
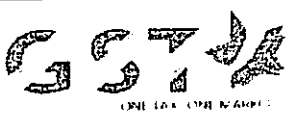


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: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

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20220364WT0000112166

फा.सं./F.No. STC/15-84/OA/2020

आदेश की तारीख/Date of Order :- 11-03-2022

जारी करने की तारीख/Date of Issue :- 11-03-2022

द्वारा पारित/Passed by:-

आर गुलजार बेगम /R. GULZAR BEGUM

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 77/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 एस टी -4 (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 -4 (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।

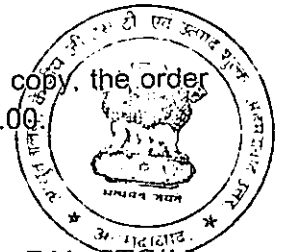
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -4 (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:

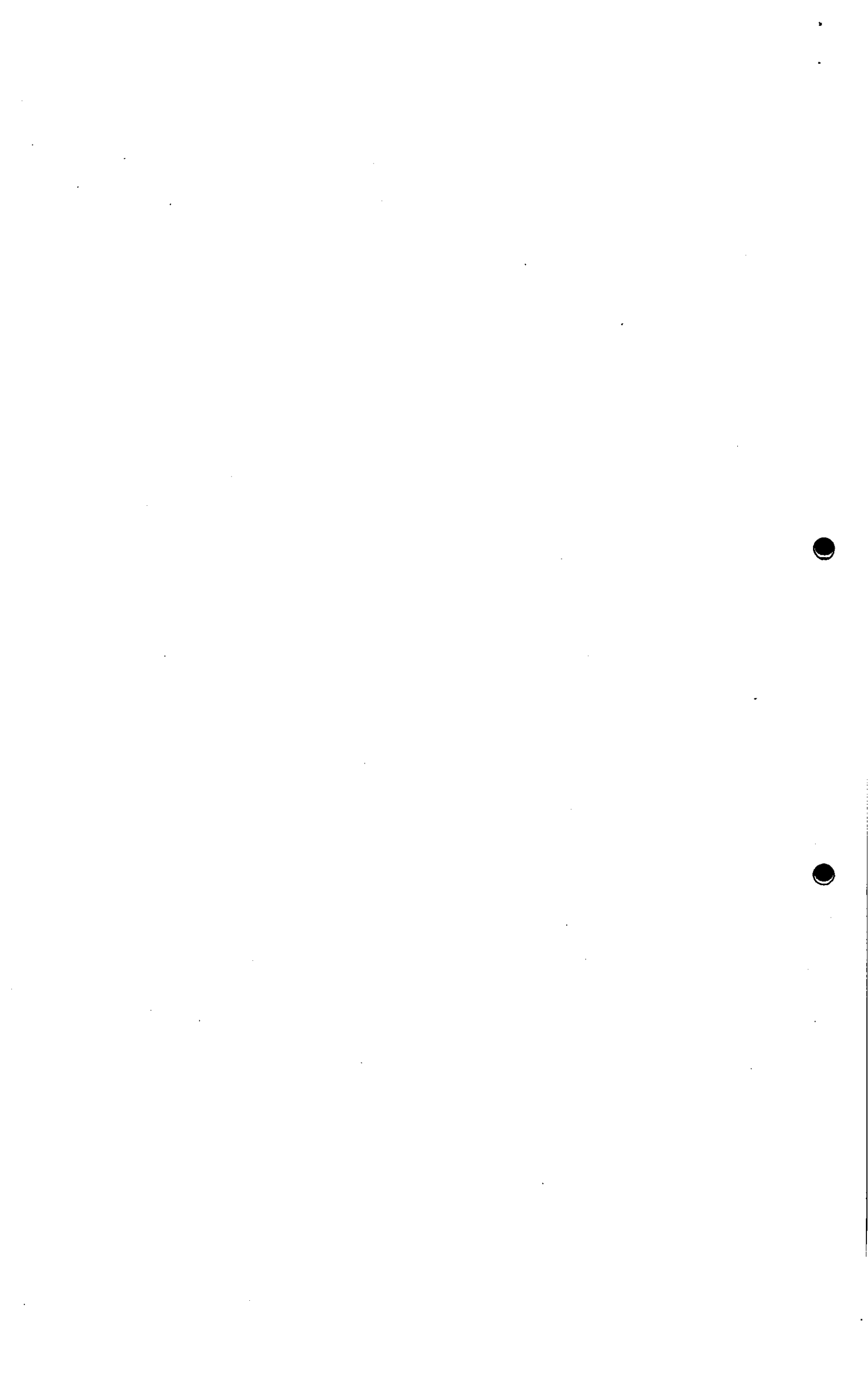
(1) Copy of accompanied Appeal.

(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/15-84/OA/2020 dated 29.09.2020 issued to M/s Jitendra Purshottamdas Shah, B Jadav Chambers 10, 3rd floor, above Sales India, Ashram Road, Navranpura, Ahmedabad.



BRIEF FACTS OF THE CASE :

M/s JITENDRA PURSHOTTAMDAS SHAH, situated at B JADAV CHAMBERS 10 3RD FLOOR ABOVE SALES INDIA ASHRAM ROAD NAVRANGPURA AHMEDABAD (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. ALXPS5820LSD001.

2. Ongoing through the third party CBDT data for the Financial Year 2014-2015 to 2016-17, it has been observed that the Assessee has declared less/ not declared any taxable value in their Service Tax Return (ST-3) for the F.Y.2014-2015 to 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/ Form 26AS, the details of difference as per CBDT data for the Financial Year 2014-2015 to 2016-17 are as under:

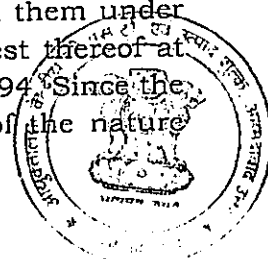
(Amount in Rs.)

F.Y.	Value As per B/S, P&L, Form 26AS of ITR	Value declared in ST-3 Returns	Differential amount	Service tax payable (including cess)
2014-15	14328571/-	600000/-	13728571/-	1696851/-
2015-16	13910700/-	0/-	13910700/-	2017052/-
2016-17	23356666/-	0/-	23356666/-	3503500/-
Total				7217403/-

3. The clarification along with documents were called for from the assessee for assessment purpose, vide letter F.No. STC/Prev/Gr-I/TPD-/2017-18 dated 12.02.2018 followed by Reminders dated 03.05.2018, 30.07.2019 and 13.07.2020 by the jurisdiction office. The assessee neither submitted the documents nor extended the co-operation in the matter although sufficient time was provided. This act of non-co-operation of assessee has contravened the provision of Section 72 of the Finance Act, 1994 has rendered themselves liable for penal action under Section 77 of Finance Act, 1994.

4. In view of above, it was observed 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.7217403/-, 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.

5. 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 to 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.7217403/-. 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 of the Finance Act, 1994 along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature



specified under Section 78 of the Finance Act, 1994, it appears that the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

6. Therefore, M/s. JITENDRA PURSHOTTAMDAS SHAH, B JADAV CHAMBERS 10 3RD FLOOR ABOVE SALES INDIA ASHRAM ROAD NAVRANGPURA AHMEDABAD is hereby called upon to show cause to the Additional Commissioner, Central GST & Central Excise, Ahmedabad North having office 1st Floor, Custom House, Navarangpura, Ahmedabad as to why :

- (i) The demand for Service tax to the extent of Rs.72,17,403/- (Rupees Seventy Two Lakh Seventeen Thousand Four Hundred Three Only) 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;
- (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 of Rs.10,000/- (Rupees Ten thousand only) should not be imposed under Section 77 of the Finance Act, 1994.

DEFENCE REPLY:

7. The assessee vide their letter dated 16.01.2021 forwarded their written submission wherein they stated their client has expired on 17-12-2019 and the show cause notice dt. 29-9-2020 has been received by his legal heir and son Manish J. Shah, who is also a practicing Advocate; that they fail to understand the reason for such an inordinate delay in service of the notice; that the notice cannot be issued in the name of the deceased person; that their client has not received any correspondence mentioned in the Show Cause Notice; that the old office has been vacated by them before, It, therefore, appears that for this reason, the assessee has not received any previous notice; that the new address of the assessee was also informed to Income Tax Department long back. Further they stated that the assessee was an individual Practicing as an Advocate and received Professional Fees for appearing before Honourable Tribunal, Honourable High Court and also Honourable Supreme Court in income tax matters as an Advocate; that the assessee was never served any notice, there was no question of non-co-operation or non compliance of any notice; that the contention to ascertain the Service Tax Liability of the Service Provider on the basis of the income mentioned in the I.T.R. is absolutely incorrect because the provisions of I.T. Act and Service Tax are different and, therefore, the Service Tax liability is required to be determined as per the provisions of Law relating to Service Tax or Section 68 of The Finance Act, 1994.

As per the Notification No.25/2012 of -Service Tax, dated the 20th June, 2012,
Services provided by-

(a) an arbitral tribunal to -

- (i) any person other than a business entity; or
- (ii) a business entity with a turnover up to rupees ten lakhs in the preceding financial year;

(b) an individual as an advocate or a partnership firm of advocates by way of legal services

to,-

- (i) an advocate or partnership firm of advocates providing legal services ;
- (ii) any person other than a business entity; or
- (iii) a business entity with a turnover up to rupees ten lakhs in the preceding financial year; or

(c) a person represented on an arbitral tribunal to an arbitral tribunal;
are exempt.

Further, as per the Notification No.30/2012-Service Tax, dated the 20th June, 2012, in respect of the services provided or agreed to be provided to the Business entity with a turnover exceeding Rs. 10 lacs, by an individual advocate or a firm of advocates by way of legal services is covered under Reverse Charge Mechanism and, therefore, the Service Receiver is liable to pay 100% Service Tax. Therefore, the business entity having turnover exceeding Rs. 10 lakhs was liable to pay service tax under Reverse Charge Mechanism on services received by them and the services provided by the assessee to any person other than a business entity was exempt from service tax.

In view of the above legal position, the above assessee who is an individual was not required to pay service tax in any case during the F.Y. 2014-15 to F.Y. 2016-17; that they submitted **copy of Degree Certificate of the assessee in support of their claim that he was a lawyer and providing legal services; that as a Professional, he had opted for the 'Cash Basis of Accounting' and accordingly, his Professional Income and other income was taxable as per Income Tax Act, 1961 on 'Cash Basis' which he was offering for taxation in his Income Tax Return . On the other hand, the clients of Shri J. P. Shah were deducting T.D.S. at the time of crediting or paying the bills of Shri J. P. Shah, whichever was earlier as his clients were following Mercantile system of Accounting. These being the facts, it will be appreciated that the professional receipts shown in I. T. Return, Professional Receipts reflected in Form NO. 26AS and Taxable Value of Services reflected in ST-3 cannot tally. They also informed that a letter dt.09/08/2016 was issued by the office of the Asst. Commissioner of Service Tax, Division II, APM Mall, Satellite, Ahmedabad 380015 regarding Non-payment of Service Tax for F.Y. 2014-15 and the same was duly replied vide their letter dt. 22/08/2016 on 01/09/2016 giving the necessary explanations and supporting documents. Thereafter no further query was raised by the Assessing Officer ; that facts stated in that reply have remained the same ; that the provisions of the Proviso to Section 73 of the Finance Act, 1994 providing for extended time limit of 5 years for recovery cannot be invoked at all as **the Service Tax was not paid** because of any Fraud, Collusion, Willful misstatement, suppression of facts or contravention of any of the provisions of Chapter V of the Finance Act, 1994 but **because of the exemption granted by the Law and/or S.T. being payable by the recipient of the service under Reverse Charge Mechanism in respect of the Services provided by 'Advocates'**. ; that there is no violation of Finance Act and rules made thereunder.**

PERSONAL HEARING

8 No personnel hearing was granted to the assessee as he expired on 17.12.2019.

DISCUSSION AND FINDINGS:



9 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 16.01.2021 alongwith the documents submitted by the consultant on behalf of the assessee. In the present case, Show Cause Notice has been issued to the assessee demanding Service Tax of Rs. 72,17,403/- for the financial year 2014-15 to 2016-17 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 76, 77 and 78 of the Finance Act, 1994. I find that the assessee is expired on 17.12.2019.

9.2 On going through the SCN, I find that data of Sales /Gross receipt from services as per ITR were shared by the CBDT with CBIC for FY 2014-15, 2015-16 & 2016-17 provided by the assessee. The difference in value of service to the extent of Rs. 5,09,95,937/- 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. 5,09,95,937/- under proviso to section 73(1) of Finance Act, 1944 or not.

9.3 Thus, first and foremost I feel it necessary to understand the activities being carried out by the assessee. I find that after introduction of new system of taxation of services in negative list regime, any services for a consideration is taxable except those services specified in the negative or exempt list by virtue of mega exemption.

9.4 I find that the consultant of assessee in his defence reply dated 16.01.2021 has stated that they are practicing as Advocate and entire receipt as shown in paragraph 6 of the SCN dated 29.09.2020 pertaining to FY 2014-15, 2015-16 & 2016-17 is towards providing Legal Services. Further they also submitted that entry no. 6(b) of Notification Number 25/2012 dated 20.06.2012, as amended from time to time, exempts the Services provided by an individual as an Advocate or a partnership firm of advocates by way of legal services to certain entities and individuals. In all other cases, the entire liability to pay the Service Tax is on the recipient of service (under reverse charge mechanism) vide entry no. 5 of table at serial no. II of the notification no. 30/2012 dated 20.06.2012, as amended from time to time. They have contended that the services provided by them are covered under entry no. 6(b) of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012.

9.5 Hence, I find that the activities being carried out by the assessee for a consideration are squarely covered under the definition of "Service" as defined under Section 65B (44) of the Act and I also find that there is no dispute in this regard. I also find that the income receipts for the disputed period are towards providing Legal Services.

9.6 Further as the consultant of assessee in his written submission stated that entry no. 6(b) of Notification Number 25/2012 dated 20.06.2012, as amended from time to

time, exempts the Services provided by an individual as an Advocate or a partnership firm of advocates by way of legal services to certain entities and individuals. In all other cases, the entire liability to pay the Service Tax is on the recipient of service (under reverse charge mechanism) vide entry no. 5 of table at serial no. II of the notification no. 30/2012 dated 20.06.2012, as amended from time to time.

I hereby reproduce the notification for detail discussion;

Notification No. 25/2012-Service Tax

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210(E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:—

6. Services provided by-

(an arbitral tribunal to -)

- (i) Any person other than a business entity: or
- (ii) A business entity with a turnover up to rupees ten lakhs in the preceding financial year:

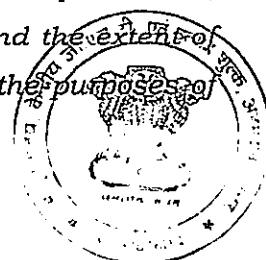
(an individual as an advocate or a partnership firm of advocates by way of legal services to,-)

- (i) An advocate or partnership firm of advocates providing legal services:
- (ii) Any person other than a business entity: or
- (iii) A business entity with a turnover up to rupees ten lakh in the preceding financial year: or

(a person represented on an arbitral tribunal to an arbitral tribunal);

9.7 I also produce relevant part of Notification No. 30/2012 dated 20.06.2012

Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:—



(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:-

Sr. No.	Description of Services	Percentage of the Service Tax payable the Service providing service	Percentage of the Service Tax payable by the person receiving the service
5	in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services	0	100

9.8 Further, I have carefully gone through the submission dated 16.01.2021, wherein the consultant of the assessee furnished the amount of total services provided to Individuals and to business entities to whom the legal services were provided during the period from 2014-15 to 2016-17. I also find that entry no. 6(b) of Notification Number 25/2012 dated 20.06.2012 exempts the Services provided by an individual as an Advocate or a partnership firm of advocates by way of legal services to certain entities and individuals. In all other cases, the entire liability to pay the Service Tax is on the recipient of service (under reverse charge mechanism) vide entry no. 5 of table at serial no. II of the notification no. 30/2012 dated 20.06.2012.

9.9 Now, I consider necessary to look into the definition of "Legal Services" provided under the Act as the assessee has claimed their service to be Legal Services. I find that the definition of "Legal Services" is provided under the Notification No. 25/2012-ST dated 20.06.2012 at Entry No. 6(b), the same is reproduced for better comprehension:

Services provided by-

"(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to,- (i) an advocate or partnership firm of advocates providing legal services; (ii) any person other than a business entity; or (iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;"
Inserted vide Notification 9/2016-Service Tax

9.10. Having considered above facts and discussion, I am of the view that the service provided by the assessee is appropriately classifiable under the "Legal Service".

9.11 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.

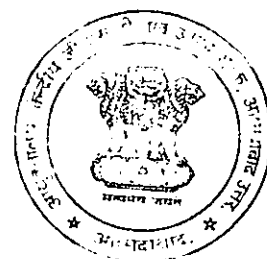
9.12. I find that the Notification No. 25/2012 -ST dated 20.06.2012 issued under Section 93(1) of the Act, grants exemption to the taxable services enlisted therein from whole of Service Tax leviable under section 66B of the Act. I find that the assessee has contested the demand of service tax on services rendered by them being Legal Service and has claimed the exemption from levy of service tax under Sr. No. 6(b) of Notification No. 25/2012-ST dated 20.06.2012. In all other cases, the entire liability to pay the Service Tax is on the recipient of service (under reverse charge mechanism) vide entry no. 5 of table at serial no. II of the notification no. 30/2012 dated 20.06.2012, as amended from time to time.

9.13 As discussed hereinabove, I find that the assessee is an advocate who is clearly engaged in business of providing Legal Service and was also registered under " BAR COUUNCIL OF MAHARASHTRA".

9.14 Keeping in view the aforementioned detailed discussions, I find that the services rendered by the assessee is squarely covered under the Sr.No. 6(b) of the Notification No. 25/2012-ST dated 20.06.2012 and Sr No. 5 of II of Notification No. 30/2012-ST dated 20.06.2012 and find that the exemption is quite clearly available to the assessee as claimed by them. Since I am fully convinced with the arguments put forth by the assessee, I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

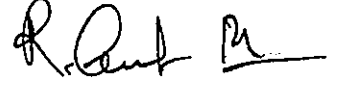
9.15 Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. Accordingly, it is my considered view that the assessee has established their case quite unambiguously that the value of service as discerned by the department by comparing the value of services in ITR/TDS is basically on account of the exempt service being the Legal Services rendered by the assesseeas they are not liable to pay Service Tax on the entire receipt and not obtained registration under the Service Tax.

9.16 In view of the facts and circumstances pertaining to the case, the demand is not tenable in law, accordingly I do not consider it necessary to deal 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

36 I drop the proceedings initiated against late M/s. JITENDRA PURSHOTTAMDAS SHAH 11,B JADAV CHAMBERS 10 3RD FLOOR ABOVE SALES INDIA ASHRAM ROAD NAVRANGPURA AHMEDABAD vide Show Cause Notice F.No. STC/15-84/OA/2020 dated 29.09.2020.



(R. Gulzar Begum)

Additional Commissioner

Central GST & Central Excise

Ahmedabad North

Dated-11/03/2022

F.No. STC/15-84/OA/2020

To

M/s. JITENDRA PURSHOTTAMDAS SHAH
11,B JADAV CHAMBERS 10 3RD FLOOR ABOVE SALES INDIA,
ASHRAM ROAD NAVRANGPURA AHMEDABAD.

BY REGD. POST A.D./SPEED POST/Hand Delivery

Copy to:

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