



सत्यमेव जयते

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



फा.सं. STC/04-03/O&A/Asif/21-22

DIN- 2021264WS0000020220

आदेश की तारीख: Date of Order: 14.12.2022

जारी करने की तारीख: Date of Issue : 15.12.2022

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

मूल आदेश सं./Order-In-Original No.: 56/CGST/Ahmd-South/JC/MT/2022-23

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/04-03/O&A/Asif/21-22 dated 22.04.2021, M/s ASIF SHAFI MOHAMMED MEDIWALA, NR. MANDALWALA PROCESS, SIKANDAR MARKET, MAHARAJ NO KHETAR, AHMEDABAD.

Brief facts of the Case:-

Whereas, ASIF SHAFI MOHAMMED MEDIWALA (hereinafter referred to as “ the said service provider”) situated at NR. MANDALWALA PROCESS, SIKANDAR MARKET, MAHARAJ NO KHETAR, AHMEDABAD with PAN No. ABIPM7857N was not registered with the Service Tax Department.

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

3. Therefore, a letter dated 26.08.2020 and summons dtd. 10.11.2020 and 31.03.2021 were written to the said Service Provider with request to submit the documentary evidence in respect to their service income for the period 2015-16 to 2017-18 (upto June'2017) within a week time from the date of receipt of above referred letter. However, the said Service Provider failed to submit the required details/documents or offer any explanation/clarification regarding income earned by them. 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	3,97,97,845/-	Contractors (Others)
2	2016-17	3,90,81,577/-	

4. With effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the Negative list are exempted. The nature of activities carried out by the said Service Provider appears to be covered under the definition of service and not under the Negative List as per Section 66D of the Finance Act, 1994 and also declared services given in 66E of the Finance Act, 1994, as amended from time to time. These services also appear to be not exempted under mega exemption Notification 25/2012-ST dated 20.06.2012, as amended from time to time, and hence the aforesaid services provided by the said Service Provider appears to be subjected to Service Tax under the provisions of Section 66B of the Finance Act, 1994.

5. As per Section 69(1) of the Act, *every person liable to pay the Service Tax under the Chapter or the rules made there under shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.*

6. As per Section 69(2) of the Act 1994, any service provider, whose aggregate value of taxable service in a financial year exceeds Rs. 9 lakh is required to take Registration. Further, according to Notification No. 33/2012- (Service Tax) dated 20.06.2012, Central Government has exempted taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the Service Tax leviable thereon under Section 66B of the Finance Act, 1994. Therefore, it appears that the said Service Provider was required to obtain Service Tax Registration and comply with the Service Tax laws accordingly.

7. 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).*

8. 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.*

9. 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.

10. 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 IT Data i.e. Sales/Gross Receipts from Services (From ITR)	Rate of Service Tax inclusive of EC & SHEC	Service Tax payable
2015-16	3,97,97,845/-	14.5%	57,70,688/-
2016-17	3,90,81,577/-	15%	58,62,237/-
		Total	1,16,32,925/-

11. It appears that the said Service Provider had neither obtained a Service Tax registration for the services provided by them for the period of F.Y. 2015-16 and 2016-17 nor responded to correspondence made with them regarding actual services provided by them, 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. **1,16,32,925/-** 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.

12. It further appears that on account of all the above narrated acts of commission and omission 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. As per Section 70 of the Finance Act, 1994, the fees for the late filing of return are prescribed. When the nature of default for late filling of fees is less than 15 days, the amount of penalty is Rs. 500 for 15 days; where the nature of default is more than 15 days & less than 30 days, the amount of penalty is Rs. 1000; and where the nature of default is more than 30 days, the amount of penalty is Rs. 1000+ Rs. 100 for each day subject to maximum penalty of Rs. 2000/-. Hence, they are liable for payment of late fees for non filing of ST 3 returns for the aforesaid period in stipulated time.

14. 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."

15. In the instant case, the service provider has failed to properly assess the Service Tax liability. Thus they have resorted to suppression of material facts by not reflecting the correct taxable income incurred in respect of the services liable to Service Tax in their ST-3 returns. Accordingly, it appears that the Service Tax as quantified herein above is liable to be recovered by invoking the extended period of limitation as provided for under Sec. 73 of the Finance Act, 1994 along with interest in terms of the provisions of Sec. 75 of the Finance Act, 1994. The said service provider has not disclosed full, true and correct information about the value of the service provided by them, and thus, it appears that there was a deliberate withholding of essential and material information from the department about service provided and value realized by them. It appears that all these material information had been concealed from the department deliberately, consciously and purposefully to evade payment of service tax. Therefore, in this case all essential ingredients exist to invoke the extended period in terms of proviso to Section 73 (1) of the Finance Act, 1994 to demand the Service Tax short not paid.

16. 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. 1,16,32,925/- (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.

17. Further, the said Service Provider failed (a) to take Service Tax Registration in accordance with the provisions of section 69 *ibid*; (b) to keep, maintain or retain books of account and other documents as required in accordance with the provisions of Finance Act, 1994; (c) to furnish information/documents called for from them; and (d) to pay the tax, accordingly the said Service Provider is liable to penalty under the provisions of Section 77(1) of Finance Act, 1994.

18. From the data received from CBDT, it appeared 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.

19. Therefore, M/S ASIF SHAFI MOHAMMED MEDIWALA, situated at NR. MANDALWALA PROCESS, SIKANDAR MARKET, MAHARAJ NO KHETAR, AHMEDABAD were called upon vide Show Cause Notice F.No.: STC/4-03/O&A/Asif/21-22 dated 22.04.2021, 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. 1,16,32,925/- (Rs. One Crore Sixteen Lacs Thirty Two Thousand Nine Hundred Twenty Five only)** which was not paid for the F.Y.2015-16 and 2016-17 as per Table-A in para-10 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) Penalty should not be imposed under Section 77(1) of the Finance Act,1994 for failure to take Service Tax Registration as per the provisions of Section 69 of the Finance Act, 1994.
- iv) 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
- 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:-

20.1 The said service provider submitted their submission vide letter dated 18.11.2022 and the same is as under:-

“ I have received a notice as on 10th Nov, 2021 regarding not taking registration in service tax due to Job Work in textile industries is exempt. And not any liabilities in RCM.

Assessee is mainly in the business of Job Work for Textile Cloth Processing, From Various Customers is processed as per their requirement. Usual process are various processes. Textile Processing are exempt from Service Tax vide Notification No. 25/2012-ST dated 20.06.2012 w.e.f. 01.07.2012

20.2 Along with written submission dated 18.11.2022 the service provider submitted the following documents:-

1. Income Tax 26AS;
2. Income Tax Filed Return;
3. Balance Sheet and Profit & Loss a/c and Capital a/c

Record of Personal Hearing :-

21. Shri Akbar H. Palwiala, accountant appeared on 18.11.2022 on behalf of said assessee for personal hearing and stated that party is engaged in doing textile job work & this is exempt from Service Tax. In support of their contention party has submitted 26AS, copy of ITR, Balance Sheet, Profit & Loss Account.

Discussion and Findings:-

21.1 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.

21.2 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/04-03/O&A/Asif/21-22 dated 22.04.2021 was issued to the service provider alleging that the service provider had failed to pay service tax amounts to Rs. 57,70,688/- on taxable value of Rs. 3,97,97,845/- and Rs. 58,62,237/- on taxable value of Rs. 3,90,81,577/- 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. 1,16,32,925/- 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 non submission of Service Tax Returns has been proposed.

21.2.1 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.

21.3 In view of Para 21.2 and 21.2.1 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.

21.4 Now I would like to go through the legal aspects of the taxability of Service Tax.

21.4.1 The relevant extract of sub section 44, 51 of Section 65B, Section 66B of the Finance Act, 1994, as amended from time to time, is reproduced below:-

(44) “service” means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(51) “taxable service” means any service on which service tax is leviable under section 66B;

SECTION 66B. Charge of service tax on and after Finance Act, 2012.— There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

21.4.2 The relevant extract of Section 68, Section 69 and Section 70 of the Finance Act, 1994, as amended from time to time, is reproduced below:-

SECTION 68. Payment of service tax. — (1) Every person providing taxable service to any person shall pay service tax at the rate specified in section [66B] in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in respect of [such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section [66B] and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.

SECTION 69. Registration.— (1) Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.

(2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed.

SECTION 70. Furnishing of returns. — (1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.

(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

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

30. Carrying out an intermediate production process as job work in relation to –

(a) agriculture, printing or textile processing;

21.5 I have gone through the copy with name and style shown as “ *Trading Account for the year end 31 March 2016*” and “ *Profit & Loss A/c 1 Apr-2016 to 31- Mar-2017*” submitted by the said service provider on 18.11.2022 in their defence submission during personal hearing and find that they have shown **JOB Work (Sales)** in their sales account having amount of Rs. 3,97,97,845/- and Rs. 3,90,81,577/- for the Financial year 2015-16 and 2016-17 respectively.

21.6 I find that the service Provider in their defence submission has mentioned that they are not liable to pay service tax under Notification No. 25/2012-ST dated 20.06.2012 since they are providing Job work for textile cloth processing, however they have failed to submit any substantial documents like sales invoice & purchase invoice, which shows that they are engaged in job work for textile cloth processing. I also find that the service provider has submitted the documents with name and style shown at Para 21.5 above doesn't show that they are providing job work for textile cloth processing. Moreover, I also find that the service provider has not submitted Audited Balance Sheet/ Books of Account, required to be audited under Section 44AB of the Income Tax Audit, 1961, at any point of time.

21.7 I have also gone through 26AS submitted by the service provider and find that there were numerous deductors viz. Aiyubbhat Faridbhat Paliwala, Ashish Vishvanath Chhaparia, Abdulrashidbhai Mohmedrafiqbhai Sojatwala, Dharmmik Pravinbhai Jarech, Irfan Aiyubbhai Kurawala etc. Who deducted TDS of the said Service provider under Section 194C of Income Tax Act, 1961.

21.7.1 According to the Section 194C of the Income Tax Act, any individual making a fee to a residential individual, who carries out 'work' as a contract between the 'specified individual' and the 'resident contractor,' is obliged and required to deduct TDS (Tax Deducted At Source).

The word 'work' comprises the following:

- Catering;
- Advertising;
- Broadcasting and telecasting;
- Conveyance of goods/travellers by any method of transport excluding railway;
- Production/supplying a product based on the specification of buyers by utilising material acquired from the buyer. Nevertheless, it doesn't bear when the material is purchased from an unspecified person other than the buyer.

28. In view of foregoing paras I find that the service provider is not entitled for benefit of exemption under Notification No. 25/2012-ST dated 20.06.2022, as they have not submitted any substantial evidence which shows that they are engaged in the business of job work of processing of textile as claimed in their defence submission as well as during personal hearing.

28.1 Further, I also find that the activity carried out by the service provider doesn't cover under Negative list specified in Section 66D of the Finance Act, 1994, therefore, in terms of sub-section 44 and 51 of Section 65B of the Finance Act, 1994, the activities carried out by the said service provider considered as taxable service and they were required to pay service tax at the rate specified as per Section 66B as amended from time to time in terms of Section 68 of the Finance Act, 1994. Moreover, I also find that the service provider has failed to do so. Therefore, I find that the allegation made in Show Cause Notice that the said service provider has failed to pay service tax and demand of the same is legal and sustainable.

29. 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% and 15% for the F.Y. 2015-16 & 2016-17 that arrived to Rs.57,70,688/- on taxable value of Rs. 3,97,97,845/- and Rs. 58,62,237/- on taxable value of Rs. 3,90,81,577/- respectively. Further, I also find that the said service provider has again failed to provide any sales ledger/register at the time of defence submission as well as at the time of personal hearing, for the period in question. Therefore, I have no other option except to accept the demand of service tax at the rate specified in the Show Cause Notice.

30. 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.**

31. Further, I find that the said Service Provider had neither get registered themselves with the service tax department nor had filed ST-3 returns and the same has also been confirmed by the said service provider in their defence submission dated 18.11.2022. Therefore, the allegation made in the show cause notice that the said service provider has not registered with the service tax department as required under Section 69 of the Finance Act, 1994 and had failed to file ST-3 returns for above mentioned period as required under Section 70 of the Finance Act, 1994 is found legal and sustainable.

32. I find 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 demand of service tax amounting to Rs.1,16,32,925/- 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.

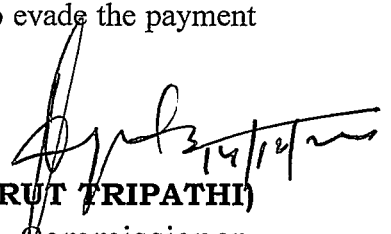
33. Further, I find that all the acts of suppression of facts i.e non reflecting of taxable value of service provided by them in their Service Tax Returns or non providing of correct information at any point of time, omission and commission committed on the part of the service provider with intent to evade payment of service tax to the tune of Rs. 1,16,32,925/- on taxable value of Rs. 7,88,79,422/- 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, 68 and 69 of the Finance Act, 1994, in as much as they had failed to get themselves registered with the service tax department; 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.

34. I also find that the service provider had failed to file their ST-3 returns for period April' 2015- September' 2015; October' 2015- March' 2016; April' 2016- September' 2016 and October' 2016 -March' 2017 within prescribed time frame 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.

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

ORDER

- i) I order to recover Service Tax amounting to Rs.1,16,32,925/- (**Rupees One Crore Sixteen Lakhs Thirty Two Thousands Nine Hundred and Twenty Five only**) which was not paid for the F.Y.2015-16, 2016-17, from ASIF SHAFI MOHAMMED MEDIWALA situated at NR. MANDALWALA PROCESS, SIKANDAR MARKET, MAHARAJ NO KHETAR, AHMEDABAD under proviso to Sub-section (1) of Section 73 of Finance Act, 1994;
- ii) I order to recover interest at the prescribed rate from ASIF SHAFI MOHAMMED MEDIWALA situated at NR. MANDALWALA PROCESS, SIKANDAR MARKET, MAHARAJ NO KHETAR, AHMEDABAD 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.80,000/-under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 for non submission of ST-3 returns for the period of April' 2015- September' 2015; October' 2015- March' 2016; April' 2016- September' 2016 and October' 2016 -March' 2017. in terms of discussions held at above mentioned para of the order.
- iv) I Impose a penalty of Rs. 10,000/- (Rupees Ten thousands only) on from ASIF SHAFI MOHAMMED MEDIWALA situated at NR. MANDALWALA PROCESS, SIKANDAR MARKET, MAHARAJ NO KHETAR, AHMEDABAD under Section 77 of the Finance Act, 1994, in as much as they have failed to get service tax registration under Section 69 of the Finance Act, 1994.
- v) I impose a penalty Rs.1,16,32,925/- (**Rupees One Crore Sixteen Lakhs Thirty Two Thousands Nine Hundred and Twenty Five only**) which was not paid for the F.Y.2015-16, 2016-17, ASIF SHAFI MOHAMMED MEDIWALA situated at NR. MANDALWALA PROCESS, SIKANDAR MARKET, MAHARAJ NO KHETAR, AHMEDABAD 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/4-03/O&A/Asif/21-22

Date: 14.12.2022

DIN:- 20221264WS0000020220

To,

ASIF SHAFI MOHAMMED MEDIWALA
NR. MANDALWALA PROCESS, SIKANDAR MARKET,
MAHARAJ NO KHETAR, AHMEDABAD

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-I, CGST, Div-IV, Ahmedabad South.
- 5) The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website.
- 6) Guard file.