



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

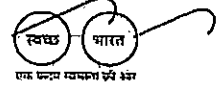
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद - 380009

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निबन्धित पावनी डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-35/OA/2020

आदेश की तारीख/Date of Order:- 25.01.2022

जारी करने की तारीख/Date of Issue :- 25.01.2022

DIN-20220164WT000000BA0A

द्वारा पारित/Passed by:-

आर गुलजार बेगम /R. GULZAR BEGUM

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 49/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-380015) को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 दो रुपये (का न्यायान्य 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।

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/15-35/OA/2020 dated 28.09.2020 issued to Mukesh Radhikaprasad Sharma, 285/6, Chanakyapuri, Ghatlodiya, Ahmedabad, Gujarat-61.



BRIEF FACTS OF THE CASE :

M/s MUKESH RADHIKAPRASAD SHARMA, 285/6 CHANAKYAPURI GHATLODIYA AHMEDABAD GUJARAT-380061 having PAN NO: AMBPS6198N (hereinafter referred to as the 'assessee') was providing services related to Sector: Sector: Trading – Wholesalers.

2. An 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 assessee had earned substantial income by pay 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. A letter dated 25.07.2020 & Summons dated 17.08.2020 by jurisdiction office were issued to party with a request to produce the documents mentioned therein to their office within a week time from the date of receipt of that letter/Summons. However, the assessee 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 assessee as Service Provider appears to be covered under the definition of service and appears to be not covered under the Negative List as given in the Section 66D of the Finance Act, 1994, as amended from time to time. These services also appears to be not exempted under mega exemption notification No. 25/ 2012-S.T. dated 20-06-2012, as amended from time to time, and hence the aforesaid services provided by the assessee appears to be subjected to Service Tax.

6. Since the assessee has not submitted the required details of services provided during the Financial Year 2014-15, the service tax liability of the service tax assessee was required to be ascertained on the basis of income mentioned in the ITR returns and Form 26AS filed by the assessee 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/Gross Receipts From Services (Value from ITR)" as provided by the Income Tax Department for the financial year 2014-15. By considering the said amount as taxable income, the service tax liability is calculated as detailed below:-

Sr. No.	F.Y.	Sales/Gross Receipts From Services (From ITR)	Service Tax rate	Service Tax Payable
1	2014-15	Rs 9,70,56,420/-	12.36%	Rs 1,19,96,174/-

8. It is observed that the assessee has neither obtained the Service Tax registration from the Department for the services provided by them for the period of F.Y.2014-15 to 2015-16, nor responded to correspondence made by the department in order to ascertain the actual taxable service income. Therefore, it appears that the assessee 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. 1,19,96,174/- is therefore recoverable from them by invoking extended period of five years as per first 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

9. Further, the said assessee (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 assessee is liable to penalty under the provisions of Section 77(1) & 77(2) of Finance Act, 1994.

10. Accordingly Show Cause Notice No.STC/15-35/OA/2020 dated 28.09.2020 was issued to the said noticee are called upon to show cause as to why



- (i) Service Tax of Rs. 1,19,96,174/- which was not paid for the financial year 2014-15 as per Annexure-B, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (ii) 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;
- (iii) Penalty under the provisions of Section 77(1) & 77(2) of the Finance Act, 1994, as amended, should not be imposed on them.
- (iv) 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.

11. DEFENCE REPLY :

The assessee has not furnished any defence reply in response to show cause notice issue to them.

12. PERSONNEL HEARING :

Personnel Hearing was granted to the assessee on 22.12.2021 wherein Shri Mukesh Radhika Prasad Sharma, proprietor remain present to defend their case wherein he furnished his written submission and has stated that their services does not fall under taxability, that he requested to drop all the proceedings, that he stated that he will submit the VAT returns within 5 days of time.

13. In the written submission dated 21.12.2021, he stated that he is running Hindustan Petroleum, authorized petrol pump in the name and style as M/s. Tulsi Petroleum at Karan Nagar, Kadi Highway, Kadi; that the sales proceeds are from sale of Petrol/Diesel and Lubricating Oil; that he is the proprietor of the said petrol pump; that he furnished audited balance sheet and profit and loss account, tax audit report and 26AS for the year 2014-15; that as far as sale of petrol, diesel and lubricating oil are concern, all are covered under VAT during the period under consideration and hence applicability of service tax does not arise at all; that considering the above mentioned facts and documents referred as above, service tax on the turnover of the business is entirely irrelevant and the show cause notice become null and void.

14. The assessee vide mail dated 27.12.2021 has furnished the copy of Vat Returns for the period 2014-15. The assessee is registered as dealer under TIN No.24040900477.

DISCUSSION AND FINDINGS:

15. 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 21.12.2021 alongwith documents submitted by the assessee.

16. 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 2014-15, which has been provided by the tax payer. The difference in value of service provided to the extent of Rs.9,70,56,420/- 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 on the differential value of Rs. 9,70,56,420/- under proviso to section 73(1) of Finance Act, 1944 or not.

17. On going through the records available in the file and defence reply furnished by the service provider, I find that the assessee is proprietor of Hindustan Petroleum, authorized petrol pump, in the name and style as M/s. Tulsi Petroleum at Karan Nagar, Kadi Highway, Kadi. The assessee has not obtained the Service Tax registration thereby not registered with the Service Tax department and not filing the Service Tax returns. The assessee vide his letter dated 21/12/2021 stated that the sales proceeds are from sale of Petrol/Diesel and Lubricating Oil and has stated that as far as sale of petrol, diesel and lubricating oil are concern, all are covered under VAT during the period under consideration and hence applicability of service tax does not arise at all;

18. I have gone through their financial records i.e. Profit and Loss Account and Balance sheet for the year 2014-15, I find that income shown in profit and loss account are from sales of Petrol, Diesel and Lubricating Oil. There is no element of Service provided or received involved in their financial records. The said records are audited by Rajendra Saini & Company, Chartered accountant.

19. I have also gone through the definition of Service which has been defined in clause (44) of the new section 65B and means – *any activity for consideration carried out by a person for another and includes a declared service and does not include – any activity that constitutes only a transfer in title of*

(i) goods or

(ii) immovable property by way of sale, gift or in any other manner

(iii) a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the Constitution a transaction only in

(iv) money or

(v) actionable claim a service provided by an employee to an employer in the course of the employment. fees payable to a court or a tribunal set up under a law for the time being in force.

20. From the above, it is clearly define that a transfer, delivery or supply of goods which is deemed to be a sale of goods does not include in the definition of Service.

21 I find that the aforementioned 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. Service provider 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.

22 I find that the assessee has not provided any "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994 and declared Services as defined under Section 66E of the Finance Act, 1994 as the assessee is proprietor of the petrol Pump namely Tulsi Petroleum and therefore has not obtained the Service Tax registration thereby not registered with the Service Tax department and not filing the Service Tax returns.

23 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

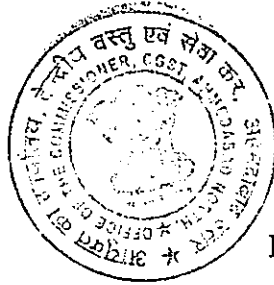
therefore refrain from discussing the taxability on other income other than the sale of service.

24 Keeping in view the aforementioned detailed discussions, I find that there no service is rendered by the assessee as per the financial records furnished by the assessee which is available in the file. I, therefore, hold that no service tax is payable by the assessee, as demanded, in the subject SCN.

25. In view of the above facts and circumstances, 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 assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise of imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

26 I drop the proceedings initiated against M/s.Mukesh Radhikaprasad Sharma, 285/6, Chanakyapuri, Ghatlodiya, Ahmedabad, Gujarat - 380061. The Shaw Cause Notice issued from STC/15-35/OA/2020 dated 28.09.2020 is hereby disposed off.



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

Dated- 25/1/22

F.No. STC/15-35/OA/2020

By RPAD/By Hand:

To,

M/s MUKESH RADHIKAPRASAD SHARMA,
285/6 CHANAKYAPURI GHATLODIYA
AHMEDABAD, GUJARAT-380061

Copy to:

1. The Commissioner of CGST & C. Ex., Ahmedabad North.
2. The Assistant Commissioner, CGST & C. Ex., Division-VI, Ahmedabad North.
3. The Superintendent, Range-IV, Division-VI, Ahmedabad North.
4. The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- ✓ 5. Guard File