



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/15-58/OA/2020

आदेश की तारीख/Date of Order: -15.12.2021

जारी करने की तारीख/Date of Issue :- 15.12.2021

DIN NO: 20211264WT0000111C55

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

संयुक्त आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 31/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/15-58/OA/2020** dated **28.09.2020** issued to **M/s. Esparkbiz Technologies Private Limited** situated at **101/102 Shantimall Near Satadhar Char Rasta, Ghatlodia, Ahmedabad, Gujarat-380061.**

BRIEF FACTS OF THE CASE :

M/s ESPARKBIZ TECHNOLOGIES PRIVATE LIMITED, 101/102 SHANTIMALL NEAR SATADHAR CHAR RASTA GHATLODIA AHMEDABAD GUJARAT-380061 **having PAN NO: AADCE3056A** (hereinafter referred to as the 'noticee') was providing services related to **I.T. enabled services, BPO service provides.**

2. Information was received from CBDT regarding third party data for the Financial Year 2014-2015 to 2016-17, wherein it is observed that the said noticee had earned substantial income by way of providing taxable services, but has neither obtained Service Tax registration nor paid the applicable Service tax thereon. Vide letter no. 381/77/2012/1908 to 1932, dated 25.07.2016, the Directorate General of Audit, New Delhi, had informed that the third batch of CBDT data for the year 2014-15 has been disseminated through Antarang portal <https://antarang.icegate.gov.in>. The said data alongwith the data for the subsequent periods was forwarded from the office of the Chief Commissioner, C.G.S.T, Ahmedabad Zone, Ahmedabad, to the respective through Preventive Section, H.Q., C.G.S.T., Ahmedabad North.

3. On scrutiny of the above data, it is noticed that the noticee has earned an income of Rs. 67,15,520/- for the financial year 2014-15, Rs 2,34,72,856/- for the financial year 2015-16 & Rs 3,69,80,413/- for the financial year 2016-17. These values were reflected under the heads "**Sales of services under Sales/Gross Receipts From Services (Value from ITR)**" or "**Total Amount Paid/Credited Under Section 194C, 194I, 194H, 194J**" by the Income Tax Department. In order to ascertain the Service Tax liability of the noticee, letters dated 25.07.2020; and Summons dated 17.08.2020 were issued to party with a request to produce the documents mentioned therein within a week time from the date of receipt of the said letters/Summons. The noticee was directed to provide the Audited Balance Sheets, ITR, 26AS, ST-3 returns of the relevant period and also submit sample Sales invoices along with the details of all the sales invoices issued during the period. However, the noticee has failed to submit the required details / documents.

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 noticee as Service Provider appears to be covered under the definition of service and does not appear to be covered under the Negative List as given in the Section 66D of the Finance Act, 1994, as amended from time to time. These services are also not exempted under Mega Exemption Notification No. 25/ 2012-S.T. dated 20.06.2012, as amended from time to time. Therefore, the aforesaid services provided by the noticee appear to be liable to payment of Service Tax.

6. Since the noticee has not submitted the required details of services provided during the period from April-17 to June-17, the service tax liability of the service tax noticee was required to be ascertained on the basis of income mentioned in the ITR returns and Form 26AS filed by the noticee 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 2014-15, 2015-16, 2016-17. 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
1	2014-15	Rs 67,15,520/-	12.36%	Rs 8,30,039 /-
2	2015-16	Rs 2,34,72,856/-	14.5%	Rs 34,03,564/-
3	2016-17	Rs 3,69,80,413/-	15%	Rs 55,47,062/-
TOTAL				Rs 97,80,665/-

8. Whereas, no data was forwarded by CBDT, for the period from April-17 to June-17 and the noticee 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 from April-17 to June-17.

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 is observed that the "Total Amount Paid/Credited Under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts From Services (From ITR)" for the from April-17 to June-17 has not been disclosed thereof by the Income Tax Department, nor the reason for the nondisclosure was made known to this department. Further, the noticee 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 period from from April-17 to June-17 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 noticee, action will be initiated against the said 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, in as much as the Service Tax liability arising in future, for the period from

April-17 to June-17 covered under this Show Cause Notice, will be recoverable from the noticee 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 noticee 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 deposited 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, M/s ESPARKBIZ TECHNOLOGIES PRIVATE LIMITED, 101/102 SHANTIMALL NEAR SATADHAR CHAR RASTA GHATLODIA AHMEDABAD GUJARAT-380061 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 viz. "Contractors "/any other Declared service, 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) All the above acts of contravention on the part of the said noticee 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 read with Notification dated 27.06.2020 issued vide F.No. CBEC-20/06/08/2020-GST 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 punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.
- (v) The said noticee 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.

(vi) Section 77 of the Finance Act, 1994, in as much as they failed to file correct and true ST-3 returns.

13. The above said service tax liabilities of the noticee **M/s ESPARKBIZ TECHNOLOGIES PRIVATE LIMITED**, has been worked out on the basis of limited data/ information received from the Income tax department for the financial years 2014-15, 2015-16, 2016-17. Thus, the present notice relates exclusively to the information received from the Income Tax Department.

14. It is observed that the noticee has neither obtained the Service Tax registration from the Department for the services provided by them for the period of F.Y. 2014-15, nor responded to correspondence made by the department in order to ascertain the actual taxable service income. Therefore, it appears that the noticee 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 97,80,665/-** is therefore recoverable from them by invoking extended period of five years as per 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 along with interest under Section 75 of the Finance Act, 1994 and penalty under Section 78 of Finance Act, 1994.

15. Further, the said noticee (a) failed to take registration in accordance with the provisions of section 69; (b) failed to keep, maintain or retain books of account and other documents as required in accordance with the provisions of Finance Act, 1994 & (c) failed to furnish information / documents called for from them (d) failed to pay the tax electronically, accordingly the said noticee is liable to penalty under the provisions of Section 77(1) & 77(2) of Finance Act, 1994.

16. In this regard, the noticee was offered an opportunity to give explanation/clarification as Pre-SCN Consultancy on 25.09.2020. M/s. Krupal & Associates, Chartered Accountant, vide e-mail dated 27.09.2020, stated that their client is not liable to pay any Service Tax nor liable to register for service tax as their client is doing export of services.

17. Therefore, **M/s ESPARKBIZ TECHNOLOGIES PRIVATE LIMITED, 101/102 SHANTIMALL NEAR SATADHAR CHAR RASTA GHATLODIA AHMEDABAD GUJARAT-380061**, are hereby called upon to show cause before the Additional Commissioner, Central Goods and Service Tax, Ahmedabad North having his office situated at 1st floor, Customs House, Opposite Old High Court, Income Tax Cross Road, Navrangpura-380009 as to why:

- (i) Service Tax of **Rs 97,80,665/-** which was not paid for the financial year 2014-15, 2015-16 and 2016-17 as above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (ii) Service Tax liability not paid for the period from April-17 to June-17, **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) & 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. The proceedings propose and that may be taken against the said noticee, under the aforementioned provisions of the Finance Act 1994 read with the Service Tax Rules, 1994 framed there under, are saved by the Section 174(2) of the CGST Act, 2017.

19. DEFENCE REPLY:

M/s. krupal Associates, Chartered Accountant on behalf of the noticee vide letter dated 12.02.2021 submitted their written submission wherein they stated that their client are engaged in providing services related to export which are covered under exempt services of Service Tax Act; that their client providing mainly cognitive Technologies, Mobile App & Web Development Services which is other than given in negative list of Section 66D; All service provided in life span of company is belongs to Export in USA, UK and Australia; that they have attached few FIRC as an evidence for foreign remittance received by them during the period ; that as per rule 6A of the Service Tax Rules, 2005, their client falls under taxable category; that recipient of service is located outside India ; that the payment of such service has been received by the provider in convertible foreign exchange; that provider of service and recipient of service are merely establishment of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of Section 65B of the Act.

20. PERSONNEL HEARING:

Personnel hearing in the matter was granted to the noticee on 16.11.2021 wherein Shri Akshay Barad, CA, authorized representative appeared before me. He reiterated the written submission made on 12.02.2021 and stated that the unit has done exempted service and hence not liable to pay service tax.

21. DISCUSSION AND FINDINGS:

21.1 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 12.02.2021 and documents submitted by the noticee.

21.2 On going through the SCN, I find that data of Sales /Gross receipt from services was shared by the CBDT with CBIC for FY 2014-15 to 2016-17, The difference in value of service to the extent of Rs. 6,71,68,789/- was noticed and therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the noticee is liable to pay service tax on the basis of ITR filed for the period 2014-15 to 2016-17 on value of Rs. . 6,71,68,789/- under proviso to section 73(1) of Finance Act, 1944 or not.

21.3 I find that the noticee in their reply dated 12.02.2021 has stated that the value of service of sales/ gross receipts shown in their ITR filed for 2014-15 to 2016-17 is on account of export of service. They have, further, stated that they had provided service of cognitive Technologies, Mobile App & Web Development Services i.e Information Technology & Software Service out of country as well, and such services qualified as Exports of Services as per Rule 6A of Service Tax Rules, 1994. The Services provided to their clients are other than given in negative list of Section 66D. They have stated that service provided in life span of company is belongs to Export in USA, UK and Australia. Further I also find that in support of their reply, the noticee have submitted the copy of Balance Sheet, P&L account for FY 2014-15 to 2016-17, random copy of the list of Bank Realisation Certificated ("BRC" for sake of brevity) issued to them for Export of service, Ledger "Sales

Account-Export" for FY 2014-15 to 2016-17, and certificate dated 12.11.2021 from Chartered Account Krupal & Associates certifying that the Total turnover for the financial year 2014-15 to 2016-17 are from export of Services only.

21.4 I have gone through the reply and documents submitted by the noticee. I observe that the noticee is not registered with the Service Tax and accordingly not filing the returns. I find from the Balance Sheet, P&L account for FY 2014-15 to 2016-17, that the noticee has booked revenue of Rs. 6,71,68,789/- under the head of "Revenue from Operations". I have also gone through the ledger Account furnished by the noticee for the year 2014-15 to 2016-17, in respect of Service Fees which have been received by them from foreign service recipient. I find that the noticee has furnished the copy of the list of random BRCs issued by the Kotak Mahindra Bank, Sola Road, Ahmedabad, HDFC Bank, Ahmedabad. I have cross checked some Invoices with their remittance and their entry in the ledger of the noticee. I find that the noticee has issued a invoices, against which remittance in foreign currency have been received and the entry of the said remittance in their register. I find no discrepancy in this regard. I find that the noticee has provided services of Information and Technology Services to their foreign buyer, the amount of which have been received in US \$, reflecting in their respective ledger. I find that the noticee in FY 2014-15 to 2016-17 has received revenue from sale of service outside India to the extent of Rs. Rs. 6,71,68,789/-

21.5 As stated in Para No. 9 & 10, of the Show Cause Notice, for the unquantified demand for the period April -2017 to June 2017, I have gone through the ledger for the respective period I find no discrepancy in this regard. I find that the noticee has provided services of Information and Technology Services to their foreign buyer, the amount of which have been received in US \$, reflecting in their respective ledger for the year 2017-18 (Up to June 2017).

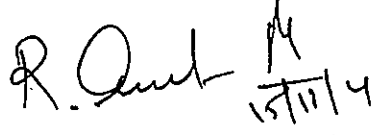
21.6 From the above discussions and document available on records, I find that all the ingredients which formalize/ qualify the activity to be "export of service" for the purpose of Rule 6A of Service Tax Rules 1994, are satisfied by the noticee in as much as (a) the provider is located in the taxable territory (b) the recipient of service is located outside India (c) the service is not in a negative list (d) the place of provision is outside India in the instant case as per the Rule 3 of Place of Provision of Service Rules, 2012 (e) the payment has been received by the provider of service in convertible foreign exchange (f) the provider of service and the recipient of service are different legal entities established under different laws, hence, they are not merely distinct establishment of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the act.

18.6. Having considered these factual and documentary evidences available on records, I find no reason to disagree the noticee's contentions. I am therefore of the view that the noticee has established their case quite clearly that the amount shown in Show Cause Notice i.e. Sales of Service under Sales/Gross Receipt from ITR is the value of service is on account of export of service. I therefore hold that no service tax is payable by the noticee as demanded in the subject SCN.

21.7 In view of the facts and circumstances pertaining to the case as aforementioned, the demand is not tenable in law, accordingly I do not consider it necessary to delve in the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said noticee in their submissions. For the same reasons, I am also not entering into discussions on imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

22 I drop the proceedings initiated against M/s ESPARKBIZ TECHNOLOGIES PRIVATE LIMITED, 101/102 SHANTIMALL NEAR SATADHAR CHAR RASTA GHATLODIA AHMEDABAD GUJARAT-380061 vide Show Cause Notice F.No. STC/15-58/OA/2020 dated 28.09.2020.


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

By Regd. Post AD./Hand Delivery

F.No. STC/15-58/OA/2020

Date: 11/12/2021

M/s ESPARKBIZ TECHNOLOGIES PRIVATE LIMITED,
 101/102 SHANTIMALL , NEAR SATADHAR CHAR RASTA GHATLODIA
 AHMEDABAD GUJARAT-380061

Copy for information to:

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