



OFFICE OF THE COMMISSIONER OF C. G. S. T.,
AHMEDABAD - SOUTH.

प्रधान आयुक्त का कार्यालय, के. व. से. क., अहमदाबाद दक्षिण
G. S. T. BHAVAN, AMBAWADI, AHMEDABAD - 380 015
व. से. क. भवन, आम्बावाड़ी, अहमदाबाद - ३८००१५

F. No. : STC/04-15/O&A/Vijaya/21-22
DIN No. : 20221264WS000000B197

आदेश की तारीख: Date of Order : 01.12.2022
जारी करने की तारीख: Date of Issue : 01.12.2022

द्वारा पारित / Passed by: *Shri Marut Tripathi, JOINT COMMISSIONER*

मूल आदेश सं./Order-In-Original No.50/CGST/Ahmd-South/JC/MT/22-23

यह प्रति उस व्यक्ति (यों) को, जिसके (जिनके) लिए यह आदेश जारी किया गया है, उनके (उनके) व्यक्तिगत उपयोग के लिए नि:शुल्क प्रदान की जाती है।

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यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त (अपील), केन्द्रीय जीएसटी, केन्द्रीय जीएसटी भवन, आम्बावाड़ी, अहमदाबाद-15 को प्रारूप इ.ए.-1 में अपील कर सकता है। उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए। इसपर रुपए 2.00/- केवल का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this order in Form E.A.1 to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील दो प्रतियों में प्रारूप सं. इ.ए.-1/S.T.-4 में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001 के नियम 3 के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए। इसके साथ निम्नलिखित को संलग्न किया जाए:

The Appeal should be filed in form No. E.A.-1/S.T.-4 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be accompanied with the following:

उक्त अपील की प्रति।

Copy of the aforesaid appeal.

निर्णय की दो प्रतियाँ (उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील की गई है) अथवा उक्त आदेश की अन्य प्रति जिसपर रु 2.00/- का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

Copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरुद्ध आयुक्त (अपील) में शुल्क के 7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती 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."

संदर्भ/Reference : कारण बताओ सूचना फा. सं. F. No. STC/04-15/O&A/Vijaya/21-22. issued to M/s Vijaya Logistics, 24 O Om Shanti Nagar-2, Near Bhamria Kuva, Vatva-Lambha Road, Lambha, Ahmedabad- 382405.

Brief facts of the Case:-

Whereas, M/s VIJYA LOGISTICS, 24 O OM SHANTI NAGAR-2, NEAR BHAMRIA KUVVA, VATVA-LAMBHA ROAD, LAMBHA, AHMEDABAD-382405, (hereinafter referred to as the 'Service Provider' for the sake of brevity) is registered under Service Tax having Registration No.-BERPP1177FSD001.

2. As per the information received from the Income Tax Department, M/s Vijya Logistics had earned substantial service income, however, however, they have not paid service tax on actual sale of services thereon.

3. Therefore, The clarification along with documents related to service income for the period 2015-16 to June-2017 were called for from the Service Provider for assessment purpose, vide letter dated 27.01.2020 and 28.09.2020 and summon dated 01.04.2021. However, the said Service Provider failed to submit the required details/documents or offer any explanation/clarification regarding income earned by them.

4. Further, the Income Tax Department shared the data for the Financial Year 2015-16 and 2016-17. As per the data provided by the Income Tax Authority, income earned by the said Service Provider is as under:-

Sr. No.	Period (Fin. Year)	Income earned in Rs.	Business description (Service Sector)
1	2015-16	2,62,64,904/-	Service Sector [Transporters]
2	2016-17	3,00,31,823/-	

However, they have been filed the return for the period October-2015 to March-2016 on 23.04.2016.

5. According to Section 70 of the Finance Act, 1994 read with Rule 7(1) of the Service Tax Rules, 1994, *every person liable to pay Service Tax shall himself assess the tax due on the services provided by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all materials facts in ST-3 returns.*

6. As per provision of Section 68 of Finance Act, 1994 read with Rule 6 of Service Tax Rule 1994 as amended, *every person providing taxable service to any person is liable to pay Service Tax at the rate prescribed in Section 66B to Central Government by the 5th of the month/ quarter immediately following the calendar month/ quarter in which the taxable service is deemed to be provided (except for the month of March which is required to be paid on 31st March).*

7. Since the said Service Provider had failed to submit the required details of services provided during the Financial Year 2015-16 to June-2017 till date, the service tax liability of the Service Provider was required to be ascertained on the basis of income mentioned in the ITR returns and Form 26-AS filed by the said Service Provider 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 67A of the Finance Act, 1994 as the said Service Provider failed to determine the correct taxable value.

8. The Service tax payable is calculated on the basis of value of "sales of services under Sales/Gross Receipts from Services (Value from ITR)" as provided by the Income Tax Department for the Financial Year 2015-16 and 2016-17. By considering the said amount as taxable income, and as the said Service Provider failed to submit the required details as per above referred letter, the service tax liability is calculated as under:-

Table-A

F.Y	Taxable Value as per ITR	Value declared in ST-3	TOTAL VALUE for TDS(including 194C,194Ia,194Ib,194J,194H)	HIGHER VALUE(VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Service Tax (at 14.5% for 2015-16 and 15% for 2016-17) payable
2015-16	26264904	0	4286897	26264904	3808411
2016-17	30031823	0	4223257	30031823	4504773
				Total	8313184

9. It appears that the said Service Provider had neither filed a correct Service Tax ST-3 return for the services provided by them for the period of F.Y. 2015-16 and 2016-17, nor responded to correspondence made with them and concealed the value from the department, declared to the income tax department. Therefore, it appears that the said Service Provider had not paid correct service tax by way of willful suppression of facts to the department in contravention of provision of the Finance Act, 1994 relating to levy and collection of service tax and the Rules made there under, with intent to evade payment of service tax. Therefore, the service tax amounting to Rs. 8313184/- is recoverable from them by invoking extended period of five years under first proviso to sub-section (1) of Section 73 of Finance Act, 1994 along with interest at the prescribed rate under Section 75 of the Finance Act, 1994 and also rendered himself liable for penal action under Section 77 and 78 of Finance Act, 1994.

10. Whereas, with respect to issuance of un quantified 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.'

11. 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 Financial year 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 service provider has also failed to provide the required information even after the issuance of letters/summon from the Department. Therefore, the assessable value for the year 2017-18 (upto June-2017) is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said service provider, action will be initiated against the said service provider 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 2015-16, 2016-17 and 2017-18 (upto June-2017) not covered under this Show Cause Notice, will be recoverable from the service provider accordingly.

12. It further appears that on account of all the above narrated acts of commission and omissions on the part of the said service provider, they have rendered themselves liable to penalty under the following proviso of the Finance Act, 1994 and Rules framed there under:-

➤ Section 70 and Section 77 of the Finance Act, 1994 as amended in as much as they failed to correctly self assess the tax due on the services provided and have not filed/not filed correct ST-3 return and contravened the provisions of Service Tax laws and did not comply to the letter issued by the Department and did not provide the required information/documents.

➤ Section 78 of the Finance Act, 1994, in as much as they have suppressed the material facts from the department about service provided and value realized by them with intent to evade payment of service tax.

13. Section 70 of the Finance Act, 1994 stipulates that every person liable to pay the Service Tax shall himself assess the tax due. The Government has introduced self-assessment system under a trust based regime which casts the onus of proper assessment and discharging of the Service Tax on the Service Provider. The definition of "assessment" available in Rule 2(b) of Service Tax Rules, 1994 is reproduced as under:-

"Assessment" includes self assessment of service tax by the assessee, re-assessment, provisional assessment, best judgment assessment and any order of assessment in which the tax assessed is nil; determination of the interest on the tax assessed or re-assessed."

14. In view of discussion in the fore going paras, it appears that all the above acts of suppression of facts, misstatement and contravention, omissions and commissions are on the part of said service provider that they have willfully suppressed the facts, nature and value of service provided by them by not assessing and paying due Service Tax liability, therefore, the above said amounts of Service Tax of Rs. 8313184/- (Non-payment of Service Tax for the period 2015-16 and 2016-17 on Income from taxable service provided by them), and Late fee (Non filing of Service Tax returns) for the above period is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years for the reasons stated herein foregoing paras. In view of the facts discussed in foregoing paras and material evidence available on record, it appears that the said service provider have contravened the provisions of Section 66B of the Finance Act, 1994, Section 68 of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules, 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as that they failed to determine; collect and pay Service Tax amounting to Rs. 8313184/- (including EC, SHEC, SBC & KKC) for the period 2015-16 and 2016-17 as detailed above and they have failed to declare value of taxable service to the department and thus suppressed the amount of charges received by them for providing taxable services as detailed above.

15. Therefore, M/S VIJYA LOGISTICS, 24 O OMSHANTINAGAR-2, NEAR BHAMRIA KUVA, VATVA-LAMBHA ROAD, LAMBHA, AHMEDABAD, were called upon vide Show Cause Notice F.No.: STC/4-14/O&A/Vijay/21-22 dated 21.04.2021, to show cause to the Joint Commissioner, Central GST, Ahmedabad South having his office situated at 7th Floor, GST Bhavan, Revenue Road, Ambawadi, Ahmedabad-380015 as to why:-

i) Service Tax of Rs. 8313184/- which was not paid for the F.Y.2015-16 and 2016-17 as per Table-A in para-8 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994;

ii) Interest at the prescribed rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at above under Section 75 of the Finance Act, 1994;

iii) Prescribed late fee, should not be recovered from them for each S.T.-3 return filed late, for the relevant period, under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 and

iv) Penalty should not be imposed under Section 77 of the Finance Act, 1994.

v) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994, for non-payment of Service Tax by willfully suppressing the facts from the department with intent to evade the payment of Service Tax as explained herein above.

Defence submission:-

16.1 The said service provider submitted their submission vide letter dated 07.11.2022 and the same is as under:-

I Shashikumar S Pandey proprietor of Vijay Logistics is in receipt of SCN demanding duty of Rs. 8313184/- which is not legally sustainable since service provided by us is exempted by virtue of notification No. 25/2012 & 30/2012 service tax dated 20.06.2012. It is bring to your kind notice that we are engaged in providing service of our vehicle i.e. Truck, trailer to another transporter as demanded. To support our contest, we are submitting herewith Freight register for the period 20115-16 & 2016-17 from which you can verify that we had provided the service only to other transporter & Limited, Private limited & partnership firm.

We had submitted all the documents before, we only provide service to GTA to GTA & RCM hence we are not liable for service tax, and we do not wish to have PH so we request you to drop SCN.

The government has extended exemption to the said service vide entry no. 22 in the notification No. 25/2012 service tax dated 20.06.2022 which is produced below

22. Services by way of giving on hire-

(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or

(b) to a GTA, a means of transportation of goods;

The government has extended exemption to the said service vide entry no. A in the notification No. 23/2012 service tax dated 20.06.2012 which is produced below:-

(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;

From above it is clear that whatsoever service provided by us is exempted by Notification No. 25/2012 & 30/2012 Service tax dated 20.06.2012. Accordingly we are not liable to pay service tax. Hence, it is requested to drop SCN in the natural justice.

16.2 Along with written submission dated 07.11.2022 the service provider submitted the following documents:-

1. Audited Balance sheet and Profit & Loss Account for Assessment Year 2016-17 & 2017-18;
2. Sales register for Financial Year 2015-16 & 2016-17;
3. Form 26AS for Assessment Year 2016-17 & 2017-18 and
4. ST-3 returns for period April-September & October- March for Financial year 2015-16 & 2016-17.
5. Statement showing Freight Summary as under:-

Particulars	Year 2015-16	Year 2016-17
Service Supply to Body Corporate	2,07,99,985/-	2,40,91,650/-
Service Supply to Partnership firm	30,73,370/-	21,30,385/-
Service Supply to GTA	22,64,049/-	36,09,285/-
Service Supply to other (Tax payable)	1,27,500/-	2,00,503/-
Total	2,62,64,904/-	3,00,31,823/-

Record of Personal Hearing :-

17 Shri Basant Sharma, Tax Practitioner appeared on 18.11.2022 on behalf of said assessee for personal hearing and stated that party works with body corporate, Partnership firm & GTA which are exempted as per Notification No. 25/2012 and 30/2012-ST dated 20.06.2012.

Discussion and Findings:-

18.1 I have carefully gone through the case record, submission made by the service provider, documents submitted by the service provider and records of personal hearing.

18.2 In the instant case I find that on the basis of information/data received from the Income Tax Department, a Show Cause Notice bearing No. STC/04-15/O&A/Vijay/21-22 dated 21.04.2021 was issued to the service provider alleging that the service provider had failed to pay service tax amounts to Rs. 38,08,411/- on taxable value of Rs. 2,62,64,904/- and Rs. 45,04,773/- on taxable value of Rs. 3,00,31,823/- for the Financial year 2015-16 and 2016-17 respectively. Therefore, in the said Show Cause Notice a demand and recovery of service tax amount of Rs. 83,13,184/- had been proposed under sub-section (1) of Section 73 of the Finance Act, 1994; demand of interest under Section 75 of the Finance Act, 1994 had been proposed; Penalty under Section 77 and 78 of the Finance Act, 1994 has been proposed; late fee under Rule 7C of the Service Tax Rules, 2002 read with Section 70 of the Finance Act, 1994 for delay submission of Service Tax Returns has been proposed.

18.2.1 I also find that the service provider in their defence submission and during personal hearing has denied the entire allegation made in the said Show Cause Notice and has claimed the benefit of the exemption Notification No. 25/2012-ST dated 20.06.2012 and Notification No. 30/2012-ST dated 20.06.2012.

18.3 In view of Para 18.2 and 18.2.1 above, I have to decide whether (i) the service provider is liable to pay service tax or otherwise & (ii) the service provider is entitled for the benefit of the exemption Notification No. 25/2012-ST dated 20.06.2012 and Notification No. 30/2012-ST dated 20.06.2012.

18.4 Now I would like to go through the legal aspects of the taxability of GTA services.

18.4.1 The relevant extract of the Rule 2(d)(i)(B) of the Service Tax Rules, 1994 provided that;

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

(i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,

(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.

18.4.2 The relevant extract of second proviso of Rule 4A and Rule 4B of Service Tax Rules, 1994 as amended is reproduced below:-

Second proviso of Rule 4A

[Provided further that in case the provider of taxable service is a goods transport agency, providing service to any person, in relation to transport of goods by road in a goods carriage, an invoice, a bill or, as the case may be, a challan shall include any document, by whatever name called, which shall contain the details of the consignment note number and date, gross weight of the consignment and also contain other information as required under this subrule.

Rule 4B

4B. Issue of consignment note.- Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the recipient of service:

Provided that where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note [to the recipient of service].

Explanation.- For the purposes of this rule and the second proviso to rule 4A, "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.

18.4.3 The relevant extract of Notification No. 25/2012-Service Tax dated 20.06.2012 is reproduced below:-

21. *Services provided by a goods transport agency by way of transportation of—*

(a) *fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;*

(b) *goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or*

(c) *goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;*

22. *Services by way of giving on hire - (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or*

(b) *to a goods transport agency, a means of transportation of goods;*

18.4.4 The relevant extract of Notification No. 30/2012-Service Tax dated 20.06.2012 is reproduced below:-

(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

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

18.5 In view of foregoing para 18.4.1 & 18.4.2, I find that the person who is liable to pay freight will be liable to pay service tax and therefore establishment for liability of payment of freight to ascertain the liability of payment of service tax is mandatory in terms of Rule 2(d)(i)(B) of the Service Tax Rules, 1994. However, I find that in the instant case the service provider has not substantiated with documentary evidence like consignment note or lorry receipt etc. at any point of time to establish that by whom freight had been paid. Therefore, the benefit of the exemption notification for the services provided to body corporate and partnership firms by the service provider cannot be extended without fulfillment of legal requirements, without undertaking necessary verification, without appreciation of requirements and fulfillment of legal provisions.

18.6 Further, I also find that the service provider has claimed the benefit under Sr. No. 22(b) of exemption Notification No. 25/2012-ST dated 20.06.2012, wherein it is mentioned that *Services by way of giving on hire to a goods transport agency, a means of transportation of goods*. In the present case, I also find that the service provider has never substantiated with documentary evidence like agreement or any other documents at any point of time to establish that to whom they have provided their vehicles on hire or rent.

18.7 On going through the ST-3 returns for period April-September' 2015-16; October-March' 2015-16; April-September' 2016-17 and October- March' 2016- 2017, I find that the service provider has never disclosed value of claim of exemption under Notification 25/2012-ST dated 20.06.2022 and Notification No. 30/2012-ST dated 20.06.2022 in their such ST-3 returns, what have claimed in their defence submission. Moreover, I also find that the service provider in their defence submission has submitted the statement of summary of freight as mentioned above at para 16.2, wherein they have self declared that they were liable to pay service tax on value of Rs. 1,27,500/- and Rs. 2,00,503/- for FY 2015-16 & 2016-17 respectively, however they had never disclosed even though in their Service Tax returns as filed for period April-September' 2015-16; October- March' 2015-16; April-September' 2016-17 and October- March' 2016-2017.

18.7.1 Therefore, from the foregoing paras 18.5, 18.6 and 18.7, I find that the service provider is not entitled for benefit of exemption Notification No. 25/2012-ST dated 20.06.2022 and Notification No. 30/2012-ST dated 20.06.2022.

19. Further, I also find that the service provider had not provided any sales ledger/register for the period of 2015-16 and 2016-17 to the investigating authority hence demand of service tax was calculated by the Show Cause Notice issuing authority at rate of 14.5% for the F.Y. 2015-16 that arrived to Rs.83,13,184/- on taxable value of Rs. 5,62,96,727/-. However, during the adjudication, the service provider has provided freight receipt register for the F.Y. 2015-16 and F.Y. 2016-17. Liability of Service Tax has been re-calculated as per the freight receipt register provided by the service provider that arrived to Rs. **81,66,810/-** (Rs. 1,46,374/- less than the demand made in Show Cause Notice). The service tax liability is worked out as under:

Year	Period as per lorry receipt	Value of Service	Rate of service tax %	Tax Liability
2015-16	01.04.15 to 31.05.15	27,33,820/-	12.36%	3,37,900/-
	01.06.15 to 14.11.15	1,24,77,338/-	14%	17,46,827/-
	15.11.15 to 31.03.16	1,10,53,746/-	14.50%	16,02,794/-
	Total Amount in Rs.	2,62,64,904/-		36,87,521/-
2016-17	01.04.16 to 31.05.16	50,96,870/-	14.50%	7,39,046/-
	01.06.16 to 31.03.17	2,49,34,953/-	15%	37,40,243/-
	Total Amount in Rs.	3,00,31,823/-		44,79,289/-
Sub- total (Amount in Rs.)		5,62,96,727/-		81,66,810/-

20. It is on record that 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 Financial year 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 service provider has also failed to provide the required information even after the issuance of letters/summon from the Department. Therefore, the assessable value for the year 2017-18 (upto June-2017) is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said service provider, action will be initiated against the said service provider 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 2015-16, 2016-17 and 2017-18 (upto June-2017) not covered under this Show Cause Notice, will be recoverable from the service provider accordingly.**

21. Further, I find that the said Service Provider had neither filed a correct Service Tax ST-3 return for the services provided by them for the period of F.Y. 2015-16 and 2016-17, nor responded to correspondence made with them and concealed the value from the department, declared to the income tax department. Therefore, the said Service Provider had not paid correct service tax by way of wilful suppression of facts to the department in contravention of provision of the Finance Act, 1994 relating to levy and collection of service tax and the Rules made there under, with intent to evade payment of service tax. Therefore, the demand of service tax amounting to Rs.81,66,810/- from them by invoking extended period of five years under first proviso to sub-section (1) of Section 73 of Finance Act, 1994 along with interest at the prescribed rate under Section 75 of the Finance Act, 1994 is legal and sustainable.

22. Further, I find that all the acts of suppression of facts i.e non reflecting of correct value of service provided by them in their Service Tax Returns or non providing of correct information at any point of time, omission and commission committed on the part of the service provider with intent to evade payment of service tax to the tune of Rs. 81,66,810/- on taxable value of Rs. 5,62,96,727/- for Financial Year 2015-16 and 2016-17 rendered themselves liable for penal action under Section 78 of the Finance Act, 1994. Therefore, I find that the penal action proposed under Section 78 of the Finance Act, 1994 in show cause notice is legal and sustainable. Moreover, I also find that the service provider has contravened the provisions of Section 66B, 67 and 68 of the Finance Act, 1994, in as much as they had failed to correctly self assess their service tax liability and had failed to pay the correct service tax to the Government rendered themselves liable for penal action under Section 77 of the Finance Act, 1994. Therefore, I find that the penal action proposed under Section 77 of the Finance Act, 1994 in the show cause notice is legal and sustainable.

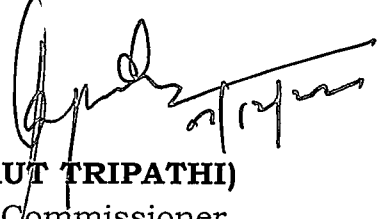
23. I also find that the service provider had failed to file their ST-3 returns for period October-March' 2016-17 within prescribed time frame and has filed the same 111 days delay as well as they had failed to pay late fees as prescribed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994. Therefore, I find that the demand of late fee proposed in show cause notice is legal and sustainable.

24. In view of above discussion, I pass the following order.

ORDER

- i) I order to recover Service Tax amounting to Rs.81,66,810/- (**Rupees Eighty one lakhs sixty six thousands eight hundred and ten only**) which was not paid for the F.Y.2015-16, 2016-17, from M/s VIJYA LOGISTICS, 24 O OM SHANTI NAGAR-2, NEAR BHAMRIA KUVA, VATVA-LAMBHA ROAD, LAMBHA, AHMEDABAD-382405 under proviso to Sub-section (1) of Section 73 of Finance Act, 1994 and drop the demand of Rs. 1,46,374/- (Rs. One Lakh forty six thousands three hundred seventy six only) in as much as the reason elaborated at Para 19 above;
- ii) I order to recover interest at the prescribed rate from M/s VIJYA LOGISTICS, 24 O OM SHANTI NAGAR-2, NEAR BHAMRIA KUVA, VATVA-LAMBHA ROAD, LAMBHA, AHMEDABAD-382405 for the period of delay of payment of service tax mentioned above at Sr. (i) under Section 75 of the Finance Act, 1994;
- iii) I order to recover late fee of Rs.20,000/-under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 for delayed submission of ST-3 returns for the period of October 2016 to march 2017. in terms of discussions held at above mentioned para of the order.
- iv) I Impose a penalty of Rs. 41,400/- (Rupees Forty One Thousand Four Hundred only) on from M/s VIJYA LOGISTICS, 24 O OM SHANTI NAGAR-2, NEAR BHAMRIA KUVA, VATVA-LAMBHA ROAD, LAMBHA, AHMEDABAD-382405.

- v) I impose a penalty Rs.81,66,810/- (**Rupees Eighty one lakhs sixty six thousands eight hundred and ten only**) which was not paid for the F.Y.2015-16, 2016-17, from M/s VIJYA LOGISTICS, 24 O OM SHANTI NAGAR-2, NEAR BHAMRIA KUVA, VATVA-LAMBHA ROAD, LAMBHA, AHMEDABAD-382405 under Section 78 of the Finance Act, 1994 for non payment of service tax by wilful suppressing the facts from the department with intent to evade the payment of service tax explained hereinabove.



(MARUT TRIPATHI)

Joint Commissioner,
CGST & Excise, Ahmedabad South,
Ahmedabad.

BY SPEED POST AD/HAND DELIVERY

F.No. STC/4-14/O&A/Vijay/21-22

Date: 01.12.2022

DIN: 202226WS00000B197

To,

M/s VIJYA LOGISTICS,
24 O OM SHANTI NAGAR-2, NEAR BHAMRIA KUVA,
VATVA-LAMBHA ROAD, LAMBHA, AHMEDABAD-382405

Copy to:

- 1) The Principal Commissioner, CGST, Ahmedabad South.
- 2) The Deputy Commissioner, Central GST, Div-IV, Ahmedabad South.
- 3) The Assistant Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South
- 4) The Superintendent, Range-IV, CGST, Div-IV, Ahmedabad South.
- ✓ 5) The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website.
- 6) Guard file.