



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/15-80/OA/2020

आदेश की तारीख/Date of Order:- 14.02.2022

जारी करने की तारीख/Date of Issue :- 14.02.2022

DIN-20220264WT0000010226

द्वारा पारित/Passed by:-

आर गुलजार बेगम /R. GULZAR BEGUM

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 63/ADC/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 माठ (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/15-80/OA/2020 dated 29.09.2020 issued to M/s. CTPL Industrial Services Pvt Ltd. Orange Mall, 417, 4th floor, Nr. Sharda Petrol Pump, I.O.C. Circle, Chandkheda, Ahmedabad-382424.

BRIEF FACTS OF THE CASE :

M/s. CTPL Industrial Services Pvt. Ltd., Orange Mall, 417, 4th Floor, Nr. Sharda Petrol Pump, I.O.C. Circle, Chandkheda, Ahmedabad, Gujarat(hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.AACCC9808MST001 and was engaged in providing "Manpower Recruitment/Supply Agency Service", "Business Auxiliary Service", "Travel Agent for booking of Passage (other than air/rail travel agents)", "Transport of Goods by Road/ Goods Transport Agency Service" and "Other Taxable Services-Other than the 119 listed".

2. Ongoing through the third party CBDT data for the Financial Year 2014-2015, 2015-16 and 2016-17, it has been observed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y. 2014-2015, 2015-16 and 2016-17 as compared to the Service related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

Sr. No.	F.Y.	Taxable Value as per ST-3 returns (In Rs.)	Sales/Gross Receipts From Services (Value from ITR) (In Rs.)	Difference Between Value of Services from ITR and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax short paid (in Rs.)
1	2014-15	6,20,25,613/-	6,75,18,477/-	54,92,864/-	6,78,918/-
2	2015-16	3,46,60,568/-	5,16,55,301/-	1,69,94,733/-	24,64,236/-
3	2016-17	4,64,95,676/-	6,16,62,753/-	1,51,67,077/-	22,75,062/-
TOTAL		14,31,81,857/	18,08,36,531/-	3,76,54,674/-	54,18,216/-

3. To explain the reasons for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form: 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns, Letters dated 08.02.2018, 02.05.2018 and 16.07.2020 were issued to the said assessee. However, the said assessee neither submitted any details / documents explaining such difference nor responded to the Letters in any manner. For this reason, no further verification can be done in this regard. Therefore, the highest applicable rate is taken for calculation of Service Tax for the year.

4. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said notice had not paid

service tax as worked out as above in Table for Financial Year 2014-2015 and 2016-17.

5. As per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appears that the said service provider has not assessed the tax dues properly, on the services received by him, as discussed above, and failed to file correct ST-3 Returns thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

6. As per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the noticee along with interest under Section 75 of the Finance Act, 1994.

7. 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/ short paid/ deposit Service Tax to the extent of Rs. 54,18,216/-, by declaring less value in their ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

8. It has been noticed that at no point of time, the Assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2014-2015, 2015-16 and 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it appears that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth

the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs. 54,18,216/-. 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 payment of Service tax to the extent mentioned hereinabove. Hence, the same appears to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appears that the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994. Assessee also filed their both returns late from the due date, it appears that the Assessee has rendered themselves liable for penalty under provisions of Rule 7C of the Service Tax Rules, 1994.

9. Therefore, M/s CTPL Industrial Services Pvt. Ltd., Orange Mall, 417, 4th Floor, Nr. Sharda Petrol Pump, I.O.C. Circle, Chandkheda, Ahmedabad, Gujarat called upon to show cause to the Additional Commissioner, CGST &CX, Ahmedabad North having office at 1st Floor, Custom House, Navrangpura, Ahmedabad as to why:

- (i) The demand for Service tax to the extent of Rs. 54,18,216/- (Rupees Fifty Four Lakh Eighteen Thousand Two Hundred Sixteen Only) short paid /not paid by them in F.Y. 2014-2015, 2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty should not be imposed upon them for late filing ST-3 returns under the provisions of Rule 7C of the Service Tax Rules, 1994.
- (v) Penalty should not be imposed upon them under the provisions of Section 77(1) of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Service Tax Act, 1994.
- (vi) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

DEFENCE REPLY :

10. The Tax payer vide letter dated 24.01.2022 stated that they have received the Demand cum Show Cause Notice under Section 73(1) of the

Finance Act 1994 read with Section 174 of the Central GST Act 2017 for different values in Service Tax Return (ST-3) and Income Tax Return (ITR), stating that service tax is not paid, even though substantial income is reported to Income tax department in filing of return for the FY 2014-15, FY 2015-16 and FY 2016-17; that demand raised vide the SCN merely on the facts that there is difference between ST3 Returns and 26AS/Income Tax Returns is unsustainable and is patently illegal; that the said SCN is issued without following any process of investigation and is devoid of any factual aspects; that SCN has been issued plainly on basis of pure arithmetic based on the data received from Income tax and comparing the same with the Service tax returns filed by them; that while raising the demand, it is not proved that the differential amount was received on account of providing of taxable service; that It has been held by Hon'ble Ahmedabad Tribunal that before raising the demand on the difference between the amounts of ST-3 return and Balance Sheet, the adjudicating authority should reconcile these figures by adopting the proper methods; that this has been decided in the case of *COMMISSIONER OF SERVICE TAX, AHMEDABAD VERSUS PURNI ADS. PVT. LTD. [2010 (19) S.T.R. 242 (Tri - Ahmd.)]*; that this case also says that just by finding the difference in the ST-3 figures and the Balance sheet figures does not mean that the assessee has short paid service tax; that the department should come up with proper evidence to this effect that the amount shown in the balance sheet is that amount on which service tax must be paid by the assessee and they have not paid service tax on the same; that in the instant case also, the demand has been proposed in the impugned show cause notice simply on the grounds that there is difference between the figures of the ITR/TDS and ST-3 return. However, it has not been proved that the said difference is on account of receipts from taxable income; that in the light of above cited decision, the show cause notice issued alleging that the service tax paid by them is short paid is totally erroneous and is liable to be set aside; that they have cited the case laws of *SHARMA FABRICATORS & ERECTORS PVT. LTD. Versus C.C.E., ALLAHABAD 2017 (5) G.S.T.L. 96 (Tri - All.)*, affirmed by Allahabad High Court [*Commissioner v. Sharma Fabricators & Erectors Pvt. Ltd. - 2019 (22) G.S.T.L. J166 (All.)*]; that demand in the entire SCN is based on differential amount between income reported in ITR/TDS and ST 3 return. However, it has been proved nowhere how the differential receipts are classifiable as taxable service; that this shows that the demand has been raised mechanically without proving the allegations with cogent and corroborative evidence which is not justified and has cited various case laws; that they are a company registered with Ministry of Corporate Affairs bearing CIN U51490GJ2004PTC045085 since 2004; that they are engaged in providing (a) RIG Transportation (2) Manpower Supply Services (Manpower, Rigger) (3) Accommodation Set up (Bunk House,

Hiring) (4)Hiring of Equipment (Hiring, Hydraulic Crane, Trailer) (5) RIG Maintenance etc. services to their clients: that they have been paying service tax at full rate wherever it is applicable to them and many of their services are leviable to Service Tax under Reverse Charge Mechanism as per Notification No. 30/2012-Service Tax dated 20.06.2012; that they have been complying with all the legal provisions of Service tax regularly that detailed year-wise Income Reconciliation is given as under:

FY 2014-15

Sr. No.	Particulars	As per Audited FS	ST-3 Return			Taxable under Reverse Charge	Difference
			Taxable Income	Abatement	S. Tax Paid		
1	Hiring Services	35,143,929	35,143,929		4,343,790	-	(0)
2	Man Power Services	25,094,352	25,084,729		3,100,473	-	9,623
3	Tours and Travels Services	1,796,955	1,796,955	1,078,171	88,842	-	-
4	Transportation Services	5,483,241	-	-	-	5,492,864	(9,623)
As per Balance Sheet		67,518,477	62,025,613	1,078,171	7,533,104	5,492,864	(0)

FY 2015-16

Sr. No.	Particulars	As per Audited FS	ST-3 Return			Taxable under Reverse Charge	Difference
			Taxable Income	Abatement	S. Tax Paid		
1	Hiring Services	20,620,011	20,620,011		2,878,299		0
2	Man Power Services	13,992,557	13,992,557		1,934,430		0
3	Tours and Travels Services	48,000	48,000	28,800	2,373		-
4	Transportation Services	16,994,733			-	16,994,733	-
As per Balance Sheet		51,655,301	34,660,568	28,800	4,815,102	16,994,733	0

FY 2016-17

Sr. No.	Particulars	As per Audited FS	ST-3 Return			Taxable under Reverse Charge	Difference
			Taxable Income	Abatement	S. Tax Paid		
1	Hiring Services	32,946,257	32,946,258		4,930,098		(1)
2	Man Power Services	13,470,904	13,470,903		219,110		1
3	Tours and Travels Services	78,515	78,515	47,109	4,711		0
4	Transportation Services	15,167,077			-	15,167,077	-
As per Balance Sheet		61,662,753	46,495,676	47,109	5,153,918	15,167,077	(0)

that during the period from FY 2014-15 to FY 2017-18, they had provided services in the nature of Hiring Services, Manpower Services and Tour and Travels services, which was duly reported in ST-3 Return and applicable Services Tax liability were properly discharged; that during the said period they had also provided Transportation of Goods by road services which is liable to services tax under Reverse Charge Mechanism under Notification No. 30/2012-Service Tax dated 20.06.2012; that they do have their own Trucks as well as they also procure Transport Services from

other Goods Transport Agencies. Details of transport Income and Expenses are given below:

F. Year	Transport Expenses	Transport Income
2014-15	62,76,335	54,83,241
2015-16	1,10,42,540	1,72,92,400
2016-17	89,41,530	1,51,74,596
2017-18	46,11,500	54,00,000

that they submit documents i.e Income ledgers extracted from Accounting System for the period FY 2014-15 to FY 2017-18 (up to Jun.17); Audited Financial Statements and Income Tax Returns for the FY 2014-15 to FY 2017-18; ST 3 Returns for the period from FY 2014-15 to FY 206-17; Copies of Service Tax Paid challans; Copies of Sample Copies of Transportation Income Invoice; that department has already conducted their Service Tax audit and done due verification of the books of the noticee; that the department while conducting audit would have checked 62 crores worth of exempted income thoroughly; In view of the reconciliation done by the audit department, they paid the demanded service tax due on service tax on security agency service under reverse charge mechanism, Service tax paid on differential amount due to reconciliation of Income and excess cenvat credit on input service credit at the time of Final audit conducted by the Office of the Commissioner of Central Excise & CGST; that Service tax has already been paid by the Noticee for the period of April 2014-June 2017; that they attach copy of Final Audit Report No. 566/2019-20 (Service Tax); that they have not contravened provision of Section 66B, Section 67 or Section 68 of the Finance Act, 1994; that in light of the above entire demand raised along with Interest as per Section 75 of the Act should be quashed in entirety and requested to set aside the SCN; that no penalty under Section 77 & 78 and interest Under Section 75 of the Act can be imposed on the Noticee; that they request Personnel Hearing before deciding the case.

PERSONNEL HEARNG :

11. Personnel hearing was granted to the assessee on 02.02.2022, where Shri Pranav Shridhar, Chartered Accountant appeared for personnel hearing on behalf of the assessee. He submitted reconciliation statement and has stated that they have provided GTA Services and are not liable for Service Tax.

DISCUSSION AND FINDING :

12. I have carefully gone through the records of the case, submission made by the noticee in reply to the show cause notice and also during the course of personal hearing, Audited Balance Sheet, ITR, for the year 2014-15 to 2016-17. In the present case, Show Cause Notice has been issued to the assessee demanding Service Tax of Rs. 54,18,216/- for the financial year 2014-15 to 2016-17 on the basis of data received from Income Tax authorities. In the present case, Service Tax demand has been issued on the basis of difference between value of Services from ITR and Gross value provided in Service Tax returns. 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.

13. In reply to the Show Cause Notice, the tax payer submitted that demand raised vide the SCN merely on the facts that there is difference between ST3 Returns and 26AS/Income Tax Returns is unsustainable and is patently illegal. They stated that they are a company registered with Ministry of Corporate Affairs since 2004 and are engaged in providing (a) RIG Transportation (2) Manpower Supply Services (Manpower, Rigger) (3) Accommodation Set up (Bunk House, Hiring) (4) Hiring of Equipment (Hiring, Hydraulic Crane, Trailer) (5) RIG Maintenance etc. services to their clients: I have gone through the reconciliation statement furnished by the assessee details below ;

FY 2014-15

Sr. No.	Particulars	As per Audited FS	ST-3 Return			Difference in declaration in value
			Taxable Income	Abatement	S. Tax Paid	
1	Hiring Services	35,143,929	35,143,929		4,343,790	0
2	Man Power Services	25,094,352	25,084,729		3,100,473	Difference is Rs. 9623/- which is higher in financial records
3	Tours and Travels Services	1,796,955	1,796,955	1,078,171	88,842	0
4	Transportation Services	5,483,241	-	-	-	Taxable under RCM
As per Balance Sheet		67,518,477	62,025,613	1,078,171	7,533,104	

FY 2015-16

Sr. No.	Particulars	As per Audited FS	ST-3 Return			Difference
			Taxable Income	Abatement	S. Tax Paid	
1	Hiring Services	20,620,011	20,620,011		2,878,299	0
2	Man Power Services	13,992,557	13,992,557		1,934,430	0
3	Tours and Travels Services	48,000	48,000	28,800	2,373	0
4	Transportation Services	16,994,733				Taxable under RCM 16,994,733
As per Balance Sheet		51,655,301	34,660,568	28,800	4,815,102	16,994,733

FY 2016-17

Sr. No.	Particulars	As per Audited FS	ST-3 Return			Difference
			Taxable Income	Abatement	S. Tax Paid	
1	Hiring Services	32,946,257	32,946,258		4,930,098	Minor difference of Rs. (1)
2	Man Power Services	13,470,904	13,470,903		219,110	Minor difference of Rs. 1
3	Tours and Travels Services	78,515	78,515	47,109	4,711	0
4	Transportation Services	15,167,077			-	Taxable under 15,167,077
As per Balance Sheet		61,662,753	46,495,676	47,109	5,153,918	15,167,077

14. I find from the above submissions that out of the various services, the services provided with regard to Hiring Services and Man Power Supply Services for all the three years i.e. 2014-15 to 2016-17, the assessee has paid full Service tax on the value of services provided, (However, there is minor Difference of Rs. 9623/- shown less in their Service Tax returns. However, I therefore refrain myself to enter in to the taxability since the Audit of the assessee has already been carried out vide final Audit Report No. 566/201-20 dated 14.11.2019, covering the Show Cause Notice Period) which are also according to their financial records and Service Tax returns filed before the authority.

15. With regard to the Tours and Travels services provided by the assessee, I find that they after taking proper abatement, have paid Service Tax on the abated value of services provided, which is also according to their financial records and Service Tax returns filed before the authority.

16. I find with regard to the Goods and Transport Services, the assessee has provided Services under Reverse Charge Mechanism as per Notification No. 30/2012-Service Tax dated 20.06.2012. I would like to go through the legal aspects of the taxability of GTA services.

Rule 2(d)(B)(V) of the Service Tax Rules, 1994 provided that;

- (d) "person liable for paying service tax", -
- (i) (B) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—
- (I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (III) any co-operative society established by or under any law;
- (IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- (V) any body corporate established, by or under any law; or
- (VI) any partnership firm whether registered or not under any law including association of persons; any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage : Provided that when such person is located in

a non-taxable territory, the provider of such service shall be liable to pay service tax.

17. Para 1(A)(ii) and Para II of Notification No. 30/2012-ST dated 20.06.2012 as amended provided that service tax payable on services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (c) any co-operative society established by or under any law;
- (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- (e) any body corporate established, by or under any law; or
- (f) any partnership firm whether registered or not under any law including association of persons;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :-

TABLE

Sl. No.	Description of Service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving service
01	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	NIL	100%

18. As per provisions contained in Rule 2(d)(B)(V) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, service tax on GTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) and dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder is payable in RCM by the service recipient. The said assessee has claimed RCM tax liability under above categories in reconciliation statement certified by the chartered accountant.

19. On perusal of reconciliation statement, ledger accounts and financial records, I find that the assessee have income of 54,92,864/-, Rs. 1,69,94,733/-, and Rs. 1,51,67,077/- (Total Rs. 3,76,54,774/-) for the year

2014-15 to 2016-17 respectively from GTA services provided to other than proprietary concern i.e. corporate body & partnership firm.

20. I find that the aforementioned financial 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.

21. As per provisions contained in Rule 2(d)(B) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, service tax on GTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) or a dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder is payable in RCM by the service recipient. The Noticee has claimed RCM tax liability under above categories in reconciliation statement certified by the chartered accountant. I find that the status of the service recipient as body corporate and the partnership firm is organizational and has been verified by chartered accountant. Therefore, in the above backdrop I accept bifurcation of GTA service provided by noticee to the body corporate and the GTA service provided by the noticee to above extent are liable to be paid in RCM by the service recipients.

Description	2014-15	2015-16	2016-17
Total income as per ITR and SCN	67518477	51655301	61662753
Total income declared as per ST3	62025613	34660568	46495676
Differential value on which service tax demanded	5492864	16994733	15167077
GTA services provided to body corporate under RCM	5492864	16994733	15167077
Difference	0	0	0

22. As stated above, on perusal of reconciliation statement, ledger accounts and financial records, I find that the assessee have income of 54,92,864/-, Rs. 1,69,94,733/-, and Rs. 1,51,67,077/- (Total Rs. 3,76,54,774/-) for the year 2014-15 to 2016-17 respectively from GTA services which are and the same income earned by way of providing services to corporate body and the liability to service tax falls upon the service receiver as per Notification No.30/2012 and therefore the assessee i.e service provider is not required to pay service tax on the said amount. In view of the above, the service tax demand on the differential amount of Rs. 3,76,54,674/- is not sustainable and therefore the demand of service tax demand of Rs. 54,18,216/- is liable to be dropped.

23. With regard to point No. (iv) of charging para, I find the assessee has filed the ST-3 return late for the period 2014-15 to 2016-17 as detailed below;

Return period	No. of days delay filing	Penalty amount	Penalty paid vide challan No,
April 14 to Sept 14	502	20000	50973 dtd 16.07.2016
Oct-14 to March 15	346	20000	50974 dated 16.07.2016
April 15 to Sept 15	211	19100	55964 dated 25.10.2016
Oct-15 to March 16	154	13400	54211 dtd 05.12.2016
April 16 to Sept 16	125	10500	50216 dtd 10.04.2017
Oct-16 to March 17	363	20000	Not paid.

23.1 I find from the available records in file that the assessee has late file their ST-3 returns as stated in above column and paid the late fees as stated above except for the ST-3 returns for the period October 2016 to March 2017 wherein the assessee has late filed their return 363 days and has not paid the late fees. Therefore the assessee is liable to pay late fees under the provision of Rule 7C of Service Tax Rules, 1994.

24. I have also gone through the Audit report and I find that the Final Audit Report No. 566/2019-20 dated 14.11.2019 issued by the Audit Commissionerate and covering the period of the subject SCN must be considered. I find that the Audit of the assessee was under taken on 21.08.2019, 13 & 20.09.2019 covering the period for the year 2014 to June 2017 where all the 3 revenue paras raised by the Audit for recovery of Service tax have been approved as the assessee agreed with the Audit objection and paid the Short payment/Wrong availment of Service Tax.

25. Therefore, it is apparent from the Final Audit Report that the reconciliation of Income booked/ shown in the books of accounts of the assessee, for the period April 2014 to June 2017 was carried out with Taxable

value disclosed in their ST-3 Returns filed by the assessee. It is also evident that the audit of records of assessee by the department had already been conducted before the issuance of the subject SCN. Despite of the above fact, the SCN seeks demand of the service tax on differential value worked out by comparing the Income as per ITR/ Form 26AS vis-à-vis Taxable value disclosed in ST-3 Returns. I find that apart from the differences noticed in the figures reported in ST-3 returns and in ITR/Form 26AS, the department had not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non payment of service tax. Having considered these factual and documentary evidences available on records, and relying on the Final Audit Report, I find that there is no short payment on the part of the assessee. The SCN issued to the assessee after audit of the assessee is beyond the law and is not justified. Thus, the subject SCN is liable to be dropped on merits being incorrect and legally not sustainable.

26. I find that the SCN had not questioned the taxability on any income other than the income from sale of services shown in ITR/Form 26AS. I therefore refrain myself from to enter in to the taxability on other income other than the sale of service.

27. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, ITR, reconciliation statement, and the Audit Report in respect of Audit Carried out by Audit Commissionerate, I find that the service tax demand of Rs. 54,18,216/- for the period 2014-15 to 2016-17 is not sustainable and accordingly Show Cause Notice dated 29.09.2020 is liable to be dropped. Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty except under the provision of Rule 7C of Service Tax Rules, 1994.

Accordingly, I pass the following order;

ORDER

21. (i) I hereby order to drop proceedings initiated for recovery of service tax of Rs. 54,18,216/- against M/s. CTPL Industrial Services Pvt. Ltd., Orange Mall, 417, 4th Floor, Nr. Sharda Petrol Pump, I.O.C. Circle, Chandkheda, Ahmedabad, Gujarat along with interest.

(ii) I hereby order to drop Penalty imposed upon them under the provisions of Section 77 (1), 77(2) and Section 78 of the Finance Act, 1994.

(iii) I impose penalty of Rs. 20,000/- (Rs. Twenty Thousand only) upon them for late filing ST-3 returns for the period October 16 to March 17 under the provisions of Rule 7C of the Service Tax Rules, 1994.

The SCN No. STC/15-80/OA/2020 dated 29.09.2020 is hereby disposed off.



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

By Regd. Post AD./Hand Delivery

F.No. STC/15-80/OA/2020

Dated- 14/02/2022

To

M/s. CTPL Industrial Services Pvt. Ltd.,
Orange Mall, 417, 4th Floor,
Nr. Sharda Petrol Pump, I.O.C. Circle,
Chandkheda, Ahmedabad, Gujarat.

Copy for information 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

