



आयुक्त का कार्यालय



OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-68/OA/2020

आदेश की तारीख/Date of Order:-22.03.2022

जारी करने की तारीख/Date of Issue :- 22.03.2022

DIN NO: 20220364WT000092449C

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

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 95/ADC/GB/2021-22

जिस व्यक्ति(यों) (को यह प्रति भेजी जाती है ,उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील ,इसकी प्राप्ति से) 60 साठ (दिन के अन्दर आयुक्त) अपील ,(केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन ,अंबावाड़ी ,अहमदाबाद-380015को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील ,अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क) अपील (नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1)

उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

- (1) Copy of accompanied Appeal.
- (2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice No. STC/15-68/OA/2020 dated 29.09.2020, issued to M/s Interline Roadways, 1, Rajendra Soc., Opp. AMTS Depot., Sabarmati, Ahmedabad-380005.

BRIEF FACTS OF THE CASE :

M/s Interling Roadways, 1, Rajendar Soc., Opp. AMTS, Depot, Sabarmati, Ahmedabad-380005 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.ADVPG4087DST001 and was engaged in providing "Transport of goods by road/goods transport agency service".

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

Sr. No	F.Y.	Taxable Value of services provided as per ST-3 returns (In Rs.)	Difference Between Total Amount paid/Credited from TDS/ITR and Gross Value in Service Tax Provided or Higher value of Difference Between Total Amount paid/Credited from TDS/ITR and Gross Value in Service Tax Provided, as applicable(In Rs.)	Rate of Service Tax (in %)	Resultant Service Tax short paid, including Cess (in Rs.)
1	2014-15	0			
2	2015-16	0	26835060	12.36	3316813
Total		0	16306057	14.50	2364378
			43141117		5681192

3. The letters dated 13.02.2018, 03.05.2018, 30.09.2019 and 06.07.2020 were issued to the assessee for clarification. But, no clarification was submitted by the assessee till date. And since the said noticee has not provided any details/data for such difference, the reasons for such difference cannot be ascertained and therefore, the exact Service Tax liability cannot be adjudged. Therefore, for calculation and demand of the Service Tax under this notice, the maximum amount of difference between (i) Value of Services declared in ITR filed by the notice & Value of Services provided as per Service Tax Returns or (ii) Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' & Value of Services provided as per Service Tax Returns i.e. the highest difference between these two is considered and the highest applicable rate is applied for Non-Payment/Short-Payment of Service Tax (Including Cess) for Financial Year 2014-15 and 2015-16. The same is worked out as shown in above table.

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.56,81,192/- (Including Cess), 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 and 2015-16. 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.56,81,192/- (Including Cess). 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. Interling Roadways, 1, Rajendar Soc., Opp. AMTS, Depot, Sabarmati, Ahmedabad-380005 is called upon to show cause to the Additional/Joint Commissioner, Central GST & Central Excise, Ahmedabad North having office at 1st Floor, Customs House, Near All India Radio, Ashram Road, Navrangpura, Ahmedabad-380009 as to why :

- (i) The demand for Service tax to the extent of Rs.56,81,192/- (Including Cess) (Rupees Fifty six lakh eighty one thousand one hundred and ninety two Only) short paid /not paid by them, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty should not be imposed upon them for late filling of ST-3 Returns under the provisions of Section 70 of the Finance Act, 1994, if any

DEFENCE REPLY :

7. The assessee vide letter dated 08.11.2020 has submitted their defence reply wherein they stated that the allegations made in the Show Cause Notice is baseless and stated that they have not evaded any payment of Service Tax; that the assessee firm is proprietary firm and Shri Vimalkumar Hiralal Gupta is the proprietor of the said firm; that the assessee is engaged in the business of transport of goods; that their services are covered under negative list inter alia vide entry No.. 66(D) (p)(i); that definition of Goods Transport agency is provided in Section 65(50b) of Finance Act, 1994; that vide notification NO. 30/2012 ST dated 20.06.2012 shifted liability to pay Service Tax on Service Recipient; that contention discussed supra covering the legal provision of the Finance Act, 1994, it is cleared that the liability is on the person receiving the service and not on the person who provides services and therefore they are not liable to pay Service Tax; that since they are not liable to pay Service Tax, question of penalty under Section 78, Interest under Section 75 can not be imposed; that they attach Notification , Income Tax Returns and sample self certified copy of consignment note/ lorry receipts.

PERSONNEL HEARING :

8. Personnel Hearing in the matter was granted to the assessee wherein Kiran L. Vithlani, Advocate and authorized representative appeared for personnel hearing. They reiterated the written submission and requested to drop all further proceedings.

DISCUSSIONS AND FINDINGS :

9.1 I have carefully gone through the records of the case, submission made by the noticee in reply to the show cause notice, Form 26AS, Balance sheet for the year 2014-15, 2015-16. In the present case, Show Cause Notice was issued to the noticee demanding Service Tax of Rs. 56,81,192/- for the financial year 2014-15, 2015-16, on the basis of data received from Income Tax authorities. The assessee is registered under Service Tax having registration No. ADVPG4087DST001. 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(1), 77(2) and 78 of the Finance Act, 1994. The assessee submitted that they are providing transportation of goods by road and submitted that they are provided service to those person on which the service recipient is liable to pay service tax. Based on the details received from Income tax department and comparing the receipt shown in Form 26AS with ST-3 returns filed by the them, the show cause notice alleges that they have short paid service tax of Rs. 56,81,192/-.

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

(d) "person liable for paying service tax", -

(i) (B) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(III) any co-operative society established by or under any law;

(IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under;

(V) any body corporate established, by or under any law; or

(VI) any partnership firm whether registered or not under any law including association of persons; any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage : Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

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

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under;

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not under any law including association of persons;

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

TABLE

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

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

9.4 On perusal of reconciliation statement, ledger accounts and financial records, I find that the assessee has income of Rs. 2,68,35,060/- and Rs. 1,63,06,057/- for the year 2014-15 and 2015-16 respectively from GTA services provided to corporate body/ Pvt. Limited i.e other than the Individual.

9.5 As per provisions contained in Rule 2(d)(B) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, service tax on GTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) or a dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder is payable in RCM by the service recipient. The Noticee has claimed RCM tax liability under above categories in reconciliation .e Ledger for truck fair income indicating party wise service provided to body corporate and the partnership firms and total of such separate sheet matches with value taken in reconciliation statement. Therefore, in the above backdrop I accept bifurcation of GTA service provided by noticee to the body corporate and the partnership firms and the GTA service provided by the noticee to above extent are liable to be paid in RCM by the service recipients.

Description	2014-15	2015-16
Total income as per ITR and SCN	2,68,35,060/	1,63,06,057/
Total income declared as per ST3	00	00
Differential value on which service tax demanded	2,68,35,060/	1,63,06,057/-
GTA services provided to body corporate/Pvt. Ltd. etc under RCM	2,68,35,060/	1,63,06,057/-
Difference	00	00
Service Tax	00	00

9.5 On perusal of the records of the case, submissions of the assessee, Audited Balance Sheet, ITR, copies of ledger accounts and the ledger / reconciliation statement for the year 2014-15, 2015-16 , I find that the assessee has income of Rs. 2,68,35,060/- and Rs. 1,63,06,057/- for the year 2014-15 and 2015-16 respectively from GTA services provided to corporate body/ Pvt. Limited i.e other than the Individual earned by way of providing services to to body corporate/Pvt. Ltd. Etc., and the liability to service tax falls upon the service receiver as per Notification No.30/2012 and therefore the aseeseee i.e service provider is not required to pay service tax on the said amount. In view of the above the service tax demand on the differential amount of Rs.4,31,41,117/- for the year 2014-15 and 2015-16 is not sustainable and therefore the demand of service tax of Rs.56,81,192/- is liable to be dropped.

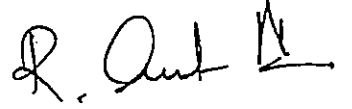
10. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, ITR , ledger/reconciliation statement, I find that the service tax demand of Rs.56,81,192/- for the period 2014-15 & 2015-16 is not sustainable and accordingly Show Cause Notice dated 29.09.2020 is liable to be dropped.

Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty upon noticee on this count.

Accordingly, I pass the following order;

ORDER

11. I hereby order to drop proceedings initiated against M/s Interling Roadways, 1, Rajendar Soc., Opp. AMTS, Depot, Sabarmati, Ahmedabad-380005 for recovery of service tax of 56,81,192/- along with interest and penalties vide SCN No. STC/15-68/OA/2020 dated 29.09.2020.



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

F.No. STC/15-68/OA/2020

Dated-22.03.2022

To
M/s Interling Roadways,
1, Rajendar Soc.,
Opp. AMTS, Depot,
Sabarmati, Ahmedabad-380005

Copy for information to:

1. The Commissioner, CGST & CX, Ahmedabad North.
- 2.. The Dy. /Assistant Commissioner, DIV-VII, CGST & CX, Ahmedabad North.
3. The Superintendent, Range-V, Division-VII, CGST & CX, Ahmedabad North
4. The Superintendent, Systems, CGST & CX, Ahmedabad North
- ✓5. Guard File.

