



<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर, कस्टम हॉउस, 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- 20221164WT000000CA21

फा.सं./F.No. STC/15-217/OA/2021

आदेश की तारीख/Date of Order :- 15.11.2022

जारी करने की तारीख/Date of Issue :- 15.11.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 62/JC/ LD /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।

(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 रु .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

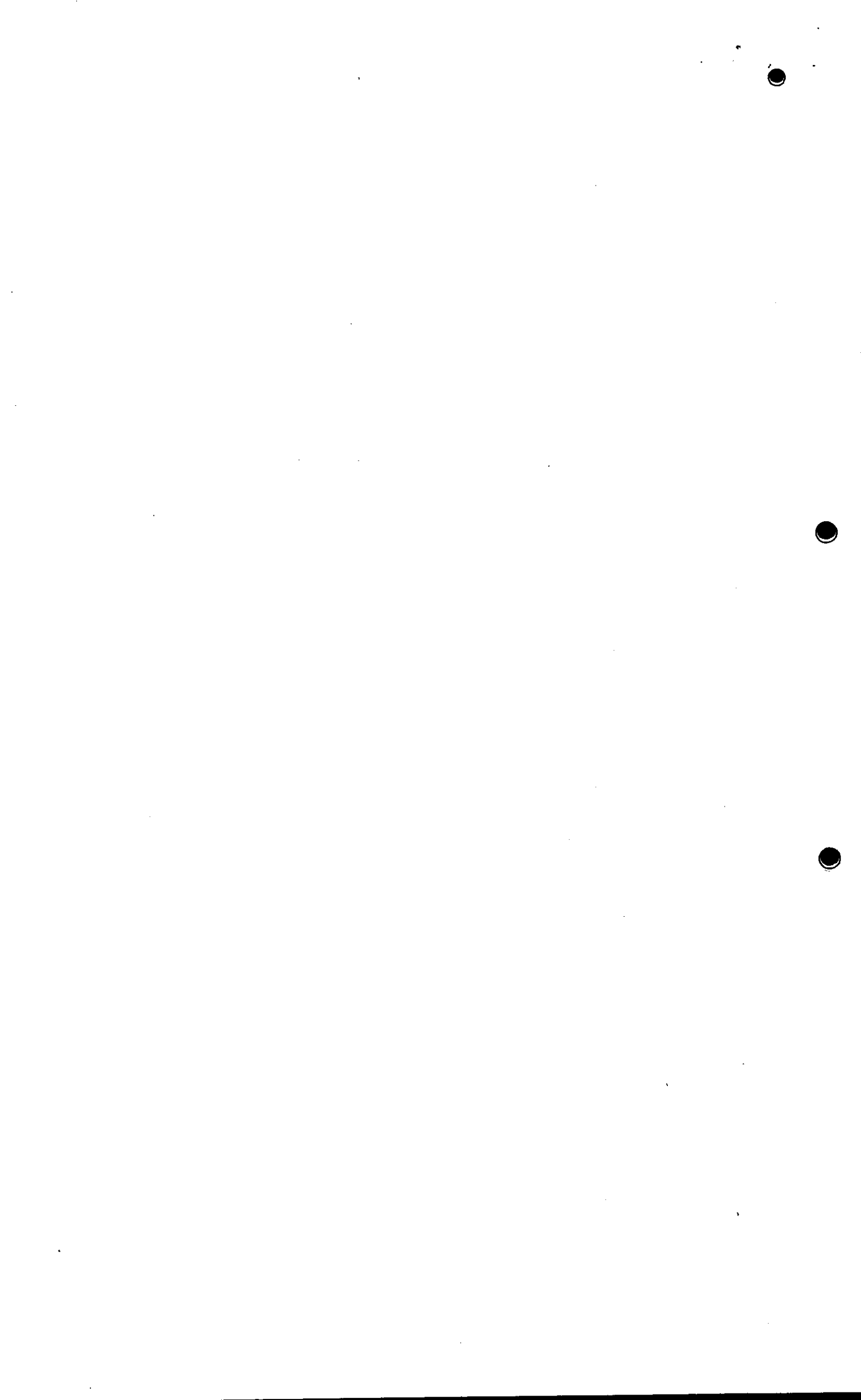
The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(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.5.00.

विषय- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-217/OA/2021 dated 23.04.2021 issued to M/s Gujarat Vaibhav Publications Pvt. Ltd.,6, Mill Officers Colony, B/h La. Gajjar Chambers, Ashram Road, Ahmedabad, Gujarat-380014.





BRIEF FACSTS OF THE CASE

M/s. Gujarat Vaibhav Publications P.Ltd, 6, Mill Officers Colony, B/h. La Gajjar Chambers, Ashram Road, Ahmedabad 380014 having PAN No.AACCG1338G (hereinafter referred to as the assessee) was engaged in providing taxable services without taking registration.

2. On going through the third party CBDT data for the Financial Year 2015-16 and 2016-17, it has been observed that the Assessee has earned substantial service income by way of providing taxable services but has neither obtained service tax registration nor paid service tax thereon.

3. With effect from 01.07.2012, the negative list regime came into existence under which all the services are taxable and only those services that are mentioned in the negative list are exempted.

4. 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 appear to not be exempted under mega exemption notification No.25/2012-ST dated 20.06.2012, as amended from time to time, and hence the aforesaid service provided by the assessee appears to be subjected to service tax.

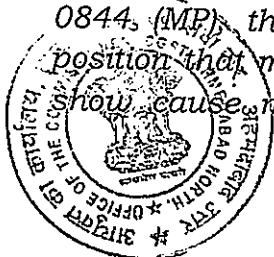
5. The service tax liability of the service tax assessee is ascertained on the basis of income mentioned in their ITR returns and Form 26AS filed by the assessee with the IT Department. The figures/data provided by the IT Department is considered as total taxable value in order to ascertain the service tax liability under section 67 of the Finance act, 1994. By considering the said amount as taxable income, the service tax liability is calculated as detailed below.:

Sr. No.	F.Y.	Total Value for TDS (including 194C, 194Ia, 194Ib,194) (In Rs.)	Service Tax Rate	Resultant Service Tax short paid (in Rs.)
1	2015-16	31133892	14.5%	18045507
2	2016-17	0	15%	0

6. No data was forwarded by CBDT, for the period 2017-18 (upto June-2017) 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).

7. 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."

8. From the facts,, it appeared that the "total amount paid /credited under Section 194C, 194H, 194I, 194J for the FY 2017-18 (upto June 2017) has not been disclosed thereof by the income tax department or any other sources/agencies, against the said assessee, action will be initiated against the said assessee under the proviso to Section 73(1) of Finance Act 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 2017-18 (upto June 2017) covered under SCN will be recoverable from the assessee accordingly.

9. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the assessee, M/s. Gujarat Vabhav Publications Pvt. Ltd, have contraventions of the provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004:

- (i) Section 69(1) of the Finance Act, 1994 read with Noti.No.33/2012 dated 20.06.2012 as much as they failed to obtain service tax registration.
- (ii) Section 67 of the Finance Act, 1994 as much as they failed to determine the correct value of taxable service provided by them as discussed above.
- (iii) Failed to register with the Department and fail to declare correctly assess and pay the service tax due on the taxable services 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 Finance Act, 1994 read with Rule 6 & 7 of the service Tax Rules, 1994.
- (iv) Section 66B and Section 68 of Finance Act, 1994 and Rule 2&6 of Service Tax Rules, 1994 in as much as they failed to pay service tax correctly at the appropriate rate within the prescribed time in the manner and a the rate as provided under the said provision.
- (v) Section 77 of Finance Act, 1994, in as much as failed to take registration.
- (vi) All the above acts of contravention on the part of the said assessee 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 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 publishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

The said assessee 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.



10. The above said service tax liabilities of the 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.

11. It was observed that the assessee has not obtained the ST registration from the Department for the services provided by them for the period FY 2015-16 to 2017-18 (upto June 17). Therefore, it was noticed that the assessee had not paid actual service tax by way of willful suppression of facts and in contravention of provisions of Finance Act, 1994 an rules made thereunder relating to levy and collection of service tax with intent to evade payment of service tax. The service tax amounting to Rs.1,80,45,507/- is therefore recoverable from them by invoking extended period of five years as per first proviso to sub section (1) of Section 73(1) of Finance Act, 1994 along with interest u/s.75 of Finance Act, 1994. and penalty u/s.78 of Finance act, 1994. Further they are also liable for penalty u/s.77(1)(a), 77(1)(c) & 77(2) of Finance Act, 1994 for failure to take registration in accordance with the provisions of section 69 and for failure to furnish information/documents called for from them.

12. Further, the assessee is liable to pay penalty under the provisions of Section 77(1)(a), 77(1)(c) & 77(2) of the Finance Act, 1994 for failure to take registration in accordance with the provisions of section 69 and failure to furnish information/documents called for from them.

13. Therefore the Show Cause Notice No.STC/15-217/OA/2021 dated 23.04.2021 was issued to the assessee called upon to show cause as to why:

- (i) Service Tax of Rs. 1,80,45,507/- which was not paid for the financial year 2015-16 & 2016-17 as mentioned above , should not be demanded and recovered from them under proviso to sub section (1) of Section 73 of the Finance Act, 194.
- (ii) Service Tax liability not paid during the financial year 2017-18 (upto June-2017), ascertained in future, 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 under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty under the provisions of Section 77(1)(a), 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.

(v) Penalty under Section 78 of the Finance Act, 1994. should not be imposed upon them for suppressing the full value of taxable services and material facts from the department resulting into non payment of service tax as explained hereinabove.



DEFENCE REPLY

14. The Assessee vide letter dated 07.05.2021 submitted their reply to SCN wherein they stated that they have following income in the relevant financial year.

1. Receipt from sales of News Paper

The assessee has receipt from sale of newspaper in the financial year 2015-16 to 2016-17 which is considered as trading of goods. As provided under negative list of services provided in Section 66D of the Finance Act, 1994 which is exempt from levy of service tax.

(e) Trading of goods.

As Negative list specifically includes trading of goods, hence sales of news paper has been exempted from the purview of service tax. Therefore assessee has not collected service tax on such receipt in the relevant financial year.

2. Receipt from printing advertisement in newspaper.

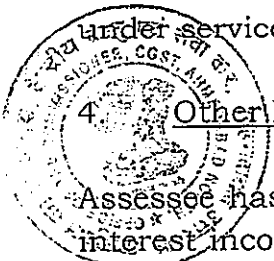
Assessee has receipt from printing advertisement in New paper in the financial year 2015-16 and 2016-17. As per section 65(105) (zzm) of Finance Act, 1994 as amended, it has been provided that "Taxable service" means any service provided or to be provided to any person, by any other person, in relation to sale of space or time for advertisement, in any manner, but does not include sale of space for advertisement in print media and sale of time slots by a broadcasting agency or organization. Adding further, as provided under the negative list of services provided in section 66D of the Finance Act, 1994 which is exempt from levy of service tax (g) selling of space for advertising in print media. As negative list specifically includes selling in space in print media, hence receipt from advertisement in newspaper has been exempt from the purview of service tax. Therefore the assessee has not collected service tax on such sales receipt in the financial year.

3. Rental Income

Assessee has rental income in the FY 2015-16 & 2016-17 which has been a taxable services and subject to service tax. As per Notification No.33/2012-service tax dated 20.06.2012, Central Govt, being satisfied that it is necessary in the public interest hereby exempt taxable services of aggregate value not exceeding Rs.ten lacs in any financial year from the whole of service tax leviable thereon under section 66B of the said Finance Act,1994. Since assessee has total taxable receipt in the FY 2015-16 & 2016-17 below threshold limit of RS.10,00,000/- assessee has not liable to get registration under service tax act.

4. Other Income

Assessee has other income of sale of scrap, sundry bad debt written back & interest income in the FY 2015-16 to 2016-17. This income has been exempt under section 66D in negative list of service tax. Therefore assessee has not paid service tax on such income in the relevant year. The assessee has been



providing exempt services which has been covered under negative list under section 66D whereas taxable service provided has not exceed threshold limit in the relevant financial year. Therefore assessee has not been liable to get registered under service tax act.

15. They further submitted that the assessee has not been liable to get registered under section 69(1), question of non payment of service tax under section 68 and non filing ST 3 of service tax under section 70 has not been arise. The assessee further state that since e the assessee has not been liable to register under section 69(1) and 69(2) question of service tax under section 73(1), Interest under section 75(1) and penalties under section 77(1)9a, section 77(1)© and section 77(2) not arise. They have also produced OTR, Statement of income, Audited Report Form 26AS TDS and requested to drop the matter.

PERSONEL HEARING

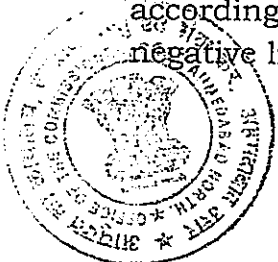
16. In this case, Personal Hearing was held to the assessee on 10.11.2022. Shri Dilip U Jodhani, CA, authorised representative attended the P.H and reiterated the written reply dated 07.05.2021 and requested to consider the case on merits.

DISCUSSION AND FINDINGS

17. 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. In the SCN the FY 2016-17 was also mentioned, however no data regarding differential value of resultant service tax has given, I am not going into the figures of FY 2016-17.

18. I have carefully gone through the Show Cause Notice, submission made by the assessee, Audited Balance Sheet, 26AS, for the year 2015-16. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.1,80,45,507/- for the financial year 2015-16 on the basis of data received from Income Tax authorities. 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. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs.1,80,45,507/- for the financial year 2015-16 under proviso to section 73(1) of Finance Act, 1944 or not.

19. On perusal of the reply to SCN and other documents, I find that the assessee has receipt from sale of newspaper, printing advertising in newspaper, rental income and other income in lieu of providing services. Here I would like to go the definition of service on which service tax is payable. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified according to the different category of services. Further after introduction of negative list with effect from 01.07.2012, service has been defined as:



(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

- (a) an activity which constitutes merely,—
- (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
- (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the constitution or
- (iii) a transaction in money or actionable claim.
- (b) A provision of service by an employee to the employer in the course of or in relation to his employment.
- (c) fees taken in any court or tribunal established under any law for the time being in force.

From the definition it is evident that any activity carried out by any person to another person for any consideration is covered under the above definition of service.

Further the term "taxable service" is defined under Section 66B(51) of the Finance act, 1994 as under:

(51) taxable service means any service on which service tax is leviable under Section 66B.

It is clear that the service tax is levied under Section 66B of the Finance Act, 1994 which reads as under:

Section 66B : Charge of service tax on and after Finance Act, 2012- There shall be levied a tax (hereinafter referred to as the service tax) at the rate fourteen percent on the value of all services other than those services specified in negative list, provided r agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed"

20. According to which service tax is levied on all services other than those specified in negative list (Section 66 D of Finance act, 1994) in the taxable territory by one person to another. In this context the services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,

SECTION 66D. Negative list of services.— The negative list shall comprise of the following services, namely :—

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) transport of goods or passengers; or
- (iv) Any service, other than services covered under clauses (i) to (iii) above, provided to business entities;

(b) services by the Reserve Bank of India;



(c) services by a foreign diplomatic mission located in India;

(d) services relating to agriculture or agricultural produce by way of—

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or [* * *] testing;

(ii) supply of farm labour;

(iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(v) loading, unloading, packing, storage or warehousing of agricultural produce;

(vi) agricultural extension services;

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

(e) trading of goods;

(f) [****].;

(g) selling of space for advertisements in print media;

(h) service by way of access to a road or a bridge on payment of toll charges;

(i) betting, gambling or lottery; Explanation. - For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in Explanation 2 to clause (44) of section 65B;

(j) [* * * *]

(k) transmission or distribution of electricity by an electricity transmission or distribution utility; 10

(l) [* * * *]

(m) services by way of renting of residential dwelling for use as residence;

(n) services by way of—

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;

(ii) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;

(o) service of transportation of passengers, with or without accompanied belongings, by—

(i) [* * * *]

(ii) railways in a class other than— (A) first class; or (B) an air-conditioned coach;

(iii) metro, monorail or tramway,

(iv) inland waterways;

(v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

(vi) metered cabs or auto rickshaws

(p) services by way of transportation of goods—

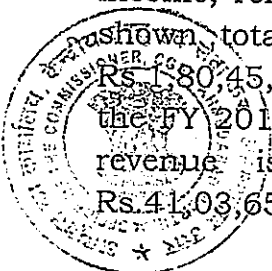
(i) by road except the services of— (A) a goods transportation agency; or (B) a courier agency;

(ii) [* * *]

(iii) by inland waterways;

(q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

21. In the instant case, I have gone through the contents of SCN, reply to SCN, audited Balance sheet & Profit & Loss accounts, Form 26AS and other documents submitted by the assessee. On perusal of the said documents, I find that the assessee is engaged in printing, publishing and sale of newspapers. The assessee has income from sale of newspaper, advertisement income, rental income and other income. In the instant case, the SCN has shown total value for TDS as Rs.12,44,51,773/- on which service tax of Rs.1,80,45,507/- has been demanded. However on perusal of Audit Report for the FY 2015-16, I find that as per audited balance sheet and P &L, the total revenue is Rs.41,03,65,960/-. Hence, I consider the amount of Rs.41,03,65,960/-, being on the higher side, as gross revenue for adjudication

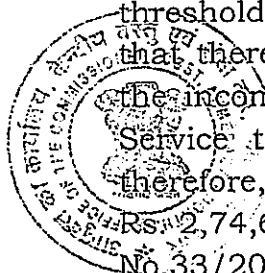


for the Financial Year 2015-16. I also find that the assessee have neither obtained service tax registration nor filed any ST 3 Returns for the said period.

22. On perusal of reply to SCN and other documents, I find that the assessee claims that they have receipt from sales of newspaper amounting to Rs.24,39,92,093/- and the income from sale of newspaper is exempted from the payment of service tax as they have considered the same as income from trading of goods and which is exempted from payment of service tax under the head Trading of goods in Section 66D of the Finance Act, 1994. I have gone through the audited balance sheet and financial records of the assessee and find that they have shown Rs.24,39,92,093/- as the revenue from sale of newspaper. I have gone through Sl. No.(e) of Section 66D of Finance act, 1994 wherein the negative list of services enlisted. Therefore, in view of the above provisions, I find that the assessee is not liable to pay Service Tax on the income derived from the trading of goods amounting to Rs. 24,39,92,093/- as stated above for the year 2015-16. As the trading activity is covered under the negative list of services specified at (e) of Section 66D of Finance Act,1994, the income derived from the activity of trading amounting to Rs. 24,39,92,093/- is also not taxable under Service tax. Further they have also an income of Rs.9,95,600/- from sale of waste. Sale of waste is also covered under the head trading of goods, I find that the said income also is not taxable under service tax and under the negative list of services specified in Section 66D of Finance Act,1994, the income derived from the activity of trading amounting to Rs. 9,95,600/- is also not taxable under Service tax.

23. Further on perusal of reply to SCN and other documents, I find that the assessee claims that they have advertisement income of Rs.16,50,03,587/- and receipt from printing advertisement in newspaper is exempted from the payment of service tax under the head (g) selling of space for advertisement in print media in Section 66D of the Finance Act, 1994. I have gone through the audited balance sheet and financial records of the assessee and find that they have shown Rs. 16,50,03,587/- as the revenue from selling of space for advertisement to various clients in their newspaper. I have gone through Sl. No. (g) of 66D wherein the negative list of services enlisted and find that selling of space for advertisement in print media is considered as an exempted service . Therefore, in view of the above provisions, I find that the assessee is not liable to pay Service Tax on the income derived from the selling of space for advertisement in print media amounting to Rs. 16,50,03,587/- as stated above for the year 2015-16. As the selling of space for advertisement in print media is covered under the negative list of services specified in Section 66D of Finance Act,1994, the income derived from the activity of trading amounting to Rs. 16,50,03,587/- is also not taxable under Service tax.

24. Further on reconciliation of financial accounts and balance sheet, I find that an amount of Rs.2,74,680/- is shown as rental income and the assessee has claimed that this amount is not taxable as the said income is less than the threshold limit of Rs. 10 lac. I have gone through the Balance sheet and find that there is an income of Rs. 2,74,680/- shown against labour charges. As the income is below Rs.10 lacs, the same is exempted from the purview of Service tax in view of Notification No.33/2012-ST dated 20.06.2012 and therefore, I find that the contention of the assessee that the labour income of Rs.2,74,680/- during the year 2015-16 is exempted from service tax in view of No.33/2012-ST dated 20.06.2012 is correct. Further they have shown Rs.1,00,000/- sundry balance written back which is not an income derived in

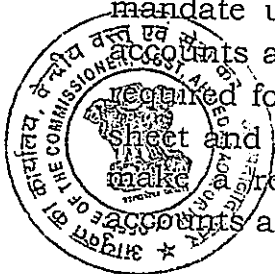


lieu of providing any taxable service. Therefore the said income is also not taxable. In view of the above facts and findings, I find that the total income of Rs.40,89,95,680/- received by the assessee is not taxable and therefore the service tax demand of Rs.1,80,45,507/- for the year 2015-16 is also not sustainable and therefore required to be dropped. I reconcile the revenue for the relevant period for the sake of clarity.

Sl.No	Particulars	Amount (in Rs.)
01	Total income as per Audited B/S as discussed	41,03,65,960/-
02	Less: Income from trading activity which is exempted as per Negative List under Section 66D	24,49,87,693/-
03	Less: Income from sale of space for advertisement in print media which is exempted as per Negative List under Section 66D	16,50,03,587
04	Less: sundry balance written back is not ataxable as discussed	1,00,000/-
05	Less: Rent income which is not taxable as per Noti.No.33/2012 as discussed	2,74,680/-
	Balance	0

25. Further, on perusal of the SCN, I find that the levy of service tax for 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 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 assessee accordingly. Since the assessee has not provided any details/information/documents for the FY 2017-18 (upto June 2017) and the department has not also adduced any information/evidence and the reason for the non disclosure has also not been made known to the department, I refrain myself from entering into the said period to determine the liability as otherwise of assessee for service tax. On perusal of SCN, I further 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.

26. The Balance sheet and profit and loss account of an assessee is vital statutory records. Such records are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for evincing true financial position. Assessee was legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in unorganized method. The statute provides mechanism for supervision and monitoring of financial records. It is mandate 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 fair conclusion in respect of the balance sheet and profit and loss accounts. It is also onus upon auditor to verify and 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



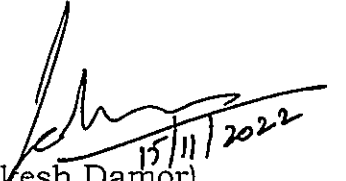
on the affairs. The Chartered Accountant, who audited the accounts of the assessee, being qualified professional has given declaration that the balance sheet and profit and loss accounts of the noticee reflect true and correct picture of the transaction and therefore, I have no option other than to accept the classification of incomes under profit and loss account as true nature of the business and to proceed to conclude instant proceedings accordingly.

27. In view of the above discussion and findings and also on perusal of SCN, reply to SCN, Form 26AS, Audited Balance sheet for the FY 2015-16, reconciliation statement, submissions made by the said assessee and other documents, I find that the service provided by the assessee is rightly eligible for exemption as the said services falls under Negative List of Service under Section 66 D of Finance Act, 1994 and also exempted vide Noti.No.33/2012 dated 20.06.2012 as discussed and therefore the assessee is not liable to pay service tax of Rs.1,80,45,507/- demanded vide above referred SCN. Accordingly they are also not liable to pay Penalty under Section 77 and 78 and interest under Section 75 of Finance Act, 1994.

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

ORDER

29. I hereby order to drop proceedings initiated for recovery of service tax of Rs.1,80,45,507/- along with interest and penalties against M/s. Gujarat Vaibhav Publications P.Ltd, vide SCN No.STC/15-217/OA/2021 Dated 23.04.2021


(Lokesh Damor) 15/11/2022

Joint Commissioner
Central GST & Central Excise
Ahmedabad North

By Regd. Post AD./Hand Delivery
F.No.STC/15-217/OA/2021

Date:

M/s. Gujarat Vaibhav Publications P.Ltd,
6, Mill Officers Colony, B/h.La Gajjar Chambers,
Ashram Road, Ahmedabad

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Deputy Commissioner Division-VII, Central Excise & CGST, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Central Excise & CGST, Ahmedabad North
4. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
5. Guard File

