

e-Exercise



Drafting of Show Cause Notice (Service Tax)

Note:

In this **e-Exercise Book**, the reader can check his understanding and knowledge about *Drafting of Show Cause Notice in Service Tax*. Though all efforts have been made to make this exercise book error free, but it is possible that some errors might have crept into it. If you notice any errors or if you have any suggestion to improve this exercise book, the same may be brought to our notice through email on the e-mail address rtinacenkanpur@yahoo.co.in. This may not be a perfect **e-Exercise Book** and all are requested to assist us to make it better.

Sd/-
(C. P. Goyal)
Additional Director General
NACEN, RTI, Kanpur
goyalcp@hotmail.com

Class Exercise No.1 – Service Tax

Before doing this class exercise, the trainee may carefully go through the content of the note given below.

Note for the trainees:

- This exercise on drafting of Show Cause Notice has been developed for purpose of teaching newly recruited officers of the rank of Inspectors and explains the basics of drafting of Show Cause Notice.
- This exercise can be used by trainers for the purpose of conducting class exercise of trainee officers while imparting training to such officers.
- It must be kept in mind that Show Cause Notices issued in the field are much more detailed one.
- In this exercise, attempts have been made to explain **four 'C's- Contraventions, Consequences, Charged persons and Charging paragraph**. The proper understanding of **four "C"s** is must for the officers to draft good quality SCN.
- After reading the situation given, the trainee officer may identify the legal provisions which have been contravened; consequences of such contravention of each of the legal provisions; person to be charged in the SCN; and finally, draft Charging Paragraph of the SCN.
- After completion of the exercise, trainee may compare his/her answer with the model answer given at the end.

Situation:

M/s XYZ, a proprietorship firm is engaged in providing Commercial training and coaching in Kota, Rajasthan. On the basis of intelligence collected regarding evasion of service tax, the officers of the department visited the firm on 10.07.2015 and found that no service tax was paid for the period April, 2015 to June, 2015.

The proprietor himself provided a computer generated statement to the officers indicating that no service tax was paid on the fee amounting to Rs.3,20,000/- collected from 70 students during aforesaid period. He informed that these details were forwarded to his Chartered Accountant for working out service tax liability.

During the search of the firm, a register was resumed by the officers, which indicated that another 415 students were enrolled during 1.4.2015 to 30.6.2015 and fee collected from them was Rs.18,20,000/- against which no receipts were generated and issued to the students. This fact was brought to the notice of the proprietor and his statement was recorded under section 14 of the Central Excise Act, 1944 wherein he admitted that actually total 485 students were enrolled during 1.4.2015 to 30.6.2015 and total Rs. 21.40 lakhs were collected by his institute.

Work out the service tax liability of the firm assuming rate of Service Tax @10%.

Identify the provisions of Finance Act, 1994 and Service tax Rules, 1994 which have been contravened in this case? Draft a SCN to the firm.

Analysis of 4-Cs.

A. Provisions (of Finance Act,1994 and Rules issued thereunder) contravened

- Section 69: Registration
- Rule 4 of the Service Tax Rules, 1994: For not taking Registration
- Rule 4A of the Service Tax Rules, 1994: For not issuing Invoices
- Rule 6 of the Service Tax Rules, 1994: For not paying Service Tax
- Malafide intent to evade payment of service tax evident from recovery of Register containing details of student registered and payment received, but invoices were not generated and issued.

B. Consequences:

- Demand and Recovery of Service Tax not paid: Under Section 73 of the FA, 1994
- Demand and recovery of Interest on Service tax not paid: Under Section 75 of the FA, 1994
- Penal action under Section 78 of the FA, 1994
- Penal action under Section 77 of the Finance Act, 1994

C. Person to be charged: M/s XYZ

D. Charging Paragraphs

In view of above, M/s XYZ is hereby required to show cause to the Assistant Commissioner of Central Excise, Kota within 30 days from the receipt of this notice as to why,-

- (i) Service tax amounting to Rs. ___including Education Cess and SHE Cess should not be demanded and recovered from him under section 73 (1) of Finance Act, 1994;
- (ii) Interest on the amount of Service tax should not be demanded and recovered from him under Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under section 78 of the Finance Act, 1994 for various act of omission and Commission as explained in the preceding paragraphs;
- (iv) Penalty should not be imposed under section 77 of the Finance Act, 1994 for violation of the provisions of section 69 of the Finance Act, 1994 read with rule 4 and 4A of Service Tax Rules, 1994.

Model Draft Show Cause Notice

F. No.

Dated :

DRAFT DEMAND CUM SHOW CAUSE NOTICE

M/s XYZ (hereinafter referred to as the noticee), located at _____Kota is engaged in providing the Commercial training and Coaching and have not been registered with the Department.

2. Whereas, on the basis of specific intelligence collected regarding evasion of service tax by M/s XYZ, Kota, the Central Excise officers of the Commissionerate of Central Excise, Jaipur searched the premises of M/s XYZ on 10.7.2015 under the search authorization. During visit, it was found that no service tax has been paid by the service provider for the period from April, 2015 to June, 2015.

3. Whereas, Mr. __, proprietor of M/s XYZ provided a computer generated statement to the officer indicating that he has received fee of Rs. 3.2 lakhs from 70 students during the aforesaid period. He informed that he has forwarded these details to his Chartered Accountant for working out service tax liability.

4. Whereas, during the search of the premises, a register was resumed by the officers which indicated that 415 more students were enrolled with the service provider and fee collected from these students during the period was Rs. 18,20,000/- on which also no service tax has been paid.

5. Whereas, statement of Mr. __, proprietor of the M/s XYZ was recorded under Section 14 of the Central Excise Act, 1944 as has been made applicable to service tax matter vide Section 83 of the Finance Act, 1994. In his statement, he admitted that actually 485 students were enrolled during the period from 1.4.2015 to 30.6.2015.

6. Whereas, it appears that M/s XYZ have provided training and coaching services which is taxable service chargeable to service tax as per section 66B of the Finance Act, 1994. The turnover of the institute exceeded the exemption limit of Rs. 10 lakhs during the period April , 2015 to June, 2015, therefore, they appears to be liable to pay service tax on the services rendered by them in terms of section 66 B of the Finance Act, 1994. They also appear to have contravened the following provisions of Finance Act, 1994 and the Service tax rules, 1994 in as much as that,-

- (i) They have failed to take registration under Section 69 of the Finance Act, 1994 read with rule 4 of the STR, 1994
- (ii) They have failed to issue proper invoice under Rule 4 A of the STR, 1994
- (iii) They have failed to deposit service tax under Rule 6 of the STR, 1994.

Drafting of Show Cause Notice (Service Tax)

7. Whereas, it appears that M/s XYZ have deliberately suppressed the vital facts of providing taxable service and crossing the exemption limits of Rs. 10 lakhs, as narrated above, with an intent to evade payment of service tax.

8. Now, therefore, it appears that service tax amounting to Rs. 2,03,636/- as explained below, appears to be recoverable from them under Section 73 of the Finance Act, 1994 along with appropriate interest under Section 75 of the Finance Act, 1994.

- (i) Total amount collected from the service recipient= $3.2 + 18.20 = 21.40$ lakhs
- (ii) Taking this amount as Cum tax price and taking 10% as rate of Service Tax, the Service tax payable is = Rs. 2,03,636/-

[Assuming Education Cess and S. & HE Cess= Nil]

9. Further, it also appears that the said M/s XYZ is also liable for penalty for contravention of the following provisions:-

- (i) Rule 4 of the STR, 1994 in as much as they have failed to take service tax registration under the Rules read with section 69 of FA, 1994 despite being liable to pay service tax;
- (ii) Rule 6 ibid in as much as they have not paid Service tax in accordance with this rule.
- (iii) Rule 4A ibid in as much as they have failed to issue proper invoice.

10. In view of above, M/s XYZ is hereby required to show cause to the Assistant Commissioner of Central Excise, Kota within 30 days from the receipt of this notice as to why,-

- (i) Service tax amounting to Rs.2,03,636 should not be demanded and recovered from him under section 73 (1) of Finance Act, 1994;
- (ii) appropriate Interest on the amount of Service tax should not be demanded and recovered from him under Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under section 78 of the Finance Act, 1994 for suppression of vital facts from the department with intent to evade payment of service tax by various act of omission and Commission as explained in the preceding paragraphs;
- (iv) Penalty should not be imposed under section 77 of the Finance Act, 1994 for violation of the provisions of section 69 of the Finance Act, 1994 read with rule 4 and 4A of Service Tax Rules, 1994 for not getting registration and for not issuing invoices as provided under Service Tax Rules, 1994.

Drafting of Show Cause Notice (Service Tax)

- 11.** The noticee is further directed to produce at the time of showing cause, all the evidences upon which they intend to rely in support of their defence. They should also indicate in their written reply whether they wish to be heard in person, or through their legal representative, before the case is adjudicated. If no mention of the same is made in their written reply, it shall be presumed that no personal hearing is desired by them and the case may be decided on the basis of the evidence available on record, without affording them any further opportunity in the matter.
- 12.** If no cause is shown against the action proposed to be taken against them within the stipulated period as shown above, or if they fail to appear before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on the basis of evidence available on the record.
- 13.** This show cause Notice is issued without prejudice to any other action that may be taken against them or any other person concerned with the matter under the Finance Act, 1994, or any other law for the time being in force.
- 14.** List of RUDs and RUDs as per list are enclosed here.

Encls: List of RUDs and copies of documents as per List of RUDs

**[Assistant Commissioner of
Central Excise, Kota]**

To,

1. The XYZ, Kota

Copy to:

- (i) Commissioner of Central Excise, Jaipur
- (ii) Adjudication Section
- (iii) Concerned Central Excise Division
- (iv) Master File
