



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

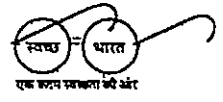
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद - 380009

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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-200/OA/2020

आदेश की तारीख/Date of Order: - 22.12.2021

जारी करने की तारीख/Date of Issue :- 22.12.2021

DIN NO: 20211264WT0000611238

द्वारा पारित/Passed by:-

मुकेश राठौर/ MUKESH RATHORE

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 34/JC/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 F. No. **STC/15-200/OA/2020** dated **30.12.2020** issued to **M/s Shiva Developers** situated at Amardeep Residency, B/H. Pushkar Bunglows, near Kailashkunj Society, Naroda-Himatnagar road, Nana Chiloda, Ahmedabad.



BRIEF FACTS OF THE CASE:

M/s. SHIVA DEVELOPERS, AMARDEEP RESIDENCY, B/H. PUSHKAR BUNGLOWS, NR. KAILASHKUNJ SOCIETY, NARODA- HIMATNAGAR ROAD, NANA CHILODA, AHMEDABAD. (hereinafter referred to as the 'said assessee') is engaged in the business of providing services as per definition of Finance Act, 1994 and registered with erstwhile Service Tax department having Service Tax Registration No.ABQFS6920CSD001.

2. Ongoing through the data provided by the CBDT for the Financial Year 2015-2016, it has been observed that the said assessee has not paid service tax of Rs.55,81,195/-

TABLE-A

(Amount in Rs)				
Sr. No.	F.Y.	HIGHER VALUE (VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Service Tax rate	Service Tax Payable
1	2015-16	3,84,91,000	14.5%	55,81,195
TOTAL				Rs.55,81,195/-

The above said service tax liabilities of the said assessee, has been worked out on the basis of limited data/ information received from the Income Tax Department for the financial years 2015-16. Thus, the present notice relates exclusively to the information received from the Income Tax Department.

No data was received, for the period 2016-17 &2017-18 (upto June 2017) and the assessee have 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 2016-17 &2017-18 (up to June 2017).

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 efficient.'

The Jurisdiction Deputy/Assistant Commissioner has requested to the said assessee for clarification regarding the differential value as mentioned as above by submitting self-certified documentary evidences such as audited balance sheet, copy

of profit & loss account, copy of ledgers, gross trial balance sheet, ITR, 26AS, ST-3 returns, sample sales invoices along with details of all the sales invoices issued during financial year 2015-16 vide various letters/email dated 09.10.2020 & 07.09.2020 but no reply received from the said assessee.

4. In view of above, it appears 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 Service Tax to the extent of Rs.55,81,195/-(round figure) as per their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services provided/received 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.

5. It has been noticed that at no point of time, the assessee has disclosed or intimated to the Department regarding providing/ receipt of Service of the 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. The Government has right from the very beginning placed full trust on the service tax 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 providing/ receipt of services by them worth the differential value as mentioned hereinabove and thereby has not paid / short paid/ not deposited Service Tax thereof to the extent of Rs.55,81,195/-. 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 the payment of Service tax to the extent mentioned hereinabove.

6. Hence, it is observed from the above paras that the duty 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 of the Finance Act, 1994 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.

Therefore, M/s. SHIVA DEVELOPERS, AMARDEEP RESIDENCY, B/H. PUSHKAR BUNGLOWS, NR. KAILASHKUNJ SOCIETY, NARODA - HIMATNAGAR ROAD, NANA CHILODA, AHMEDABAD was called upon to show cause to the Additional Commissioner of CGST & Central Excise, Ahmedabad North having their office situated at 1st Floor, Custom House, Nr. All India Radio, Ashram Road, Ahmedabad-380009 as to why:

- a) The demand of Service tax to the extent of Rs.55,81,195/- (Rupees Fifty Five lakh Eighty One Thousand One Hundred and Ninety Five only) not

- paid/short 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 78 of the Finance Act, 1994.
 - d) Penalty should not be imposed upon them under the provisions of Section 76 of the Finance Act, 1994.
 - e) Penalty should not be imposed upon them under the provisions of Rule 7 of Service Tax Rules, 1994 read with Finance Act, 1994.

8. The assessee was 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.

9. DEFENCE REPLY:

The assessee has not submitted any defence reply with regard to Show Cause Notice dated 30.12.2020 issued to them.

10. PERSONNEL HEARING:

Personnel Hearing to the assessee was granted on 18.11.2021. Shri Virang Mehta, Chartered Accountant appeared before me for personnel Hearing of behalf of M/s. Shiva Developers. During Personnel Hearing he requested that he will submit all the documents and written submission within 15 days.

11. DISCUSSIONS AND FINDINGS

11.1 I have carefully gone through the records of the case, Show Cause Notice and Personnel Hearing. In the present case, Show Cause Notice was issued to the noticee demanding Service Tax of Rs.55,81,195/- for the financial year 2015-16 on the basis of data received from Income Tax authorities and finding.

11.2 On going through the SCN, I find that data of Sales /Gross receipt from services as per ITR were shared by the CBDT with CBIC for FY 2015-16, provided by the assessee. The difference in value of service to the extent of Rs. 3,84,91,000/- was noticed and therefore, the subject SCN was issued demanding Service Tax of Rs. 55,81,195/- @ prevailing rate of 14.5%. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 55,81,195/- on the differential value of Rs. 3,84,91,000/- under provision of Section 73 of Finance Act, 1994.

11.3 I find from the records available in file and details mentioned in the Show Cause Notice that the said assessee is registered with the Service Tax department having Service Tax Registration No.ABQFS6920CSD001. However, I also find that there is no mention in the show cause Notice that under which Service the assessee has obtained the registration. During the personnel hearing, the representative of the

assessee has also not stated that under which service their client has obtained the registration.

12. An assessee registered with Service Tax Department is required to provide information/documents to the department as and when required. However, in this case the assessee failed to furnish/provide the required documents in support of their claim to prove that they are not liable to pay service tax being the service tax provider. Even during the course of personnel hearing also the assessee failed to submit any documents proving that the service receivers are fall under any of the category. Further, during the personnel hearing the representative has stated that they will provide all the documents and written submission within 15 days. I find that the assessee has not provided any written submission not any documents within stipulated time of 15 days to claim their exemption benefit.

13. In view of the above facts, it is proved that the assessee may not have the data of the service receivers or they might have been trying to avoid furnishing the details which may have lead to proof that the service recipient may not be falls under the category of any exemption notification. In case if the service receiver is not fall under any of the category, the full liability to pay service tax is on the assessee himself. To avoid this liability to pay service tax, he has not deliberately supplied the details/documents called for. Therefore, I could not ascertain the correct and legal obligation for payment of service tax verification in absence of any legal documents.

14. In the absence of the any of the supporting documents, I find that the liability to pay service tax on the entire amount falls on the assessee and therefore the unpaid service tax of Rs. 55,81,195/- is correctly demanded from the said assessee and required to be recovered from the assessee, being the service provider.

15. On scrutiny, I further observed and find that the assessee has not declared the service value of Rs. 3,79,36,681/- for the year 2015-16 in their ST-3 returns, as I find that the assessee has not filed any Service Tax Returns and therefore they are liable to pay Service Tax of Rs. 55,81,195/- on the Services Provided by them in respect of Services on the value as stated above. The same is required to be recovered from them under the provisions of Section 73 of the Finance Act, 1994;

16. On perusal of para 02 of the SCN, I find that the levy of service tax for FY 2016-17 and 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the 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 to recover the same. However, I refrain to discuss the demand for the year 2016-17 and 2017-18 (Up to June 2017), as the same is not discuss in the Charging para of the Show Cause Notice.

17. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax

cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behavior. M/s. Shiva Developers deliberately not supplied any legal documents, the actual service rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but only after going through the CBDT data these facts would have come to light. When the assessee is a registered person, ST-3 returns should file regularly to fulfill his legal obligation to disclose the full facts and material in their ST 3 returns. As they have not disclosed the entire fact, data provided by CBDT helped to find out the suppression of tax liable to pay by the assessee and subsequent issuance of Show Cause Notice to recover the service tax from the said assessee.

18. Further, they had not claimed any exemption for the said charges collected and provisions of the 'taxable services' during the aforesaid period in the ST-3 Returns, nor did they have sought any specific clarification from the jurisdictional Service Tax assessing authorities regarding the applicability of Service Tax on the services of the same covering the period of this notice. In view of the specific omissions and commissions as elaborated earlier, it is apparent that the assessee had deliberately suppressed the facts of provision of the Taxable Service by not providing the documents to the authority during the relevant period. Consequently, this amounts to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of Service Tax.

19. I further find that M/s. Shiva Developers had contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994, provided by them to their various service receivers during the period from 01.04.2015 to 31.03.2016.

- (i) Section 67 of the Finance Act, 1994 read with Rule 2A(ii)(B)(ii) of Service Tax (Determination of Value) Rules, 2006, in as much as they have failed to determine the net taxable value of taxable service and declared the same to the department.
- (ii) Section 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they did not pay the appropriate Service Tax on the taxable services provided by them.
- (iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they, as a service provider, have failed to furnish proper periodical returns in form ST-3 mentioning the particulars of the aforesaid taxable service provided by them, the value of taxable service determinable and other particulars in the manner as provided therein and incorporating the required information to the jurisdictional Superintendent of Service Tax.



20. As regards the issue of imposition of penalty under Section 76 of the Finance Act, 1994, I observe that penalty under Section 76 and 78 of the Finance Act, 1994

are mutually exclusive and once penalty under Section 78 is imposed, no penalty under Section 76 can be imposed in terms of the proviso inserted in Section 78 w.e.f 10.05.2008 in this regard. Hence I refrain from imposing any penalty u/s.76 of Finance Act,1994.

21. All above acts of contravention constitute an offence of the nature as described under the provision of Section 78 of the Act, rendering themselves liable to penalty under Section 78 of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 78 of the Service Tax Rules, 1994. They are also liable for penalty under Rule 7 of the Service Tax Rules, 1994;


22. As far as imposition of penalty u/s.78 of Finance Act, 1994 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under section 78 of Finance Act, 1994 as they failed to pay the correct duty with the intent to evade the same. It is also a fact that they had deliberately not shown in their ST-3 Returns, the actual service provision rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but on verification of data received from CBDT these facts would have not come to light. They have never informed the Service Tax department about the actual provision of taxable services so provided by them to their service recipients during the relevant time and they have also not shown the aforesaid actual provision of taxable service provided them, in respective ST-3 returns filed by them at the relevant period. The assessee have thus, willfully suppressed the actual provision of taxable service provided by them with an intent to evade the Service Tax. It, thus, found that the assessee, as a service provider, deliberately suppressed the actual provision of the taxable services provided by them, from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed hereinabove. Hence I find that this is a fit case to impose penalty u/s.78 of Finance Act,1994.

23. Further, all the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part the service provider has 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/short paid is required to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years. All these acts of contravention of the provisions of Section 65, 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 liable to penal action under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

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

ORDER

- (i) I confirm the Service Tax amounting to Rs. 55,81,195/- (Rupees Fifty Five Lacs Eighty One Thousand One Hundred Ninty Five only) under Section 73(1) of chapter V of Finance Act, 1994 read with section 174 of CGST Act,2017 as amended and order M/s. Shiva Developers to pay up the amount immediately.
- (ii) I order that interest be recovered at the appropriate rate from M/s. Shiva Developers on the service tax amount of Rs. 55,81,195/- /- under the provisions of Section 75 of chapter V of the Finance Act, 1994.
- (iii) I impose penalty of Rs.40,000/-(Rupees Forty Thousand only) on Shiva Developers under Rule 7 of Service Tax Rules, 1994 read with Finance Act 1994.
- (iv) I impose a penalty of Rs. 55,81,195/- (Rupees Fifty Five Lacs Eighty One Thousand One Hundred Ninty Five only) M/s. Shiva Developers under section 78 of the Finance Act 1994 as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s. Shiva Developers pays the amount of Service Tax as determined at Sl. No. (i) above and interest payable thereon at (ii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Shiva Developers shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.


(MUKESH RATHORE)
Joint Commissioner
Central Excise &CGST,
Ahmedabad North

By Regd. Post AD./Hand Delivery
F.No. STC/15-200/OA/2020

Date: 22.12.2021

To,

M/s. Shiva Developers,
Amardeep Residency,
B/H Pushpak Bungalows,
Nr. Kailashkunj Society,
Naroda-Himat Nagar Road,
Nana Chiloda, Ahmedabad.



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-III, Division-I, CGST & CX, Ahmedabad North.
4. The Superintendent, Systems, CGST & CX, Ahmedabad North
5. ✓ Guard File.