



भारत सरकार
GOVERNMENT OF INDIA

आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER

जीएसटी एवं केन्द्रीय उत्पाद शुल्क आयुक्तालय, गुवाहाटी
GST & CENTRAL EXCISE COMMISSIONERATE, GUWAHATI
जीएसटी भवन, केदार रोड, माछखोवा, गुवाहाटी-781001
GST BHAWAN, KEDAR ROAD, MACHKHOWA GUWAHATI - 781 001
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DIN: 20 23 03 70 2000 3/2/C

मूल-आदेश- सं 70/ आयुक्त/एस.टी/गुवाहाटी/2022-23

दिनांक, गुवाहाटी 01.03.2023

Order-In-Original NO. 70/Pr. Commr./ST /GHY/2022-23

Dated, Guwahati, 1st March 2023

(प्रधान आयुक्त, जीएसटी एवं केन्द्रीय उत्पाद शुल्क, गुवाहाटी द्वारा पारित)

(Passed by the Principal Commissioner, CGST & CX, Guwahati)

1. जिस व्यक्ति को यह प्रति जारी की गई है उनके निजी प्रयोग के लिए इसे निःशुल्क दी गई है।
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश के व्यक्तिगत रूप से अथवा डाक द्वारा प्राप्त होने की तारीख से 3 महीने के भीतर एस टी-5 प्रपत्र में सीमा शु-*/ल्क एवं सेवा कर अपील की अपील कर सकेगा। अपील चार प्रतियों में मांगे गए शुल्क के जुर्माना केवल या हो विवादित जुर्माना और शुल्क या हो विवादित शुल्क जब सकेगा जा किया तभी पर करने भुगतान का प्रतिशत 7.5) चाहिए। होना संलग्न निम्नलिखित साथ इसके हो। विवादित) जब केन्द्रीय उत्पाद शुल्क अधिकारी द्वारा अपील से संबंधित मामलों में मांग की गई शुल्क रकम की जुर्माने गई लगाई और ब्याज ,पांच लाख या उससे कम हो तो ,रूपयें हजार एक , (iii) जब केन्द्रीय उत्पाद शुल्क अधिकारी द्वारा अपील से संबंधित मामलों में मांग की गई शुल्क रकम की जुर्माने गई लगाई और ब्याज ,पांच लाख रुपये से अधिक हो लेकिन पचास लाख रुपये से अधिक न हो तो), रूपयें हजार पांच , (iii) जब केन्द्रीय उत्पाद शुल्क अधिकारी द्वारा अपील से संबंधित मामलों में मांग की गई शुल्क रकम की जुर्माने गई लगाई और ब्याज ,पचास लाख रुपये से अधिक हो तो भुगतान का फीस रूपयें हजार दस , न्यायपीठ के सहायक रजिस्टार या कोलकोता स्थित किसी भी राष्ट्रीयकृत बैंक के पक्ष के जारी क्रॉस चेक द्वारा किया जा सकेगा। अपील पूर्वीय क्षेत्रीय न्यायपीठ के अपील की अपील की अपील में दर्ज करना होगा, जो वेम्बो विला रोड बोस चन्द्र जगदीश आचार्य 169 तल वां 7 है। कोलकता
3. अपील के प्रत्येक प्रति के साथ आदेश की प्रति देना होगा और कम से कम एक प्रति प्रमाणित प्रति होनी होगी।
4. अपील के साथ एक रुपये का न्यायलय शुल्क स्टाम्प होना होगा।
5. आपका ध्यान इन नियमों एवं केन्द्रीय उत्पाद शुल्क स एवं शुल्क उत्पाद शुल्क सीमा एवं 2001 नियमावली (अपील) के अन्तर्गत अपील की (प्रक्रिया) 1982 में निहित इससे संबंधित विषयों जो की ओर भी आकर्षित किया जाता है।

1. The copy is granted free of charge for the private use of the person to whom it is used.

2. Any person deeming himself aggrieved by this order, may appeal against the order to the Customs, Excise & Service Tax Appellate Tribunal in Form ST-5 within 3(three) months of the date of receipt of the order sought to be appealed against. The appeal to the Appellate Tribunal shall be filed in quadruplicate and **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 and shall be accompanied by 4 (four) copies of the order appealed against (one of which at least shall be a certified copy).** The appeal should be accompanied by a fee of (i) Rs. 1,000/- (Rupees One Thousand) only, if the amount of duty and interest demanded, fine or penalty levied is Rs. 5,00,000/- (Rupees Five Lakhs) only or less, (ii) Rs. 5,000/- (Rupees Five Thousand) only if the duty and interest demanded, fine or penalty levied is more than Rs. 5,00,000/- (Rupees Five Lakhs) but not exceeding Rs. 50,00,000/- (Rupees Fifty Lakhs) only and (iii) Rs. 10,000/- (Rupees Ten Thousand) only if the amount of duty and interest demanded, fine or penalty levied is more than Rs. 50,00,000/- (Rupees Fifty Lakhs), paid through a + Bank Draft drawn on a nationalised bank, payable at Kolkata, in favour of the Assistant Registrar of the Bench and the Demand Draft shall be attached to the form of appeal.

3. Appeal should be filed in the East Regional Bench of the Appellate Tribunal located at 7th Floor, Bamboo Villa, 169, Acharya Jagadish Chandra Bose Road, Kolkata - 700 014.

4. Court fee stamp of Rs. 2.00 (Rupees Two) is required to be affixed on the memorandum of appeal and fifty paise on copy of the order appealed against.

5. Attention is also invited to Rule covering these and other related matters contained in Central Excise (Appeals) Rules, 2001 and Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

Subject: Show Cause Notice under F. No.V(15)441/ADJ/CGST-HQRS/GHY/ST/2021/2048 dated 20/04/2022 i.r.o. Shri Vinay Garg, Prop. M/s Shree Shyam Logistics, NH-37, Lalmati, Guwahati - Adjudication Reg.

BRIEF FACTS OF THE CASE

1.0 A demand-cum-Show Cause Notice under C.No. V(15)441/ADJ/CGST-HQRS/GHY/ST/2021/2048 dated 20.04.2022 (hereinafter referred as 'the said SCN') was issued by the Principal Commissioner, CGST & Central Excise, Guwahati to Shri Vinay Garg, Proprietor M/s Shree Shyam Logistics, NH-37, Lalmati, Guwahati (hereinafter referred as 'the said Noticee'), having Service Tax Registration No. AKLPG2643NSD001. In the said SCN, it was alleged that the said Noticee have provided taxable services other than those specified in the Negative List of services under Section 66D of the Finance Act, 1994 during the FY 2016-17. Whereas it appears that the said Noticee has suppressed the actual value of services provided during the FY 2016-17 and consequently did not pay Service Tax to the tune of ₹4,30,25,589/- (Rupees Four Crore Thirty Lakh Twenty Five Thousand Five Hundred Eighty Nine) only in violation of the provisions of Sections 66B, 67, 68 and 70 of the Finance Act, 1994 as amended read with Rule 6 and 7 of the Service Tax Rules, 1994 as amended.

1.1 Intelligence was received from DG Systems that the said Noticee had declared ₹28,68,37,259/- as sale of services in their Income Tax Return. However, they have neither paid Service Tax nor declared the gross value of services in their ST-3 returns. Therefore, Service Tax to the tune of ₹4,30,25,589/- (Rupees Four Crore Thirty Lakh Twenty Five Thousand Five Hundred Eighty Nine) only on the differential and undeclared value of services, amounting to ₹28,68,37,259/- only was required to be paid by the said noticee to the Government exchequer, which they failed to pay and hence the same is required to be recovered from them under proviso to section 73(1) of the Finance Act, 1994, as amended, by invoking extended period of limitation along with interest at appropriate rate under Section 75 of the Act, *ibid*.

1.2 Whereas on scrutiny of the records/document available at this end, it was found that the said Noticee has rendered various services under Section 65(105) of Finance Act, 1994, as amended. Post introduction of Negative List regime in the Service Tax, which became effective from 1st July, 2012, the services provided by the said Noticee would fall under the definition of 'Service' which is defined under Section 65B(44) of the Finance Act, 1994, as amended, as any activity carried out by a person for another for consideration, and includes declared service. Further as per clause (51) of Section 65B of the Finance Act, 1994 defines 'taxable service' as 'any service on which service tax is leviable under Section 66B.

1.3 Whereas it appears that the said Noticee was providing services which were taxable in terms of Section 66B of the Finance Act, 1994 on the value determinable in terms of Section 67 *ibid* and the said Noticee was liable to self-assess the tax due on the services provided by them and furnish correct returns in terms of Sec 70 *ibid*.

1.4 Whereas, as per the Section 66B, there shall be levied a tax at the rate of 14% Service Tax and 0.5% SB Cess on Service Tax (up to 31.05.2016) and 14% Service Tax, 0.5% SB Cess and 0.5% KK Cess (thereafter) on the value of all services, other than those services specified in the Negative list. Further, the Negative list has been defined in Section 66D the Finance Act, 1994 as amended. Further, vide Notification No. 25/2012-ST dated 20.06.2012, certain services have been exempted from payment of service Tax. As the said Noticee did not submit any copy of invoice / bills hence it cannot be assumed that the services provided by the said Noticee are falling either in the negative list or covered under the Mega exemption Notification No. 25/2012-ST dated 20.06.2012.

1.5 Scrutiny of data provided by the Income Tax department indicates that during the FY 2016-17, It is seen that the said noticee has provided services of ₹28,68,37,259/- but was not declared in their periodical ST-3 returns thereby suppressing the entire taxable value to the tune of ₹28,68,37,259/- against which the said Noticee was liable to pay Service Tax to the tune of ₹4,30,25,589/- (Rupees Four Crore Thirty Lakh Twenty Five Thousand Five Hundred Eighty Nine) only including Cesses.

1.6 Whereas the said Noticee has suppressed the material facts to the Department willfully by not disclosing the details regarding the gross amount received from the service recipients in the prescribed ST-3 returns during the period and by way of providing taxable services without discharging service tax liabilities with the intent to evade payment of service tax and therefore the extended period under Section 73(1) of the Finance Act, 1994 is invocable in the instant case. The said party had also violated the provisions of Sections 66B, 67, 68 and 70 of the Finance Act, 1994 read with Rules 6 and 7 of Service Tax Rules, 1994 and thus evaded payment of Service Tax amounting to ₹4,30,25,589/- (Rupees Four Crore Thirty Lakh Twenty Five Thousand Five Hundred Eighty Nine) only including Krishi Kalyan Cess and Swachh Bharat Cess against the taxable services provided by the Noticee along with interest as applicable under Section 75 ibid. The said Noticee is liable for penal action under Section 77 and 78 of the Finance Act 1994 for suppression of facts with the intent to evade payment of service tax. The noticee is also liable for penal action under section 70 of the Finance Act 1994.

1.7 It has been enshrined in the Demand-cum-SCN that after the enactment of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017), with effect from 01.07.2017, the provisions of the Finance Act, 1994 pertaining to investigation, inquiry, assessment proceedings, adjudication etc. remain unaffected by virtue of Section 174 (2) of the Central Goods & Services Tax Act, 2017.

1.8 In view of the aforesaid facts, the said Noticee was called upon to show cause as to why:

- (1) Service Tax amounting of ₹4,30,25,589/- (Rupees Four Crore Thirty Lakh Twenty Five Thousand Five Hundred Eighty Nine) only including Krishi Kalyan Cess and Swachh Bharat Cess, on the services rendered during the F.Y. 2016-17 should not be demanded/recovered from them under the proviso of Sec 73(1) of the Finance Act, 1994 as amended and why the proviso involving the extended period shall not be applicable in the instant case;
- (2) Applicable Interest on the amount of Service tax should not be demanded and recovered from him under Section 75 of the Finance Act, 1994;
- (3) Penalty should not be imposed under the proviso of Section 77(2) of the Act, 1994, as amended, for non-submission of returns under provision of Section 70 of the Act ibid read with Rule 7C of the Service Tax Rules, 1994;
- (4) Penalty should not be imposed on them separately under Section 78(1) of the Finance Act, 1994 as amended for non-payment and short payment of Service Tax (including Cesses) as stated above.

2.0 In response to the Show Cause Notice, the Noticee submitted their reply vide their letter dated 11/10/2022. The said Noticee made the following submissions:

- a) M/s Shree Shyam Logistics (Proprietor Shri Vinay Garg) provides Transport of goods by road / goods transport agency.
- b) The service receivers are liable to pay Service Tax under RCM.
- c) Service Tax is payable by the GTA if the service is provided to an individual or a proprietorship firm or HUF.
- d) As is evident from Form 26AS, services have been provided to those who are covered under RCM.
- e) He has requested to set aside the demand.

2.1 The case was posted for personal hearing on 16/01/2023. CA Arihant Sancheti appeared on behalf of the Noticee. He explained the matter. He said that the party is engaged in GTA service and rendered services to body corporates which are covered under RCM.

2.2 The principles of natural justice having been complied with, the case is taken up for adjudication.

DISCUSSION AND FINDINGS

3.0 I have carefully gone through the impugned Show Cause Notice issued under C.No. V(15)441/ADJ/CGST-HQRS/GHY/ST/2022/2048 dated 20.04.2022, the defense reply dated 11/10/2022 of the said Noticee.

3.1 I find that the crux of allegations in the impugned Show Cause Notice dated 20.04.2022 is that during the financial year 2016-17, the said Noticee was engaged in providing various taxable services under Section 66B(44) and Section 65B(51) of the Finance Act, 1994 and the services provided by the Noticee are neither falling under the Negative List nor covered under the Mega Exemption notification No. 25/2012-ST dated 20.06.2012. It is alleged that during the said period, the Noticee collected/received taxable amount of ₹28,68,37,259/- (Rupees Twenty Eight Crore Sixty Eight Lakh Thirty Seven Thousand Two Hundred Fifty Nine only) as per ITR Return provided by the Income Tax Department. The said Noticee has not filed ST-3 Returns, suppressing the entire taxable value amounting to ₹28,68,37,259/-, thereby there was non-payment of Service Tax to the tune of ₹4,30,25,589/- (Rupees Four Crore Thirty Lakh Twenty Five Thousand Five Hundred Eighty Nine) only. Accordingly, Service Tax liability is required to be determined applying the principles of interpretation as laid down in Section 65B(44), 65B(51), 66B and 66D of the Finance Act, 1994 read with the Mega Exemption Notification No. 25/2012-ST dated 20/06/2012. It has been proposed in the impugned Show Cause Notice dated 20.04.2022 to realise the said amount of Service Tax in terms of the proviso to Section 73(1) of the Finance Act, 1994. It also proposes realization of applicable interest in terms of Section 75 ibid including imposition of penalty under Section 77 and 78 of the Act ibid.

3.2 I find that the alleged gross taxable value of ₹28,68,37,259/- (Rupees Twenty Eight Crore Sixty Eight Lakh Thirty Seven Thousand Two Hundred Fifty Nine only) is as per the Form 26AS of the said Noticee for the FY 2016-17. The gross receipt from Transportation reflected in the Profit & Loss Statement of the said Noticee for the FY 2016-17 is ₹33,70,64,816/- (Rupees Thirty Three Crore Seventy Lakh Sixty Four Thousand Eight Hundred Sixteen only). I find from the balance sheet and other documents of the noticee that the total receipts in the relevant year were more than the receipts reflected in the Form 26AS of that year and accordingly the taxable value should have been more than the figure reflected in Form 26AS and taken in the Demand-cum-Show Cause Notice. However, considering the time limitation in raising the additional demand of tax liability for the relevant period, I am constrained to restrict this order to the demand already covered in the impugned Demand-cum-Show Cause Notice based on the gross receipt reflected in the Form 26AS. However, the difference between the two figures is certified through a CA certificate [Para 4.3].

3.3 As per the Form 26AS for the FY 2016-17, the sources of receipts are as under:

S.No.	Service recipients	Amount (Rs.)
1	Adunik Cement Limited	99,05,428.00
2	Ganesh Grains Limited	23,49,579.00
3	Haldia Precision Engineering Pvt. Ltd.	1,29,100.00
4	Amrit Cement Limited	6,88,51,886.00
5	B R Metallica	16,30,400.00
6	Cement Manufacturing Company Limited	5,43,61,413.00
7	Hills Cement Company Limited	75,80,620.00
8	Jagdish Prasad Lahoti	25,970.00
9	K D Cements	33,57,405.00
10	K D Iron and Teel Co.	1,21,63,380.00
11	K D Infra	10,52,932.00
12	Meghalaya Cements Limited	5,89,96,765.00
13	Megha Technical and Engineers Private Limited	31,40,054.00
14	Star Cement Meghalaya Limited	4,80,15,767.56
15	Shiv Shakti Cements	39,98,198.00
16	Topcem India	78,56,958.00
17	Vinayak Cement	34,21,403.00
TOTAL		28,68,37,259.56

4.0 On examination of the arguments advanced by the said Noticee and also the Service Tax registration (Form ST-2), I find that the said Noticee had taken Service Tax registration under the category *Transport of goods by roads / goods transport agency (GTA)*.

4.1 Section 65B(26) of the Finance Act, 1994 reads as under—

“Goods Transport Agency means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called”.

Therefore, issue of Consignment Note (C/N) is an integral and mandatory requirement before any road transport can be said to be Goods Transport Agency (GTA). Consignment Note is not defined in the Finance Act, 1994. However, as per Explanation to Rule 4B of Service Tax Rules, 1994, **“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.”**

Rule 4B of the Service Tax Rules, 1994 reads as under—

“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.”

I find that Rule 4B of the Service Tax Rules, 1994 mandates issue of Consignment Note (C/N) by any goods transport agency which provides service in relation to transport of goods by road in a goods carriage to the recipient of service.

4.2 I find that the said Noticee has issued consignment notes for the transportation of goods. Sample consignment note issued during the FY 2016-17 is reproduced below:

Lumsheng Office : 094350-17550		Shree Shyam Logistics (Fleet Owner & Leading Road Carriers) Jai Kamakhya Weight Bridge, N.H. 37, Beltola, Guwahati - 781029 (Assam) E-mail : shreeshyamlogistics2016@gmail.com		Guwahati 088766-06732 095311-26390 087238-31422	
Lumsheng Office : 094350-17559 070854-77960 070856-40158				Date: 23.03.17	
Sl. No. 3110	From Lumsheng	To Sonapur	Book From		
R.R. No. 3110	Date 23.03.17	CONSIGNOR 20x cement meghalaya LTD. meghalaya			
CONSIGNEE 20x cement LTD. (GTA) Sonapur (Assam)		Date - 23.03.17			
Description of Goods	WEIGHT Per M.T.	Freight Rate	Amount		
20x cement INVOICE 61618 20x cement Date - 23.03.17	21.03 T MT		Tc 1 Bp 1 Billed		
Rupees.....		Total Rs			
<p>DECLARATION</p> <p>We hereby declare that not availed Cenvat Credit paid on input or capital Goods used for providing services and we have also not availed the benefit under the notification No.12/2003 Service Tax Dated 20th June 2003 GSR. 503(E) hence eligible for abatement. Service Tax Registration No of Transporter:AKLPG2643NSD001 PAN No. AKLPG2643N Safe Tax No. 1B199501544</p>		<p>Truck No. WB 33 B - 5578</p> <p>Weightment Slip No.....</p> <p>Advance.....</p> <p>Driver's Signature.....</p> <p>Permit No.....</p> <p>Value of Goods.....</p> <p>Payment PAID/TO PAY/TO BE BILLED</p> <p style="text-align: center;">(Signature)</p> <p>Seal & Signature of Booking Officer</p>			
<p>UNDERTAKING :</p> <p>We undertake that in terms of Service Tax Notification B/ 2015 S.T. Dated 1/03/15 Service Tax calculated on a value which is equivalent to 30% of the Gross Amount charged from the customer for providing the Taxable Service, and no credit of duty paid on inputs or capital goods for providing such taxable service has been taken under the provisions on cenvat credit rules 2015</p> <p>Place _____ Date _____</p> <p style="text-align: right;">Authorized Signatory</p>		<p>Seal & Signature of Receiving Officer</p> <p>Note : The truck Owner will be responsible for loss / damage of goods after loading</p>			

As is evident from the sample consignment note, it contains all particulars mentioned in the Explanation to Rule 4B of Service Tax Rules, 1994 as under:

- The name of the consignor and consignee.
- Registration No. of the goods carriage in which the goods are transported.
- Details of the goods transported.
- Details of the place of destination
- Person liable for paying Service Tax, whether consignor, consignee of the GTA.

As such, I hold that the said Noticee is a Goods Transport Agency (GTA).

4.3 The said Noticee has furnished a CA certificate wherein the details of the service recipients have been furnished. The fourth character of PAN represents the status of the PAN holder – ‘C’ for body corporates, ‘F’ for partnership firms and ‘P’ for individual.

ARIHANT SANCHETI
Chartered Accountants

2nd Floor, Raghubir Sadan,
House No. 5, Near Mullick Compound,
A.T. Road, Guwahati-781001.

TO WHOM IT MAY CONCERN

This is to certify that the break-up of service provided by M/s. Shree Shyam Logistics (Prop. Vinay Garg), having Registered Office at near Jai Kamakhya Weigh Bridge, NH-37, Beltola, Guwahati - 5 alongwith their status constitution is given below :

Break-up of Gross Turnover for the Financial Year : 2016-2017

Sl. No.	Name of the Service Recipient	Freight Turnover income	Amount as per 26AS	Status Constitution	PAN / CIN
1)	Adhunik Cement Ltd.	9905428/-	9905428.00	Body Corporate / PFAS	U26942ML2003PLC007090
2)	Megha Technical & Engineers Ltd.	3140054/-	3140054.00	Body Corporate / PFAS	U27107ML2002PTC006976
3)	Star Cement Ltd.	2152798/-		Body Corporate / PFAS	L26942ML2001PLC006663
4)	Cement Manufacturing Co. Ltd.	81452492/-	54361413.00	Body Corporate / PFAS	AACCC1465A
5)	Star Cement Meghalaya Ltd.	48015768/-	48015768.00	Body Corporate / PFAS	U63090ML2005PLC008011
6)	KD Cements	3357405/-	3357405.00	Body Corporate / PFAS	AAJFK4908Q
7)	Meghalaya Cements Ltd.	58996765/-	58996765.00	Body Corporate / PFAS	U26942ML2003PLC007125
8)	Topcem India Ltd.	7856958/-	7856958.00	Body Corporate / PFAS	AAFFT9130R
9)	Amrit Cement Ltd.	68851886/-	68851886.00	Body Corporate / PFAS	U26940ML2008PLC008302
10)	Green Valley Industries Ltd.	15464550/-		Body Corporate / PFAS	U26942ML2007PLC008273
11)	Hills Cement Company Ltd.	7580620/-	7580620.00	Body Corporate / PFAS	U26942ML2003PLC007295
12)	Shiv Shakti Cements	3998198/-	3998198.00	Body Corporate / PFAS	ABKFS6084K
13)	Superlite AAC Block Industry	5501871/-		Body Corporate / PFAS	ACLFS1143H
14)	Vinayak Cements	3421403/-	3421403.00	Body Corporate / PFAS	AAEFV3482D
15)	Jagdish Pd. Lahoti	25970/-	25970.00	Individual	
16)	B R Metallics	1630400/-	1630400.00	Body Corporate / PFAS	AAJFB0436G
17)	Jumbo Roofings & Tiles	17256/-		Body Corporate / PFAS	AAFFJ9615F
18)	K D Infra	1052934/-	1052932.00	Body Corporate / PFAS	AAOFK2428E
19)	K D Iron & Steel Co., Rangla	12163380/-	12163380.00	Body Corporate / PFAS	AAJFK5005C
20)	Ganesh Grains limited	2349579/-	2349579.00	Body Corporate / PFAS	U15311WB2000PLC091315
21)	Haldia Precision Engineering Pvt. Ltd.	129100/-	129100.00	Body Corporate / PFAS	U28121WB1983PTC036476
	TOTAL::	337064815/-	286837259.00		

Contd. ... P/2

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The above information for F.Y. 2016-2017 have been verified from the audited Financial Statement, Books of Accounts, Registrations from management & Ledger and other necessary documents produced before us for verification.

Place : Guwahati

Dt. 27.01.2023



ARIHANT SANCHETI
Chartered Accountants

Sancheti Sancheti

Membership No. 304937
UDIN : 23304937BGXQHX8551

4.4 As per Entry No. A(ii) of the RCM Notification No. 30/2012-ST dated 20/06/2012, reverse charge is applicable only when taxable 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,—

- a) any factory registered under or governed by the Factories Act, 1948;
- b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- c) any co-operative society established by or under any law;
- d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under;
- e) any body corporate established, by or under any law; or
- f) any partnership firm whether registered or not under any law including association of persons;

I find that the said Noticee has provided GTA services to the following body corporates and partnership firms only as is evident from the CA certificate.

S.No.	Service recipients	Constitution	Amount (Rs.)
1	Adunik Cement Limited	Body corporate	99,05,428.00
2	Ganesh Grains Limited	Body corporate	23,49,579.00
3	Haldia Precision Engineering Pvt. Ltd.	Body corporate	1,29,100.00
4	Amrit Cement Limited	Body corporate	6,88,51,886.00
5	B R Metallics	Partnership	16,30,400.00
6	Cement Manufacturing Co. Limited	Body corporate	5,43,61,413.00
7	Hills Cement Company Limited	Body corporate	75,80,620.00
8	K D Cements	Partnership	33,57,405.00
9	K D Iron and Teel Co.	Partnership	1,21,63,380.00
10	K D Infra	Partnership	10,52,932.00
11	Meghalaya Cements Limited	Body corporate	5,89,96,765.00
12	Megha Technical and Engineers Pvt. Ltd.	Body corporate	31,40,054.00
13	Star Cement Meghalaya Limited	Body corporate	4,80,15,767.56
14	Shiv Shakti Cements	Partnership	39,98,198.00
15	Topcem India	Partnership	78,56,958.00
16	Vinayak Cement	Partnership	34,21,403.00
TOTAL			28,68,11,289.56

I find that the service recipients are covered under Entry No. A(ii) of the RCM Notification No. 30/2012-ST dated 20/06/2012. Rule 2(1)(d) of Service Tax Rules, 1994 provides that where a service of transportation of goods is provided by a 'goods transportation agency', and due to reverse charge, the person liable to pay tax is the person who pays, or is liable to pay freight (either himself or through his agent) for the transportation of goods by road in a goods carriage.

In terms of Notification No. 30/2012-ST dated 20/06/2012, the service recipients are liable to pay 100% of the Service Tax payable. As such, I hold that the said Noticee is not liable to pay Service Tax on the gross amount of ₹28,68,11,289/- (Rupees Twenty Eight Crore Sixty Eight Lakh Eleven Thousand Two Hundred Eighty Nine only) received from the body corporates and partnership firms for providing GTA service to them by the said Noticee during FY 2016-17.

4.5 The said Noticee is liable to pay Service Tax for providing GTA service to the following individuals during FY 2016-17:

Sl.No.	Service recipients	Amount (Rs.)
1	Jagdish Prasad Lahoti	25,970.00

4.6 The Service Tax liability is quantified after abatement as provided under Notification No. 26/2012-ST dated 20/06/2012, as amended.

Gross receipt	:	₹	25,970.00
Abatement @70%	:	₹	18,179.00
Taxable value	:	₹	7,791.00
Service Tax with Cesses @15%	:	₹	1,169.00

5.0 From the facts and documentary evidences stated above, I am convinced and hold that the said Noticee had contravened the provisions of Section 66B, 68 and 70 of the Finance Act, 1994 read with Rule 6 and 7 of the Service Tax Rules, 1994 by resorting to deliberate suppression of the value of taxable service by not declaring it in their periodical ST-3 Returns with an intent to evade payment of Service Tax and Cess totalling to ₹1,169/- (Rupees One Thousand One Hundred Sixty Nine) only, which is to be recovered under Section 73 ibid along with interest under Sec 75 ibid from the Noticee. The said Noticee by their act of omission/commission have rendered themselves liable to penal action under Sec 77 & 78 of the Finance Act, 1994.

5.1 Regarding the invocation of extended period of limitation, I find that the said Noticee suppressed the taxable value. In the regime of self-assessment, the onus lies on the party to declare the taxable value, applicable Service Tax in their periodical ST-3 Returns. The said Noticee willfully did not declare the correct taxable value to the department with malafide intent to evade payment of Service Tax. The non-declaration of the taxable value by the said Noticee came to the knowledge of the Department only after receipt of information from other sources. Had it not been for the data received from the Income Tax Department, the suppression of the taxable value by the said Noticee would not have been detected. The said Noticee willfully suppressed the taxable value with an intent to evade payment of Service Tax. Therefore, I hold that the Service Tax not paid by the said Noticee is recoverable by invoking extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994.

5.2 Further, I find that it is a settled law that where demand of Service Tax has been held to be sustainable, the tax defaulter is liable to pay interest at the applicable rate in terms of Section 75 of the Finance Act, 1994.

5.3 I find that the impugned SCN dated 20.04.2022 proposed for imposing penalty upon the Noticee under Section 78 of the Finance Act, 1994. I am of the view that Section 78 of the Finance Act, 1994 is co-terminus with the proviso to Section 73(1) of the Act *ibid*. I am of the view that the legal requirements for invoking the proviso under Section 73(1) *ibid* for recovery of Service Tax beyond the normal period of limitation and the legal requirements for invoking Section 78 for imposing penalty on the tax defaulter are identical. Therefore, I am of the considered view that once the proviso to Section 73(1) of the Finance Act, 1994 has been held to be sustainable in the facts and circumstances of the present case, penalty under Section 78 *ibid* is imposable in the instant case and I hold accordingly.

5.4 I find that there is proposal for imposition of penalty under Section 77(2) of the Finance Act, 1994 for failure to file their periodical ST-3 Returns for the FY 2016-17. As per Section 70(1) of the Act, *'Every person liable to pay 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 as may be prescribed.'* Since the introduction of self-assessment, it is the onus of every service provider to correctly assess the Service Tax due on his own accord. The correct value of services provided and the appropriate tax thereon have to be declared in ST-3 Returns filed. However, the said Noticee has not filed their periodical ST-3 returns for the FY 2016-17. As such, they are liable to pay penalty under Section 77(2) of the Finance Act, 1994.

5.5 Though Chapter V of the Finance Act, 1994 is omitted w.e.f. 01.07.2017 vide Section 173 of the CGST Act, 2017, but Section 174(2) ibid empowers the undersigned to adjudicate the cases of demand of Service Tax payable but not paid by any person, during any time prior to 01.07.2017 subject to the provisions stipulated under the erstwhile Finance Act, 1994.

I therefore proceed to pass the following order.

ORDER

6.1 I confirm partial demand of Service Tax including cess amounting to ₹1,169/- (Rupees One Thousand One Hundred Sixty Nine) only for the FY 2016-17 in terms of Section 73(2) of the Finance Act, 1994, as amended;

6.2 I order that interest on the above confirmed amount be paid by them at the rates applicable in terms of Section 75 of the Finance Act, 1994 as amended;

6.3 I impose a penalty of ₹10,000/- (Rupees Ten Thousand only) under Section 77(2) of the Finance Act, 1994 for the reasons discussed in Para 5.4 *supra*;

6.4 I impose a penalty of ₹1,169/- (Rupees One Thousand One Hundred Sixty Nine) only in terms of Section 78(1) of the Finance Act, 1994;

6.5 However, the Noticee is given an option to pay reduced penalty equivalent to 25% of the amount of penalty imposed under Section 78 subject to the condition that the Noticee deposit the amount of Service Tax and cess(s) confirmed under Section 73 of the Finance Act, 1994 alongwith interest in terms of Section 75 ibid and reduced penalty under proviso to Section 78 within 30 (thirty) days of the date of receipt of this order.

sd/-

(Bandhana Deori)
Principal Commissioner

C NO. V(15)441/ADJ/CGST-HQRS/GHY/ST/2022/

Dated:

To,

Shri Vinay Garg
M/s Shree Shyam Logistics
Near Jai Kamakhya Weighbridge
NH-37, Beltola
Guwahati - 781 029

sd/-

(Bandhana Deori)
Principal Commissioner

C. No. V (15)441/ADJ/CGST-HQRS/GHY/ST/2022/

Dated:-

Copy forwarded for information and necessary action to:

1. The Chief Commissioner, GST & Central Excise, Guwahati Zone, Guwahati.
Copy of Show Cause Notice is enclosed herewith.
2. The Assistant Commissioner, Guwahati-II Division, CGST & CX, Guwahati.
3. The Superintendent (Hqrs. Systems), CGST & CX, Guwahati for uploading the order in the official website of the department.



(Bandhana Deori)

Principal Commissioner