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|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <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- 20220364WT00005555BE

फा.सं./F.No. STC/15-77/OA/2020

आदेश की तारीख/Date of Order :- 21-03-2022

जारी करने की तारीख/Date of Issue :- 21-03-2022

द्वारा पारित/Passed by:-

आर गुलजार बेगम *IR. GULZAR BEGUM*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 92/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।

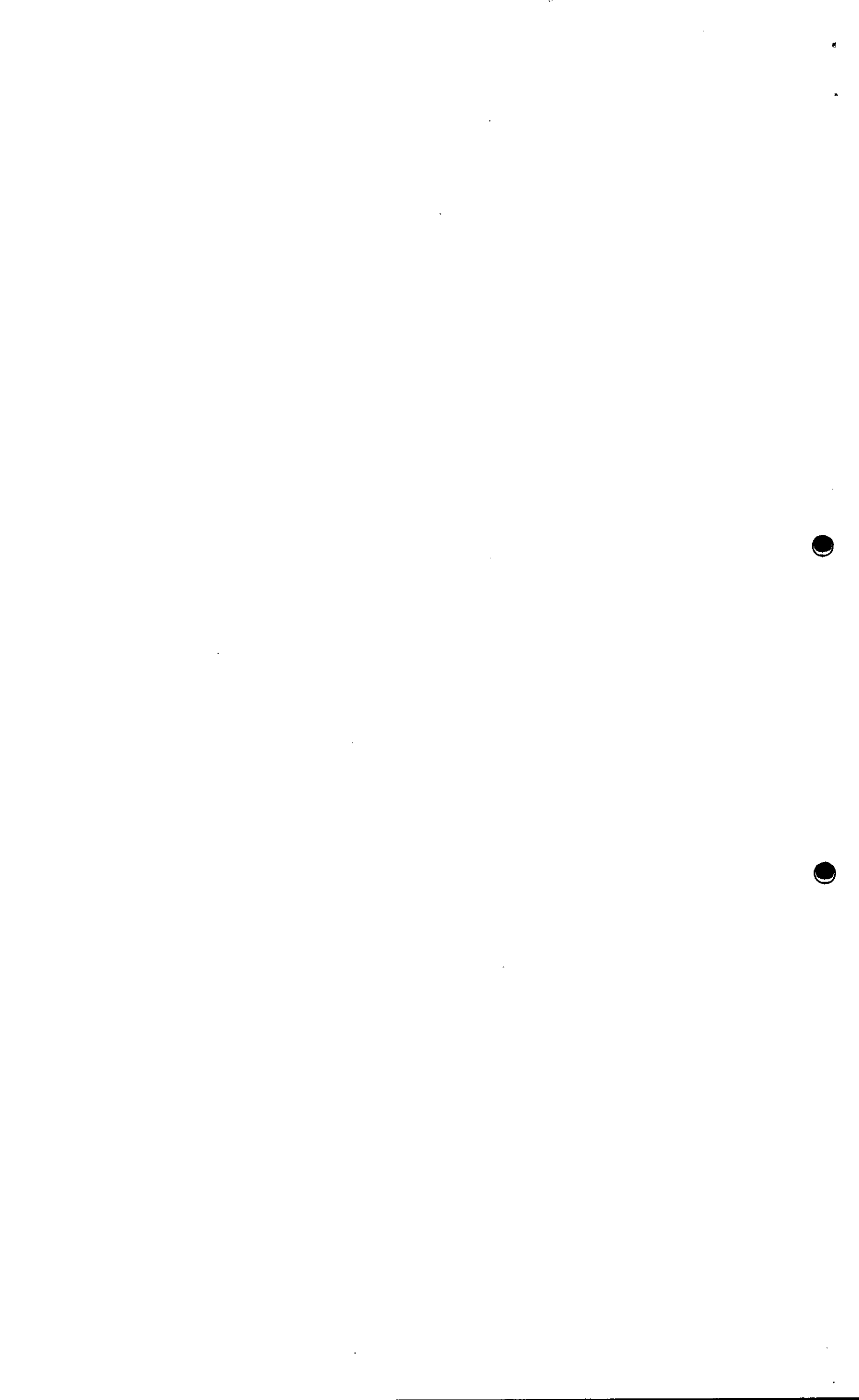
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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/15-77/OA/2020 dated 29.09.2020 issued to M/s Khevna Infrastructure, 19, Dev Kutir, B/H Madhurya Restaurant, Ambli Bhopal Road, Daskroi, Bopal, Ahmedabad, Gujarat-58.



BRIEF FACTS OF THE CASE

M/s. Khevna Infrastructure, 19, Dev kutir, 3, B/H.Madhurya Restaurant, Ambli Bhupal Road, Daskroi, Bopal, Ahmedabad, Gujarat-58 (hereinafter referred to as "the service provider") are engaged in the business of providing taxable services and registered with Service Tax Department holding Service Tax Registration No. CDAPS8220DSD001.

2. On preliminary verification of Third Party Data received from CBDT of the said service provider, the Sales/Gross Receipts from Services (Value from ITR/TDS, whichever is higher) are not tallied with Gross Value of Services Provided, as declared in ST-3 Returns of the FY 2014-15, FY 2015-16 and FY 2016-17. Further, it was observed that there is difference in Value of Services from ITR/TDS and Gross Value of Services provided in ST-3 returns which is to the tune of Rs. 43131544/-. From this, it appeared that the service provider has less discharged their service tax liability of Rs. 6142669/- on the aforesaid difference amount of Rs. 43131544/- for the FY 2014-15, FY 2015-16 and FY 2016-17, breakup of which is as under:

| FY | Difference Between Value of Services from ITR and Gross Value in Service Tax Provided | Service Tax at the rate of 12% | Education Cess at the rate of 2% on duty | Higher Edu Cess at the rate of 1% on duty | Total FY1415(S Tax+ Edu cess+ Higher Edu Cess) |
|------------|---------------------------------------------------------------------------------------|--------------------------------|------------------------------------------|-------------------------------------------|------------------------------------------------|
| FY 2014-15 | 7806805 | 936817 | 18737 | 9369 | 964923 |

| FY | Difference Between Value of Services from ITR/TDS and Gross Value in Service Tax Provided | Service Tax from 01.04.15 to 31.05.15 | Service Tax from 01.06.15 to 31.03.16 | Education cess 2% of S Tax from 01.04.15 to 31.05.15 | Sec Higher Education Cess 1% of S Tax from 01.04.15 to 31.05.15 | Swachh Bharat Cess from 15.11.15 to 31.03.16 | Total FY1516 |
|------------|-------------------------------------------------------------------------------------------|---------------------------------------|---------------------------------------|------------------------------------------------------|-----------------------------------------------------------------|----------------------------------------------|--------------|
| FY 2015-16 | 9500722 | 190535 | 1111454 | 3810 | 1905 | 17960 | 1325665 |

| FY | Difference Between Value of Services from ITR/TDS and Gross Value in Service Tax Provided | Service Tax from 01.04.16 to 31.03.17 | Swacch Bharat Cess from 01.04.16 to 31.03.17 | Krishi Kalyan Cess from 01.06.16 to 31.03.17 | Total FY1617 |
|------------|-------------------------------------------------------------------------------------------|---------------------------------------|----------------------------------------------|----------------------------------------------|--------------|
| FY 2016-17 | 25824017 | 3615362 | 129120 | 107600 | 3852082 |

| FY | Difference Between Value of Services from ITR/TDS and Gross Value in Service Tax Provided | Service Tax | Education cess 2% of S Tax from 01.04.15 to 31.05.15 | Sec Higher Education Cess 1% of S Tax from 01.04.15 to 31.05.15 | Swachh Bharat Cess from 15.11.15 to 31.03.16 | Krishi Kalyan Cess from 01.06.16 to 31.03.17 | GRAND TOTAL |
|--------------------------|-------------------------------------------------------------------------------------------|-------------|------------------------------------------------------|-----------------------------------------------------------------|----------------------------------------------|----------------------------------------------|-------------|
| FY 2014-15 to FY 2016-17 | 43131544 | 5854168 | 22547 | 11274 | 147080 | 107600 | 6142669 |

3. The service provider was requested to clarify the above said differential value by submitting the self-certified documentary evidences such as Audited Balance Sheet, copy of Profit & Loss Account, copy of Ledgers, Gross Trial Balance Sheet, ITR, Form 26AS, ST-3 returns, sample sales invoices along with details of all the sales invoices issued during financial year 2014-15, FY2015-16 and FY2016-17 vide letters/email, but the service provider has neither produced any documentary evidences of the differential value nor submitted any reply.

4. It was observed that the service provider has not discharged their service tax liability on the actual value received towards taxable services provided by them, hence, there was a short payment of Service Tax of Rs. 6142669/- during the material period. Further, it appears that the service provider has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994, inasmuch as they failed to pay Service Tax to the extent of Rs. 6142669/- as per their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services provided/received 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. In view of the above, it appears that the service provider has short paid/non-payment Service Tax of Rs. 6142669/- on the actual value received towards taxable services provided which appears to be recoverable under proviso to Section 73(1) of the said Act along with interest under Section 75 *ibid* not paid by them under Section 68 of the said Act read with Rule 6 of Service Tax Rules, 1994, inasmuch as the said service provider has suppressed the facts to the department and contravened the provisions with intent to evade payment of service tax.

6. Further, in terms of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, every person providing taxable service to any person is required to pay Service Tax at the rate specified in Section 66 in such manner and within such period as may be prescribed. In the present case, on the basis of Third party Data/information of CBDT for the FY 2014-15, FY2015-16 and FY2016-17 it however appears that the service provider has less discharge their service tax liability on the actual value received towards taxable services provided at the rate prescribed under Section 66 of the said Act. Further, it appears that all these acts of contravention on the part of the service provider is committed by way of suppression of the facts by not declaring/not considering the correct value of taxable services provided by them for payment of service tax to the Central Government for the period in question, with intent to evade payment of Service Tax and therefore the service tax which was not paid at the material time is required to be demanded under the proviso to Section 73(1) along with interest as per provision of Section 75 of the said Act.

7. All the above acts of contravention as discussed in above paras on the part of the service provider appears to be punishable, therefore, they are liable for penalty under Section 76 of the said Act. Further, as per Section 70 of the said Act, the person liable to pay service tax shall himself assess the tax due on the services provided by him and shall furnish a prescribed return as per Rule 7 of the Service Tax Rules, 1994. As they have failed to do so, they appear to be liable to penalty in terms of Section 77 of the said Act. Further, the penalty under Section 78 of the said Act also appears to be invocable in the instant case as they have suppressed the taxable value.

8. The provisions of the repealed Central Excise Act, 1944, the Central Excise Tariff Act, 1985 and amendment of the Finance Act, 1994 have been saved vide Section 174(2) of the CGST Act, 2017, and therefore the provisions of the said repealed/amended Acts and Rules made thereunder are enforced for the purpose of demand of duty, interest, etc. and imposition of penalty under this notice.

9. Therefore Show Cause Notice was issued to M/s. Khevna Infrastructure are called upon to show cause as to why :

- a) The demand of Service tax to the extent of Rs. 6142669/- (Service Tax of Rs. 5854168/- + Education Cess of Rs. 22547/- + SHEC of Rs. 11274/- + Swachh Bharat Cess of Rs. 147080/- + Krishi Kalyan Cess of Rs. 107600) not paid/short paid by them should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- b) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- c) Penalty should not be imposed upon them under the provisions of 78 of the Finance Act, 1994.

DEFENCE REPLY

10. No reply to the Show Cause Notice has been received from the said service provider.

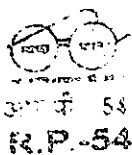
PERSONNE HEARING

11. Personal hearing in the matter was fixed on 27.09.2021, 06.10.2021, 21.12.2021 and 31.01.2022. However neither the assessee nor any representative on behalf of assessee appeared for personal hearing nor filed any intimation for their non-appearance and they have also not filed any defence submission against the notice.

DISCUSSION AND FINDINGS

12. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding further.

13. I have carefully gone through the records of the case and as per the facts available on record I have noted that ample opportunity of personal hearing was given to the said assessee however, they have not availed the same to defend their case. Therefore, I am proceeding to decide the case ex-parte based upon the records available with this office. I find that the show cause notice was served to the assessee as can be seen from the acknowledgement receipt received from the assessee. A photo of the acknowledgment receipt is displayed below.



भारतीय डाक विभाग DEPARTMENT OF POSTS : INDIA



प्राप्ति स्वीकृति / ACKNOWLEDGEMENT

रजिस्ट्री पत्र / पार्सल प्राप्त हुआ
Received Registered Letter/Parcel

क्रमांक / No. तारीख / Dated का / Of

* बीमे का मूल्य रुपये में

* Insured for Ruppees

पाने वाले

Addressed to

का / on

वितरण डाकघर की तारीख-माह
Date stamp of office of delivery

हस्ताक्षर और नाम / Signature and Name

*अनावश्यक को काट दिया जाए
Strike out if not relevant

14. I find that the service provider was given three opportunities of personal hearing but the letter of personal hearing letter addressed to them on the same address to which the notice was addressed. As the service provider was given three opportunities of personal hearing, but they failed to encash any of this opportunity, nor they filed any submissions, I am therefore bound to decide the case on the basis of the available facts on record.

15. As per SCN the said service provider is registered with department and were providing taxable services. On receipt of the data from CBDT, it was noticed that the service provider had declared different values in their Service Tax Returns (ST-3) as compared to the figures mentioned in their Income tax return (ITR/Form 22AS) for the financial year 2014-15, 2015-16 & 2016-17. They had declared less taxable value in their Service Tax return (ST-3) for the financial year 2014-15, 2015-16 & 2016-17 in comparison to the taxable value declared in their ITR/Form 22AS, and they also failed to submit any documents or details explaining such difference nor responded to the correspondence made in this regard.

16. The Service tax payable is arrived at on the basis of value of "sales of services" shown in the ITR-5/26AS for the Financial year 2014-15, 2015-16 & 2016-17. By considering the said amount as taxable income, the service tax liability is calculated. The same is tabulated in Table supra. Since, the assessee has not submitted any reasons to clarify the difference in taxable value, therefore, no further verification could be done in the matter. According to Section 67 of the Finance Act, 1994 as amended from time to time where service tax is chargeable on any taxable service with reference to its value, then such value shall be the gross amount charged by the service provider (subject to abatements prevailing) for such service provided or to be provided by him. The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service. Thus, the value to be considered for calculation of service tax is the gross amount charged for providing the taxable services.

17. In view of facts stated hereinabove, the Value of Services declared in ITR filed by the assessee for Financial Year F.Y. 2014-15, 2015-16 & 2016-17 is considered as the taxable Value of Services provided and since the said notice has not provided any details/data and the reasons for non-payment of service tax, therefore, the exact Service Tax liability cannot be adjudged. Therefore, for calculation and demand of the Service Tax under this notice, the Value of Services declared in ITR filed by the notice has been considered for Non-Payment of Total Service Tax, which comes to Rs.61,42,669/- including cess for Financial Year F.Y. 2014-15, 2015-16 & 2016-17 as tabulated in the Table.

18. It is provided under section 68 of the Finance Act, 1994 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 assessee had not paid service tax as worked out above in Table-A.

19. 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 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 provided by him, as discussed above, as they failed to file ST-3 Returns and thereby violated the provisions of Section 70(1) of the Act read with Rule 7 of the Service Tax Rules, 1994. From the foregoing paras and discussion made herein above, I find that the assessee has contravened the provisions of -

- (i) *Section 67 of the Finance Act, 1994 in as much as they have failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the SCN period;*
- (ii) *Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as-much-as they failed to make payment of service tax during the SCN period, to the credit of the Government account within the stipulated time limit;*
- (iii) *Section 70 of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value and to file correct ST-3 returns during the SCN period.*

20. The government has from the very beginning placed full trust on the service tax assessee so far as service tax is concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of the service tax assessee; therefore, the governing statutory provisions create an absolute liability, when any provision is contravened or there is a breach of trust, on the part of service tax assessee, no matter how innocently. From the information/data received from CBDT, it appeared that the assessee has not discharged service tax liability in spite of declaring before Income Tax Department. Non-payment of service tax is utter disregard to the requirements of law and the breach of trust deposited on them which is outright act of defiance of law by way of suppression, concealment & non-furnishing value of taxable service with intent to evade payment of service tax. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts. Therefore, service tax not paid by the assessee worked out in Tables supra for financial Year F.Y. 2014-15, 2015-16 & 2016-17 is required to be recovered from them under Section 73 (1) of Finance Act,

1994 by invoking extended period of five years under the proviso to Section 73(1) of the Finance Act, 1994.

21. Further, 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, I find that the assessee is liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

22. I further find that on account of all the above narrated acts of commission and omissions on the part of the service provider, they have rendered themselves liable to penalty under the provisions of the Section 78 Finance Act, 1994, as amended in as much as they have mis-stated the taxable value of the services provided/received by them and they have, knowingly and willfully not paid the correct amount of Service Tax leviable on such amount.

23. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part of the assessee has 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 the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years along with applicable interest. All these acts of contravention of the provisions of Section 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 on part of assessee have rendered them for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time.

24. In view of the above facts and findings, I pass the following order.

ORDER

1. I confirm the demand of Service Tax of Rs.61,42,669/- (including cess) (Rupees Sixty One Lakh Forty Two Thousand Six Hundred Sixty Nine only), which was short paid during the period from 2014-15, 2015-16 & 2016-17 as per Table supra and order to recover from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994;
2. I confirm the demand of Interest at the appropriate rate and order to recover from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;
3. I impose Penalty of Rs.5814784/- under Section 78 of the Finance Act, 1994, as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s. Khevna Infrastructure, pays the amount of Service Tax as determined at Sl. No. (1) above and interest payable thereon at (2) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Khevna Infrastructure, shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

(R.GULZAR BEGUM)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North

F.No. STC/15-77/OA/2020

Dt. 21/3/22

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-VI, Central Excise & CGST, Ahmedabad North.
3. The Supdt, Range-V, Division-VI, Central Excise & CGST, Ahmedabad North
4. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
5. Guard File

