



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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निवन्धित पावनी डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-123/OA/2020

आदेश की तारीख/Date of Order:-16.03.2022

जारी करने की तारीख/Date of Issue :- 16.03.2022

DIN NO: 20220364WT000000E734

द्वारा पारित/Passed by:- आर गुलजार बेगम *IR. GULZAR BEGUM*

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 83/ADC/GB/2021-22

जिस व्यक्ति(यों) (को यह प्रति भेजी जाती है ,उमके/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 प्रामि मे) 60 माठ (दिन के अन्दर आयुक्त) अपील ,(केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन ,अंबावाडी ,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 मे करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रन्त शुल्क या विवादग्रन्त शुल्क एवं दंड या विवादग्रन्त 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 जिम 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 वनाओ सूचना/ Show Cause Notice No. STC/15-123/OA/2020 dated 21.10.2020 issued to M/s. Impretion Systems Pvt Ltd, E-2, 6th Floor, Ankur Complex, Nr. Ankur Bus Stop, Naranpura Vistar, Ahmedabad-380013.

BRIEF FACTS OF THE CASE

M/s. Impretion Systems Pvt. Ltd., E-2, 6TH Floor, Ankur Complex, Nr. Ankur Bus Stop, Naranpura Vistar, Ahmedabad, Gujarat 13 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.-AABCI0230LST001& are engaged in the business of Providing Taxable Services.

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. On scrutiny of the above data, it was noticed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2015-16 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.)						
Sr No	F. Y.	Total Sale of Service as per ITR	TOTAL GROSS VALUE PROVIDED (STR)	TOTAL VALUE for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	HIGHER VALUE (VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Resultant Service Tax short paid (including Cess)
1	2015-16	48980676	5102476	24624729	43878200	6362339

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 for the Financial Year 2015-16, Letter dated 07.10.2020 was 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 could be done in this regard by the department. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16, the service tax liability of the service tax assessee has been ascertained on the basis of income mentioned in the Income Tax returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the Service tax liability under Section 67 of the Finance Act, 1994.

4. No data was forwarded by CBDT, for the period 2016-17 and 2017-18 (upto June-2017) and the assessee has 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). 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."

5. From the data received from CBDT, it appears that the "Total Amount Paid/Credited Under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2016-17 to 2017-18 (upto June-2017)

has 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 has also failed to provide the required information even after the issuance of letter from the Department. Therefore, the assessable value for the year 2016-17 to 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 2016-17 to 2017-18 (upto-June 2017) not covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

6. The government has from the very beginning placed full trust on the service provider so far as 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 by the service provider, no matter how innocently. From the evidence on record, 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 the trust deposited in them. Such outright act in defiance of law, appears 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. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the noticee, M/s.Impretion Systems Pvt. Ltd., have 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 to 2017-18 (upto June-2017).
- (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 punishable 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.

7. The above said service tax liabilities of the assessee, M/s. Impretron Systems Pvt. Ltd., 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. 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 2015-16. From the evidences, it appeared 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.6362339/- (including Cess). It appeared 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 is 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.

8. Accordingly, Show Cause Notice was issued to M/s. Impretron Systems Pvt. Ltd., called upon as to why :

- (i) The Service Tax to the extent of Rs. 6362339/- (Rupees Sixty Three lakh Sixty Two Thousand Three Hundred Thirty Nine 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 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 2016-17 and 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

9. The assessee vide their letter dated 12.01.2022 submitted the reply to SCN wherein they stated that they are a private limited company engaged in providing payroll management service having registration No.AABCI0230LST001 under the category of "Business Auxiliary Service". They further submitted that they had already received a demand cum show cause Notice No. DGCEI/AZU/36-57/2017-18 dated 15.11.2017 from ADG, AZU, DGCEI. The said notice was adjudicated on 06.07.2020 and the OIO was challenged in appeal and now the said appeal has been disallowed by the Commissioner (Appeal) vide OIA dated 29.10.2021/24.11.2021. The said notice was issued covering the period of 2015-16 which also coincides with the period from the present SCN. The table given under Para 12.1 of the DGCEI and as per Para 11.1 of OIO, in respect of period covering the year 2015-16 are reproduced as under:

Table given under Para 12.1 of the DGCEI Notice

Period	Gross Receipts against the Manpower Supply Service provided (in Rs.)	Manpower supply services provided to Educational institutes(exempted from 01.07.2012 to 10.07.2014 as per Annexure B	Net Taxable Value (in Rs.)	Total Service Tax Payable (Rs.)	Total service tax paid (in Rs.)	Net Service Tax payable (Rs.)
2015-16	50927738	-	50927738	6234616	718207	5516409

Table given under Para 11.1 of the OIO

Period	Gross Receipts against the Manpower Supply Service provided (in Rs.)	Manpower supply services provided to Educational institutes(exempted from 01.07.2012 to 10.07.2014 as per Annexure B	Net Taxable Value (in Rs.)	Total Service Tax Payable (Rs.)	Total service tax paid (in Rs.)	Net Service Tax payable (Rs.)
2015-16	50927738	-	50927738	6234616	718207	5516409

10. Thus the gross receipts/net taxable value in both of the above table is Rs.5,09,27,738/- which is higher than the total sale of service, as [per col.2 of the present Show Cause-cun-demand notice, which is Rs.48980676/- and 2) Higher Value (Value difference in ITR and STR) Or Value difference in TDS & STR) as per Col.No.6 of the present SCN, which is Rs.43878200/-. Thus the differential value which was already in the SCN, the meaning thereby that the demand and recovery nas proposed in the present SCN was duly covered and dealt with earlier.

11. Further they have denied all the averments and allegations, made vide the SCN, and, in particular that service tax amounting to Rs.1,95,09,380/- which is required required to be recovered from the noticee. The present demand was already dealt with as mentioned in Para 3 above and is currently lying at the stage of preparation of appeal against the OIA, issued in October 2021. Therefore, tin respect of the same issue , for the same period and for the same amount a second SCN cannot be issued. This aspect is as enshrined in the doctrine of Res Judicata, which means that no person should be disputed twice for the same reason and also a matter already adjudicated upon that cannot be raised again.

12. Further as regards proposal in the SCN for demand of service tax liability not paid during the year 2016-17 and 2017-18(upto June 2017), it is submitted that the same cannot be demanded and recovered without quantification in view of the plethora the case laws amongst which the following are notable.

- Shree Bankay Brass Prodcusts Vs Commissioner of C.Ex Meerut-II 2017(358) ELT1104 (Tri-All)

Before the Commissioner of Central Excise, Customs and Service Tax (Appeals)
Orissa in respect of Infosys Technologies Ltd 2007(7)STR486(Commr.Appeal)

In view of the above submission in the forgoing paras, the demand in question and the proceedings initiated vide the said SCN be dropped.

PERSONNEL HEARING

13. Personnel Hearing in the instant case has granted to the assessee on 16.02.2022. Shri V.H.Hakhani, duly authorised representative of the assessee attended the P.H and the issue involved has already been taken over by DIGGFI and hence "double litigation" is not appropriate and not legally taxable. Hence SCN /issue should be dropped on merits.

DISCUSSION AND FINDINGS

14. I have carefully gone through the records of the case, SCN, submission made by the noticee, copy of DGCEI SCN No.DGCEI/AZU/36-57/2017-18 dated 15.11.2017 and OIO No06/ADC/2020-21/MLM dt.06.07.2020. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs. 63,62,339/- on differential value of Rs.4,38,78,200/- 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. 63,62,339/- on the differential taxable value for the financial year 2015-16 under proviso to section 73(1) of Finance Act, 1944 or not.

15. The assessee in their reply to SCN contended that they had already received a demand cum show cause Notice No. DGCEI/AZU/36-57/2017-18 dated 15.11.2017 from ADG, AZU, DGCEI. The said notice was adjudicated on 06.07.2020 and the OIO was challenged in appeal and now the said appeal has been disallowed by the Commissioner (Appeal) vide OIA dated 29.10.2021/24.11.2021. The said notice was issued covering the period of 2015-16 which also coincides with the period from the present SCN. They have also produced copies of the above referred SCN and the corresponding OIO.

16. I have gone through the contents of the SCN No. DGCEI/AZU/36-57/2017-18 dated 15.11.2017 from ADG, AZU, DGCEI OIO dated 06.07.2020 passed by the Additional Commissioner. On perusal of the same, I find that in this case investigation revealed that M/s.Impertion system was not discharging the applicable service tax correctly on the gross receipt/income received from providing manpower recruitment or supply agency service. Instead of paying service tax on gross receipt they were paying service tax on differential value between the gross amount received and amount of expenditure incurred by them towards providing the said services under the category of "Business Auxiliary Services" Hence short payment of service tax by mis classification of service and undervaluation of taxable a manpower supply service. Accordingly the above referred SCN dated 15.11.2017 was issued by DGCEI demanding service tax of Rs.1,95,09,380/- covering the period from 2012-13, 2013-14, 2014-15, 2015-16 and April 2016 to Sept.2016. The said SCN was adjudicated by the adjudicating authority i.e. The Additional Commissioner, Central GST & Central Excise Ahmedabad North vide OIO No.06/SDC/2020-21/MLM dated 06.07.2020 by confirming the duty demanded vide the above referred SCN covering the period 2012-13 to Sept.2016.

17. On perusal of the said SCN issued by DGCEI and corresponding OIO dated 06.07.2020, I find that the gross receipts against the Manpower Supply Service provided is shown as Rs.5,09,27,738/- for the period 2015-16. On perusal of the

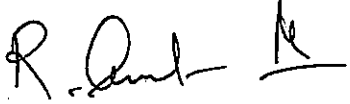
instant SCN , I find that the total sales as per ITR is Rs.4,89,80,676/- and total gross value provided in STR is Rs.51,02,476/- and accordingly service tax of Rs.63,62,339/- is demanded. On perusal of both the SCNs and OIO documents, I find that the amount covered under the SCN issued by DGCEI is Rs. 5,09,27,738/- which is more than the gross sales of Rs. 4,89,80,676/- covered under the instant SCN. As the SCN of DGCEI is issued after investigation and recording the statement of the proprietor, I find that the amount involved in the SCN issued by the DGCEI is more than the amount involved in the instant SCN and the amount involved in the instant SCN i.e.Rs.4,89,80,676/- is covered under amount of Rs.5,09,27,738/- SCN issued by the DGCEI. I also find that the said SCN dated 15.11.2017 has already adjudicated vide OIO No.06/SDC/2020-21/MLM dated 06.07.2020 by confirming the duty demanded covering the period 2015-16 also. In this connection the assessee contended that the instant SCN is liable to be dropped as two demand on the same amount for same year cannot be confirmed as the same will become double duty demand. In view of the above facts, I find that the above contention of the assessee is correct as the amount duty demanded involved of Rs.4,89,80,676/- is already covered in the OIO dated 06.07.2020 for the year 2015-16, hence I find that the instant SCN dated 21.10.2020 is required to be dropped as two demand on the same amount for same year cannot be confirmed as the same will become double duty demand.

18. Further, On perusal of para 6, 7 & 8 of the SCN, I find that the levy of service tax for FY 2016-17 & 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. I however, do not find any charges levelled for demand for FY 2016-17 & 2017-18 (upto June 2017) in charging part of the SCN. On perusal of instant SCN, I further find that the SCN has not questioned the taxability on any income, I, therefore refrain from discussing the taxability on other income other than the sale of service.

19. In view of the facts and findings, I pass the following order;

ORDER

20. I hereby order to drop proceedings initiated for recovery of service tax of Rs.63,62,339/- along with interest and penalties vide SCN No. STC/15-123/OA/2020 dated 21.10.2020.


(R.GULZAR BEGUM)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North
Dt. 16/3/20

F.No. STC/15-123/OA/2020

To
M/s.Impertion Systems Pvt. Ltd.,
E-2, 6 th Floor, Ankur Complex,
Nr.Ankur Bus Stop, Naranpura Vistar,
Ahmedabad , Gujarat 13
Copy to:

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