



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>

निबन्धित पावती डाक द्वारा/By R.P.A.D  
फा.सं./F.No. STC/15-46/OA/2023

DIN-20240164WT0000414202  
आदेश की तारीख/Date of Order: - 31.01.2024  
जारी करने की तारीख/Date of Issue :- 31.01.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 74/ADC/ LD /2023-24**

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 रू. 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 ST-4 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 रू .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 No. CGST/AR-I/DIV-VII/Abad North/TPDreg/2020-21 dated 20.10.2020 issued to M/s. Karma Shipping, 7/2, S.F., Gitanjali Shopping Centre, Darpan 5 Rasta, Naranpura, Ahmedabad.



**BRIEF FACTS OF THE CASE:**

M/s. KARMAA SHIPPING, 7/2, S.F., GITANJALI SHOPPING CENTRE, DARPAN 5 RASTA, NARANPURA, AHMEDABAD (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.-AEIPP9521KSD001.

2. On perusal of the data received from CBDT, it was noticed that the assessee had declared different values in Service Tax Return ( ST-3) and Income Tax Return (ITR/Form 26AS) for the Financial year 2015-16 and 2016-17.

3. On scrutiny of the above data, it was noticed that the Assessee had declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2015-16 and 2016-17 as compared to the Service related taxable value declared by them in their Income Tax Return (-ITR)/ Form 26AS, the details of which are as under:

(Amount in Rs.)							
S. N.	F. Y.	Total Sale of Service as per (STR)	Total Sale of Service as per ITR	TOTAL VALUE for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	HIGHER VALUE (VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Rate of duty including Cess	Resultant Service Tax short paid (including Cess)
1	2015-16	16249906	27956548	26981210	11706642	14.5 %	1697463
2	2016-17	0	51845003	50597807	51845003	15%	7776750
							9474213

4. Letter dated 07.10.2020 was issued to the said assessee by the jurisdiction office 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 for the Financial Year 2015-16 & 2016-17. 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 could be done in this regard by the department.

5. Since the assessee had not submitted the required details of services provided during the Financial Year 2015-16 & 2016-17, the service tax liability of the service tax assessee had been 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 was considered as the total taxable value in order to ascertain the Service tax liability under Section 67 of the Finance Act, 1994.

6. Further, no data was forwarded by CBDT, for the period 2017-18 (upto June-2017) and the assessee had 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 2017-18 (upto June-2017).

7. With respect to issuance of 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 data received from CBDT, it was observed that the "Total Amount Paid/Credited Under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2017-18 had not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. Further, the assessee had also failed to provide the required information even after the issuance of letter and summons from the Department. Therefore, the assessable value for the year 2017-18 (upto June-2017) is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action will be initiated against the said 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, in as much as the Service Tax liability arising in future, for the period 2017-18 (upto June-2017) not covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

9. The government has from the very beginning placed full trust on the service provider so far service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider, no matter how innocently. From the evidence, it appears that the said assessee had not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider appears to have made deliberate efforts to suppress the value of taxable service to the department and appears to have not paid the liable service tax in utter disregard to the requirements of law and breach of trust

deposed on them. Such outright act in defiance of law, appear to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

**10.** In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the assessee had committed the following contraventions of the provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004:

- (i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994;
- (ii) Failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994 as discussed above;
- (iii) Failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have not paid service tax as worked out in the Table for Financial Year 2015-16 & 2016-17.
- (iv) 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.
- (v) 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.
- (vi) 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.
- (vii) Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

**11.** The above said service tax liabilities of the assessee, M/s. KARMAA SHIPPING has been worked out on the basis of limited data/ information received from the Income tax department for the financial year 2015-16 & 2016-17. Thus, the present notice relates exclusively to the information received from the Income Tax Department.

**12.** 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 2015-2016 & 2016-17. 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.94,74,213/-(including Cess). It is observed 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 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

13. Accordingly Show Cause Notice No. CGST/AR-I/DIV-VII/Abad North/TPDreg/2020-21 dated 20.10.2020 and corrigendum dated 24.01.2023 was issued to show cause as to why:

(i) The Service Tax to the extent of Rs. 94,74,213/- short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST.

(ii) Service Tax liability not paid during the financial year 2017-18 (upto June-2017), ascertained in future, as per paras no. 7 and 8 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.

(iii)Interest at the appropriate rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;

(iv)Penalty under the provisions of Section 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.

(v) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

**DEFENCE REPLY :**

14. The assessee vide letter dated 29.01.2024 stated that a Show Cause Notice No.- GEXCOM/ADJN/ST/ADC/303/2020-ADJN-O/o COMMR-CGST-AHMEDABAD(N) dated 21.12.2020 was already issued for same period and same amount which was dropped vide Order in Original No.- 79/ADC/GB/2021-22 dated 14.03.2022. Therefore, they requested to drop Show Cause Notice No. CGST/AR-I/DIV-VII/Abad North/TPDreg/2020-21 dated 20.10.2020 on the same grounds.

**PERSONNEL HEARING :**

15. The personnel hearing was granted to the noticee on 29.01.2024, Shri Jigar K. Patel, authorised person of the Karmaa Shipping appeared for

personnel hearing. He stated that they have received two SCN of the F.Y. 2015-16 and 2016-17 having same amount. He further submitted written submission dated 29.01.2024 during personnel hearing and requested to decide the SCN on merits.

**DISCUSSION AND FINDINGS:-**

16. I have carefully gone through the records of the case, submission dated 29.01.2024 made by the noticee in reply to the show cause notice. In the present case, Show Cause Notice dated 20.10.2020 was issued to the noticee demanding Service Tax of Rs. 94,74,213/- for the Financial Year 2015-16 and 2016-17 on the basis of data received from Income Tax authorities. The details of which are as under:

(Amount in Rs.)

S. N.	F. Y.	Total Sale of Service as per (STR)	Total Sale of Service as per ITR	TOTAL VALUE for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	HIGHER VALUE (VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Rate of duty including Cess	Resultant Service Tax short paid (including Cess)
1	2015-16	16249906	27956548	26981210	11706642	14.5 %	1697463
2	2016-17	0	51845003	50597807	51845003	15%	7776750
							9474213

17. Further, I find that said Show Cause Notice dated 20.10.2020 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. I find that the assessee in their defence reply dated 29.01.2024 has submitted that that a Show Cause Notice No.- GEXCOM/ADJN/ST/ADC/303/2020-ADJN-O/o COMMR-CGST-AHMEDABAD(N) dated 21.12.2020 was already issued for same period and same amount which was dropped vide Order in Original No.- 79/ADC/GB/2021-22 dated 14.03.2022. Accordingly they requested to drop the present show cause notice.

18. As per records available, I find that Show Cause Notice No.- GEXCOM/ADJN/ST/ADC/303/2020-ADJN-O/o COMMR-CGST-AHMEDABAD(N) dated 21.12.2020 issued by the Additional Commissioner, Central Excise and Central GST, Ahmedabad North for short/non payment of Service Tax of Rs. 94,74,213/- for F.Y. 2015-16 and 2016-17. Details of which are reproduced below:-

S. N.	F. Y.	Total Sale of Service as per (STR)	Total Sale of Service as per ITR	TOTAL VALUE for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	HIGHER VALUE (VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Rate of duty including Cess	Resultant Service Tax short paid (including Cess)
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							9474213

19. As above, I find that Service Tax demand amount of Rs. 94,74,213/- for period F.Y. 2015-16 and 2016-17 in respect of M/s. KARMAA SHIPPING having Service Tax Registration No.-AEIPP9521KSD001 is already covered in SCN dated 21.12.2020. Therefore, it is quite apparent that two SCNs have been issued and service tax demands have been raised twice by using the same data received from Income Tax department. I find that demanding of service tax twice on the amount received by the assessee as per data shared by the Income Tax Department is not permissible and the same is not sustainable in law.

20. Further, I find that Show Cause Notice No.- GEXCOM/ADJN/ST/ADC/303/2020-ADJN-O/o COMMR-CGST AHMEDABAD(N) dated 21.12.2020 was dropped by the Adjudicating Authority vide Order in Original No.- 79/ADC/GB/2021-22 dated 14.03.2022 on merit. Order portion of said OIO is reproduced below:-

*"33. I hereby order to drop proceedings initiated against M/s. KARMAA SHIPPING for recovery of service tax of Rs. 94,74,213/- along with interest and penalties vide SCN No. GEXCOM/ADJN/ST/ADC/303/2020-ADJN-O/o COMMR-CGST AHMEDABAD(N) dated 21.12.2020."*

21. In view of the above, I find that demand for same period and same amount is not sustainable and accordingly SCN No. CGST/AR-I/DIV-VII/Abad North/TPDreg/2020-21 dated 20.10.2020 is liable to be dropped.

22. In view of the foregoing discussion and findings, I pass the following order;

**ORDER**

I. I hereby order to drop proceedings initiated against M/s. KARMAA SHIPPING for recovery of service tax of Rs. 94,74,213/- along with interest and penalties vide SCN No. CGST/AR-I/DIV-VII/Abad North/TPDreg/2020-21 dated 20.10.2020.

(Lokesh Darnor)  
31/01/2024  
Additional Commissioner  
Central GST & Central Excise  
Ahmedabad North



F.NO.STC/15-46/OA/2023  
By Regd. Post AD./Hand Delivery

Dated 31.01.2024

To  
M/s. KARMAA SHIPPING  
7/2, S.F., GITANJALI SHOPPING CENTRE,  
DARPAN 5 RASTA, NARANPURA, AHMEDABAD

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

