



प्रधान आयुक्त का कार्यालय,  
**Office of the Principal Commissioner,**  
केंद्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय  
Central GST , Commissionerate- Ahmedabad South,  
चौथी मंजिल, अम्बावाड़ी अहमदाबाद ३८००१५.  
4<sup>th</sup> Floor, GST Bhavan, 380015



फा.सं. STC/4-20/O&A/Preet/21-22

DIN- 20221264WS000000DE51

आदेश की तारीख: Date of Order: 14.12.2022

जारी करने की तारीख: Date of Issue : 14.12.2022

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

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**मूल आदेश सं./Order-In-Original No.: 53/CGST/Ahmd-South/JC/MT/2022-23**

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यह प्रति उस व्यक्ति लिए (जिनके) जिसके ,को (यों) यह आदेश जारी किया गया है ,उसके (उनके) व्यक्तिगत उपयोग के लिए निःशुल्क 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 भवनअहमदाबाद ,आंबावाड़ी , -को प्रारूप 15 एस.टी.-4 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 -/2.00केवल का न्यायालय शुल्क टिकट लगा होना चाहिए ।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **S.T.4** 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 .एस.टी.-4 में दाखिल की जानी चाहिए । उसपर केन्द्रीय उत्पाद शुल्क 2001 ,नियमावली (अपील)के नियम के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए । इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. 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 -/2.00 अथवा उक्त आदेश की अन्य प्रति जिसपर रु (का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

Two 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 में शुल्क के (अपील)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. STC/4-20/O&A/Preet/21-22 dated 21.04.2021,M/s Preet Logistics,47 Vasant Vihar, CO OP Housing Society, Opp. Old Naril Court, Nr. Shreeji Bunglows, Narol, Ahmedabad.

## 1. BRIEF FACTS OF THE CASE

1.1 M/s PREET LOGISTICS, 47 VASANT VIHAR CO OP HOUSING SOCIETY OPP OLD NARIL COURT NR SHREEJI BUNGLOWS NAROL AHMEDABAD-382405, (hereinafter referred to as the 'Service Provider' for the sake of brevity) is registered under Service Tax having Registration No.-AOSPP8758ESD001.

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

1.3 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.

1.4 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	17145734/-	Service Sector [Transporters]
2	2016-17	20544481/-	

1.5 However, they have been filed the return for the period October-2015 to March-2016 on 26.04.2016.

## 2. LEGAL PROVISION

2.1 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.*

2.2 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).

### 3. OBSERVATIONS

3.1 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.

3.2 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**

<b>F.Y</b>	<b>Taxable Value as per ITR</b>	<b>Value declared in ST-3</b>	<b>TOTAL VALUE for TDS(including 194C,194Ia,194Ib,194J,194H)</b>	<b>HIGHER VALUE(VALUE DIFFERENCE in ITR &amp; STR) OR (VALUE DIFFERENCE in TDS &amp; STR)</b>	<b>Service Tax (at 14.5% for 2015-16 and 15% for 2016-17) payable</b>
2015-16	17145734	42750	11473196	17102984	2479932
2016-17	20544481	0	14248726	20544481	3081672
				Total	5561604

3.3 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. **5561604/-** 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.

3.4 Whereas, 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.'*

3.5 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 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.**

#### 4. PENAL ACTION

4.1 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.

4.2 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."*

4.3 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. **5561604/-** (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. **5561604/-** (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.

**5** Therefore, M/S PREET LOGISTICS, 47 VASANT VIHAR CO OP HOUSING SOCIETY OPP OLD NARIL COURT NR SHREEJI BUNGLOWS NAROL AHMEDABAD, are hereby called upon 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. 55,61,604/-** (Fifty Five Lacs Sixty One Thousand Six Hundred Four Only) 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.

## **6. DEFENCE REPLY**

6.1 The said service provider vide reply dated 05.11.2022 has intimated that business in the name of Preet Logistics is a proprietorship business and the same was run by Shri Chandrapal H.Poonia, the proprietor. Shri Chandrapal H.Poonia was expired on 18/03/2019. However, Smt santosh Chandrapal Poonia, the wife of Shri Chandrapal H.Poonia, have submitted that Service tax on transportation of goods by road service is liable to be paid on RCM basis under section 68(2) of the act. In addition to the above she has submitted copy of Income Tax return, ITR-4, Form 26AS, self signed copy of Balance Sheet, Profit and Loss Account for F.Y. 2015-16,2016-17 and copy of death certificate of Shri Chandrapal H.Poonia.

## 7. RECORD OF PERSONAL HEARING

7.1 M/s PREET LOGISTICS, have been given chance to be heard in person on 24.10.2022, 07.11.2022 and on 18.11.2022, however no one was appeared for the same.

## 8. DISCUSSIONS & FINDINGS

8.1 I have carefully gone through the records of the case and defence reply submitted by the service provider on 05.11.2022.

8.2 The said service provider was offered an opportunity of personal hearing on the following dates.

Sr.No.	Date of Personal Hearing Offered	Remark
1.	14.10.2022	Returned undelivered with a postal remark "not known"
2.	24.10.2022	Returned undelivered with a postal remark "Left"
3.	07.11.2022	Returned undelivered with a postal remark "Left". Therefore, vide email dated 01.11.2022 the assessee was asked to send the correct details of address along with copy of PH intimation letter. The assessee response submitted defence reply vide letter dated 05.11.2022.
4.	18.11.2022	As per details of postal authority available the letter of PH intimation was delivered to the assessee on 15.11.2022.

8.2.1 Thus, in spite of receipt of PH intimation fixed on 18.11.2022 the assessee neither attended the personal hearing nor submitted any request for the adjournment of the same. Therefore, I find that the assessee is not interested to attend the personal hearing. Hence, I take up the matter for adjudication ex-parte.

8.3 As per the facts available on record, the said service provider has earned substantial service income. However, he did not pay service tax on actual sale of services thereon the details of which are shown as under:

Sr. No.	Period (Fin. Year)	Income earned in Rs.	Business description (Service Sector)
1	2015-16	17145734/-	Service Sector [Transporters]
2	2016-17	20544481/-	

8.4 Therefore on the basis of above details the department has worked out the service tax liability 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	17145734	42750	11473196	17102984	2479932
2016-17	20544481	0	14248726	20544481	3081672
				Total	5561604

8.5 Accordingly, Show Cause Notice has been issued to the service provider demanding Service Tax of Rs. **55,61,604/-** for the financial year 2015-16 to 2016-17.

8.6 In their submission, the assessee have submitted that Service tax on transportation of goods by road service is liable to be paid on RCM basis under section 68(2) of the Finance Act Act,1994 without the support of any documentary evidence.

8.7 For the purpose of taxability of GTA service on RCM basis, I may reproduce the text of Rule 2(d)(B)(V) of the Service Tax Rules, 1994 as under:

(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.

8.7.1 Thus, for the purpose of payment of service tax on RCM basis the service provider is required to fulfil the statutory requirement as per the aforesaid provision of law. However in the present matter the said service provider except their submission that in their matter service tax on transportation of goods by road service is liable to be paid on RCM basis under Section 68(2) of the Finance Act, 1994 has not provided the details of service receivers whether those were falling under the category of (I) to (VI) of the above provision of law along with the other details viz contract agreement with the service recipients, sales/freight ledgers, sales invoices, consignment note/ lorry receipt or any other supporting documents. Therefore, in absence of documentary evidences, the benefit of the exemption for the services provided by the service provider to body corporate or partnership firms as claimed by them cannot be blindly extended. Hence, I deny the exemption for the entire amount of said service provided by the Service Provider to their recipients of service. As per the details produced by service provider, the value of such service for the year 2015-16 and 2016-17 comes to Rs.1,71,02,984/-, and Rs. 2,05,44,481/- respectively. Therefore, I hold the entire value of Rs. 3,76,47,465/- as taxable one on which the said service provider is liable to pay service tax.

8.7.2 Further, as already pointed out above, the said service provider has not provided any details of sales/freight ledger/register for the period 2015-16 and 2016-17, hence the demand of service tax was worked out @ 14.5% for the F.Y. 2015 (Rs.24,79,932/-) and @ 15% for the F.Y. 2016-17 (Rs.30,81,672/-) which comes to Rs. 55,61,604/-. Even during the adjudication, the service provider has failed to provide freight receipt register for the F.Y. 2015-16 and F.Y. 2016-17. Therefore, in the absence of month-wise freight charge receiving details it is not possible to work out exact details of service tax for respective periods. Hence, I hold that they are liable to pay whole amount of Service Tax of **Rs. 55,61,604/-** as worked out in the Show Cause Notice.

9. I find 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 come to the knowledge of department only through Income Tax Department. Thus, the said service provider has failed to disclose the correct details of their income. Further, the said service provider 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) was neither ascertainable at the time of issuance of Show Cause Notice nor even after the issuance of Show Cause Notice. Therefore, as in the matter of service tax demand a stand taken for the period for 2015-16 and 2016-17 is also applicable for the service tax demand pertaining to the period for 2017-18 and for that purpose the JAC concerned is required to take appropriate action accordingly.

10. I further find that the said Service Provider has neither filed a correct Service Tax ST-3 return for the services they provided in the F.Y. 2015-16 and 2016-17, and as already discussed hereinabove, nor provided any documentary proof for exemption for the same and, thus concealed the value from the department, declared to the income tax department. Therefore, it is observed that 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 service tax amounting to **Rs. 55,61,604/-** 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.

11. In view of the above, the assessee is liable to pay service tax of **Rs. 55,61,604/-** for the period of 2015-16 and 2016-17 along with applicable interest.

## 12. LATE FEE

12.1 Coming to the matter of late fee I have noted that the said service provider have filed ST-3 Returns for the period of 2015-16 and 2016-17 in time. The details of ST-3 return filed are as under:-

Sr.No.	ST-3 period	Date of filing	Due date of filing ST-3
1	April-Sept. 2015-16	22.10.2015	25.10.2015
2	Oct-March-2015-16	26.04.2016	29.04.2016 (extended vide CBEC order No.01/2016-ST

			dtd.25.04.2016
3	April-Sept. 2016-17	25.10.2016	25.10.2016
4	Oct-March-2016-17	26.04.2017	30.04.2017
5	April-June 2017	03.08.2017	15.08.2017

ST Returns Archive List

Sl. No.	AO/SP/ST/SE/SD/001	Name of the Assessee	All Type	DOMM-YYYY	Return Reference No.	View CDR	Reviewed Date	All Status
1	AOSP8758ES0001	PREET LOGISTICS	ST3	October-March 22-09-2010	AOSP8758ES0001_S0025447001_ST3_102101	View CDR		Filed
2	AOSP8758ES0001	PREET LOGISTICS	ST3	April-June 05-11-2012	AOSP8758ES0001_S0025447001_ST3_102101	View CDR		Filed
3	AOSP8758ES0001	PREET LOGISTICS	ST3	April-September 26-12-2011	AOSP8758ES0001_S0025447001_ST3_102101	View CDR		Filed
4	AOSP8758ES0001	PREET LOGISTICS	ST3	October-March 20-04-2012	AOSP8758ES0001_S0025447001_ST3_102101	View CDR		Filed
5	AOSP8758ES0001	PREET LOGISTICS	ST3	October-March 21-04-2017	AOSP8758ES0001_S0025447001_ST3_102101	View CDR		Filed
6	AOSP8758ES0001	PREET LOGISTICS	ST3	April-June 03-08-2017	AOSP8758ES0001_S0025447001_ST3_102101	View CDR		Filed
7	AOSP8758ES0001	PREET LOGISTICS	ST3	April-September 05-10-2014	AOSP8758ES0001_S0025447001_ST3_102101	View CDR		Filed
8	AOSP8758ES0001	PREET LOGISTICS	ST3	October-March 24-04-2015	AOSP8758ES0001_S0025447001_ST3_102101	View CDR		Filed
9	AOSP8758ES0001	PREET LOGISTICS	ST3	April-September,2013-2014 23-10-2013	AOSP8758ES0001_S0025447001_ST3_102101	View CDR	31-03-2021	Reviewed
10	AOSP8758ES0001	PREET LOGISTICS	ST3	October-March,2015-2016 26-04-2016	AOSP8758ES0001_S0025447001_ST3_102101	View CDR	25-05-2020	Reviewed

Showing 1 - 10 of 14 Records

ST Returns Archive List

Sl. No.	AO/SP/ST/SE/SD/001	Name of the Assessee	All Type	DOMM-YYYY	Return Reference No.	View CDR	Reviewed Date	All Status
11	AOSP8758ES0001	PREET LOGISTICS	ST3	October-March,2013-2014 25-04-2014	AOSP8758ES0001_S002044001_ST3_102103	View CDR	25-05-2020	Reviewed
12	AOSP8758ES0001	PREET LOGISTICS	ST3	April-September,2015-2016 22-10-2015	AOSP8758ES0001_S00503A001_ST3_042015	View CDR	25-05-2020	Reviewed
13	AOSP8758ES0001	PREET LOGISTICS	ST3	April-September 25-10-2016	AOSP8758ES0001_S00503A001_ST3_042016	View CDR		Filed
14	AOSP8758ES0001	PREET LOGISTICS	ST3	July-September 29-04-2013	AOSP8758ES0001_S002044001_ST3_072012	View CDR		Filed

Showing 11 - 14 of 14 Records

12.2 In above view I find that the said service provider has filed their ST-3 Returns in time and, hence, they are not liable to pay prescribed late fee under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.

### 13. PENAL ACTION

13.1 As regard penal action under Section 77 of the Finance Act, 1994, there is no submission on the part of service provider as against the proposal

made in the SCN issued. As per the facts available on record, I have noted that clarification along with documents related to service income for the period from 2015-16 to June-2017 were called for from the Service Provider for the purpose of verification. However, the said Service Provider failed to submit the required details/documents or offer any explanation/clarification with respect to the income earned by them and, accordingly, violated the provision of the Section 77(c) of the said Act. Hence, they are liable to penalty which may extend to ten thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance. As already pointed out above, the noticee initially was asked to submit the details vide letter dated 27.01.2020. However, thereafter vide letter dated 28.09.2020 the department has issued reminder followed by summons dated 01.04.2021. In the instant matter, I have noted that till the date of issuance of SCN on 21.04.2021, the noticee has failed to submit such details/documents. Thus, there was the delay of 450 days in submitting the details as called for and, accordingly, penalty @ Rs 200/day liable to be paid by service provider comes to **Rs. 90,000/-**.

**14.** As regard penal action under Section 78, when the suppression of fact is very much involved in the matter as per the discussion held in the foregoing paras the intention was clear to evade payment of service tax. Hence, the said service provider is liable to penalty under Section 78 of the Finance Act, 1994.

**15.** Further, the erstwhile provisions of Chapter V of the Finance Act, 1994, was omitted vide section 173 of the CGST Act, 2017. Therefore the provision of the said repealed Act and Rules made there under are rightly enforceable for the purpose of demand of service tax with interest and imposition of penalty under the instant proceedings. As per Section 142(8)(a) of the CGST Act, 2017, where in pursuance of an assessment or adjudication proceeding instituted, whether before or after the appointed day, under existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrears of tax under this Act. I have gone through the written submission dated 05.11.2022 in the case and found that the Proprietor was expired on 18.03.2019. The adjudication proceeding was already instituted in the instant matter. I find that as per Section 142(8)(a) of Central Goods and Service Tax Act, 2017, any amount of tax, interest, fine or penalty arises out of the proceeding of adjudication under existing law can be recovered as an arrears of tax under The CGST Act, 2017. Further, as per Section 93 of the CGST act 2017 even in cases of death of the proprietor/partners the liability shifts to the legal representative or any other person who is continuing the

business of the proprietor/partners. The Section 93(1) of the CGST act 2017 read as, "if business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act" and as per Section 93(2) of the CGST act 2017, "if business carried on by the person is discontinued, whether before or after his death by his legal representative shall be liable to pay, out of estate of deceased, to the extent to which the estate is capable of meeting the charge, tax, interest or penalty due from such person under this Act."

15.1 Therefore, as per provisions under Section 142(8)(a) of Central Goods and Service Tax Act,2017, read with provisions Section 93 of Central Goods and Service Tax Act,2017. The tax, interest and penalty arises out of adjudication proceedings in this case, under existing law, can be recovered from legal representative in cases of death of the proprietor whether the business carried on by the person is continued or discontinued.

16. In above view, I pass the following order

#### **ORDER**

- i) I order to recover Service Tax amounting to **Rs. 55,61,604/- (Rupees Fifty Five Lakh Sixty one Thousand Six Hundred and Four only)** which was not paid for the F.Y.2015-16, 2016-17 and 2017-18 (upto June,2017) from M/S Preet Logistics, 47 Vasant Vihar Co Op Housing Society Opp Old Narol Court Nr Shreeji Bunglows Narol Ahmedabad, under proviso to Sub-section (1) of Section 73 of Finance Act, 1994. For the purpose of payment of service tax pertaining to the period 2017-18 (upto June,2017), the service tax is required to be ascertained and recovered in terms of Para 9 of the said order.
- ii) I order to recover interest at the prescribed rate from M/S Preet Logistics, 47 Vasant Vihar Co Op Housing Society Opp Old Narol Court Nr Shreeji Bunglows Narol Ahmedabad, for the period of delay of payment of service tax mentioned above under Section 75 of the Finance Act, 1994;
- iii) I drop the proceeding of late fee for ST-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 in terms of discussions held at Para 12 of the order.

