI COMPLEX, OFF C G ROAD, NAVRANGPURA, AHMEDABAD, Gujarat- 380009 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. AAAFY7520MSD001 and was engaged in Taxable Services.

2. Ongoing through the third party CBDT data for the Financial Year 2015-16 and 2016-17, it has been observed 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, the details of which are as under:

Sr. No.	F.Y.	Taxable Value as per ST-3 returns (In Rs.)	Gross Receipts From Services (Value from ITR/26AS) (In Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax short paid (in Rs.)
1	2015-16	0/-	119315476/-	119315476/-	17300744/-
2	2016-17	0/-	0/-	0/-	0/-
TOTAL					17300744/-

3. 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 for Financial Year 2015-16 and 2016-17.

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

5. With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies 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."

6. 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.

7. 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.

8. 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. 17300744/-, by declaring less value in their 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.

9. 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 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 is observed 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. 17300744/-. It is observed 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 is 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 is observed that the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

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10. Therefore, M/s YASH CORPORATION, 410-411, VRAJBHOOMI COMPLEX, OFF C G ROAD, NAVRANGPURA, AHMEDABAD, Gujarat- 380009 called upon to show cause to the Additional/Joint Commissioner, CGST &CX, Ahmedabad North having office at 1st Floor, Custom House, Navrangpura, Ahmedabad as to why:

- (i) The demand for Service tax to the extent of Rs. 17300744/- short paid /not paid by them in F.Y. 2015-16 and 2016-17, 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 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.

11. The Assessee is requested to produce at the time of showing cause all the evidences upon which they intend to rely in support of their defense. They are required to further indicate in their written reply as to whether they desire to be heard in person before the case is adjudicated. If no mention is made about this in their written explanation, it would be presumed that they do not desire to be heard in person.

Defence Reply :

12. The assessee vide letter dated 27.05.2021 has furnished their defence reply wherein they stated that they had taken Service Tax Registration on 10.06.2015; that they have already received a service tax scrutiny notice on 19.10.2020 wherein reply was provided on 7.10.2020 to the office of the Dy. Commissioner, CGST, Ahmedabad South; that subsequently show cause notice was issued on 29.12.2020 for which detailed reply was provided on 29.01.2021; that A personnel hearing was also held in presence of Joint Commissioner Mrs. Neetu Singh wherein all the matters related to the SCN were discussed/ explained and after considering all, an order for dropping the SCN was issued; that they have received a new show cause notice dated 27.04.2021 for the respective year; that considering above, it is humble requested to consider the order received on the last SCN as final and consider the matter and dropped the current SCN; that they have also furnished the Show Cause Notice issued from F. No. V/WS06/O&A/SCN-567/2020-21 dated 29.12.2020 demanding the short paid Service Tax of Rs. 37,31,062/- at the @ of 15% on higher value (Value Difference in ITR& STR) of Rs. 2,48,73,745/- for the year 2015-16.

Personnel Hearing :

13. A personnel Hearing was granted on 17.11.2021 wherein Shri Pradeep Murty (CA), a representative was appeared for personnel hearing wherein he stated that for the referred period already a SCN has been issued and order passed. He has submitted order copy and requested to drop all further proceeding as the matter has already been disposed.

14. DISCUSSION AND FINDINGS:

14.1 I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defense reply dated 27.05.2021 alongwith documents submitted by the assessee.

14.2 On going through the SCN, I find that data of Sales /Gross receipt from services as per ITR/ 26AS were shared by the CBDT with CBIC for FY 2015-16 and 2016-17,. The difference in value of service to the extent of Rs. 11,93,15,476/- was noticed and therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 1,73,007,44/- on the differential value of Rs. 11,93,15,476/- under proviso to section 73(1) of Finance Act, 1944 or not.

14.3 I find that the Show Cause notice for the same period 2015-16 for the differential value of Rs. 11,93,15,476/- has already been issued by the Dy. Commissioner, Central GST, Division VI, Ahmedabad South from F. No. V/WS06/O &A/ SCN-567/2020-21 dated 29.12.2020 and adjudicated vide order in Original NO. CGST-VI/Dem-20/Yash/DC/NS/2020-21 dated 16.03.2021 issued by Joint Commissioner (in-situ) Division VI, Central GST, Ahmedabad South for the period 2015-16

14.4 Therefore, without going into Merit of the case in respect of Current Show Cause Notice , and since the Show Cause notice for the same period 2015-16 for the differential value of Rs. 11,93,15,476/- has already been issued by the Dy. Commissioner, Central GST, Division VI, Ahmedabad South from F. No. V/W06/O & A/SCN-567/2020-21 dated 29.12.2020 and adjudicated vide Order in Original NO. CGST-VI/Dem-20/Yash/DC/NS/2020-21 dated 16.03.2021 by Joint Commissioner (in-situ) Division VI, Central GST, Ahmedabad South. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments.

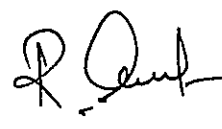
14.5 I also find that in the current SCN, there is no differential value and Service Tax demanded for the year 2016-17 are NIL. Hence I refrain from any discussion for the demand of Service Tax for the year 2016-17 in this regard..

14.6 In view of the facts and circumstances pertaining to the case, the demand is not tenable in law again for the same period. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

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ORDER

15 I drop the proceedings initiated against M/s YASH CORPORATION, 410-411, VRAJBHOOMI COMPLEX, OFF C G ROAD, NAVRANGPURA, AHMEDABAD, Gujarat- 380009. The Show Cause Notice F. No. STC/15-04/OA/2021 dated 23.04.2021 is hereby disposed herewith.

 23/11/21

(R. Gulzar Begum)
Joint Commissioner
Central GST & Central Excise
Ahmedabad North

F.No. STC/15-04/OA/2021

Dated 23.11.2021

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

By Regd. Post AD./Hand Delivery

To
M/s. YASH CORPORATION
410-411, VRAJBHOOMI COMPLEX, OFF C
G ROAD, NAVRANGPURA, AHMEDABAD,
Gujarat- 380009

Copy to:

1. The Commissioner of CGST & C. Ex., Ahmedabad North.
2. The Assistant Commissioner, CGST & C. Ex., Division-VII, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Ahmedabad North.
4. The Superintendent (System), CGST, Ahmedabad North for uploading on website.

5. Guard File