



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद - 380009

FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD - 380009

ई-मेल/E-Mail : ofadljq-cgstamdnorth@gov.in, oaahmedabad2@gmail.com

फोन/Phone : 079-27544599 फैक्स/Fax : 079-27544463



निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-72/A/2020

आदेश की तारीख/Date of Order: - 24.11.2021

जारी करने की तारीख/Date of Issue :- 24.11.2021

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द्वारा पारित/Passed by:- आर गुलजार बेगम /R. GULZAR BEGUM

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 25/JC/GB/2021-22

जिस व्यक्ति(यों) (को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से) 60 साठ (दिन के अन्दर आयुक्त) अपील, (केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015) को प्रारूप संख्या इ.ए (1-A.E) 1-में दाखिल कर सकता है। इस अपील पर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner (Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल 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. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क) अपील (नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

BRIEF FACTS OF THE CASE

M/s Dolphin Security & Service, Maitri Ashoka Bunglows, A/4, Swastik School Road, Motera, Ahmedabad-380065 (hereinafter referred to as "the said assessee" for the sake of brevity) is registered under Service Tax having Registration No.ADLPS4688LST001 and was engaged in providing "Security/detective agency service".

2. An analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 to 2016-17, and details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC). On going through the third party CBDT data for the Financial Year 2014-2015, 2015-16 and 2016-17, it was observed that the said assessee had declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2014-2015, 2015-16 and 2016-17 as compared to the service related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

| Sl. No. | F.Y. | Taxable Value of services provided as per ST-3 returns (In Rs.) | Difference Between Total Amount paid/Credited from TDS/ITR and Gross Value in Service Tax Provided or Higher value of Difference Between Total Amount paid/Credited from TDS/ITR and Gross Value in Service Tax Provided, as applicable(In Rs.) | Rate of Service Tax (in %) | Resultant Service Tax short paid, including Cess (in Rs.) |
|---------|---------|---|---|----------------------------|---|
| 1 | 2014-15 | 9057878 | 18643607 | 12.36 | 2304350 |
| 2 | 2015-16 | 2941077 | 22939881 | 14.50 | 3326283 |
| 3 | 2016-17 | 3700045 | 20165570 | 15.00 | 3024836 |
| Total | | 15699000 | 61749058 | ## | 8655468 |

3. In this regard, letters dated 13.02.2018, 30.09.2019 and 06.07.2020 were issued to the assessee for clarification. But no clarification was submitted by the assessee. Since the said assessee has not provided any details/data for such difference, the reasons for such difference cannot be ascertained and therefore, the exact Service Tax liability could not be adjudged. Therefore, for calculation and demand of the Service Tax, the maximum amount of difference between (i) Value of Services declared in ITR filed by the notice & Value of Services provided as per Service Tax Returns or (ii) Value of 'Total Amount paid/Credited Under 194 C, 194 H, 194 I, 194 J & Value of Services provided as per Service Tax Returns i.e. the highest difference between these two is considered and the highest applicable rate is applied for Non-Payment/Short-Payment of Service Tax (Including Cess) for Financial Year 2014-15, 2015-16 and 2016-17 as shown in above table.

4. In view of above, it was found that the said assessee has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of Rs. 86,55,468/- (Including Cess), by declaring less value in their ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

5. It has also been noticed that at no point of time, the said assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2014-2015, 2015-16 and 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it is

found that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs. 86,55,468/-(Including Cess). The above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove and therefore it is to be recovered from them under the provisions of Section 73 of the Finance Act, 1994 along with interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the said assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, and therefore they are also rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

6. Accordingly Show Cause Notice dated 29.09.2021 was issued to M/s Dolphin Security & Service, by the Additional Commissioner, CGST, Ahmedabad North, asking them to show cause as to why :

- (i) The demand for Service tax to the extent of Rs. 86,55,468/-(Including Cess) (Rupees Eighty Six Lacs Fifty Five Thousand Four Hundred and Sixty Eight Only) short paid /not paid by them, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

DEFENCE REPLY

7. The said assessee vide letter dated 22.01.2021 submitted their defence reply to the Show Cause Notice alongwith audited Balance Sheet, 26 AS and relevant ledger accounts. In their reply it was submitted that they are engaged in the business of providing Security Service which is covered under Reverse Charge Mechanism. As per Noti.No.30/2012-ST dated 20.06.2021 vide Sr.No.8, Service Tax shall be payable in respect of service provided or agreed to be provided by service provider to the extent of service tax on 25% of value of taxable service and balance service tax on 75% of value of taxable service to be paid by the person receiving the service under partial reverse charge mechanism, if service are provided by any individual/HUF/proprietary concern/partnership firm to the business entity registered as Body corporate. Being a proprietary concern, the said assessee was liable to pay service tax only to the extent of service tax on 25% of value of taxable service and balance 75% was paid by body corporate service recipients for the year 2014-15.

8. It was further submitted that as per Sr.No.8 of Noti.No.30/2015 -ST dated 20.06.2021 as amended time to time with effect from 01.04.2015 amended through Noti.7/2015 dated 01.03.2015, if the service provider is individual/HUF/Proprietor/partnership Firm and service receiver is business entity registered as body corporate, entire (100%) service Tax is payable by service receiver. The said assessee being a proprietary concern, he was liable to pay service tax only on service provided to person other than business entity registered as Body Corporate. He further submitted that the present SCN has been issued after considering all the turnover/gross receipts shown in ITR as taxable value of service. He has discharged full service tax liability as per provisions of Finance Act, 1994 and rules made thereunder and have disclosed service tax liability in their ST 3.

9. The said assessee vide their letter dated 23.09.2021 further clarified that there is no difference in turnover as per IT return filed with the Department and Audited Balance Sheet. Many parties deducted TDS on gross amount of invoice including service tax therefore gross

receipts as per 26 AS are inclusive of Service Tax, hence there is mismatch in figures of IT return and 26AS. They further submitted that the value shown in ST 3 and difference amount shown in SCN is incorrect figure and it does not exactly match with their record. There is no short payment of service tax, hence demand is not leviable and SCN is liable to be dropped. Also submitted that since no tax is recoverable, interest u/s.75 of the Finance Act 1994 and as there is no fraud, collusion, will full misstatement, suppression or any contravention of provisions of Finance Act, no penalty is leviable under section 78 of Finance Act, 1994.

PERSONNEL HEARING

10. A personal hearing was granted to the said assessee on 23.09.2021 which was attended on his behalf by the duly authorised representative Shri Ramawatar Jangir, CA. During the hearing he submitted reconciliation statement for the F.Y 2014-15, 2015-16 and 2016-17, copies of ITR, clarification regarding difference in turnover as per 26 AS and turnover as per Audit Report, ITR and additional submissions and reiterated their earlier written submissions dt.22.01.2021 and requested to drop the proceedings.

DISCUSSION AND FINDINGS

11. I have carefully gone through the records of the case, SCN, defence replies, reconciliation statement, audited Balance sheet, copies of Income Tax Returns for the FY 2014-15, 2015-16 and 2016-17, Form 26AS as well as oral submissions made by the said assessee during the proceedings. In the instant case, I find that the said assessee was registered with Service Tax Department under Registration No.ADLPS4688LST001 and was engaged in providing "Security/detective agency service". They were also paying service tax and filing ST 3 returns accordingly. On going through the third party CBDT data for the Financial Years 2014-2015, 2015-16 and 2016-17, I find that the assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2014-2015, 2015-16 and 2016-17 as compared to the Service related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS.

12. On perusal of case records and SCN, I find that for calculation and demand of the Service Tax, the maximum amount of difference between (i) Value of Services declared in ITR filed by the assessee & Value of Services provided as per Service Tax Returns or (ii) Value of 'Total Amount paid/Credited Under 194 C, 194 H, 194 I, 194 J & Value of Services provided as per Service Tax Returns i.e. the highest difference between these two is considered and the highest applicable rate is applied for Non-Payment/Short-Payment of Service Tax (Including Cess) for Financial Year 2014-15, 2015-16 and 2016-17 accordingly SCN was issued to the said assessee to recover the short paid Service Tax of Rs.86,55,468/- alongwith interest and penalty.

13. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified according to the different category of services. As per Section 65(92) of the Finance Act 1994, as amended, "Security agency" means any person engaged in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel. Further after introduction of negative list with effect from 01.07.2012, service has been defined as "service" means any activity carried out by a person for another for consideration, and includes a declared service. Services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,

- (a) Service by the Government/Local Authority
- (b) Service by RBI
- (c) Service by Foreign Diplomatic Mission located in India
- (d) Service in relation to agriculture

- (e) *Trading of goods*
- (f) *Manufacture of goods*
- (g) *Selling of space/time for advertisement*
- (h) *Services by access to road or bridge on a payment of Toll charges*
- (i) *Betting, gambling or lottery*
- (j) *Admission to Entertainment Events & Amusement Facilities*
- (k) *Transmission or distribution of electricity*
- (l) *Educational Services*
- (m) *Renting of Residential dwelling for use as residence*
- (n) *Financial services by way of extending deposits, loans or advances and inter se sale or purchase of foreign currency*
- (o) *Transportation of Passenger with or without accompanied belongings*
- (p) *Transportation of goods.*
- (q) *Mortuary/Funeral services*

14. In view of the above, I find that the activity carried out by the assessee i.e. Security agency service falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List the security service provided by the assessee does not fall under category of negative list of services under the provisions of Section 66D of the Finance Act. Therefore, I find that the said service provider is liable to pay Service Tax on income earned from provision of security services for the period 2014-15 to 2016-17.

15. Further, I find that as per Noti.No.30/2012-ST dated 20.06.2012 vide Sr.No.8 Service Tax shall be payable in respect of service provided or agreed to be provided in the case of security service by service provider to the extent of service tax on 25% of value of taxable service and balance service tax on 75% of value of taxable service to be paid by the person receiving the service under partial reverse charge mechanism, if service are provided by any individual/HUF/proprietary concern/partnership firm to the business entity registered as Body corporate. Subsequently the said Noti. No. 30/2012-ST dated 20.06.2012 was amended through Noti.7/2015 dated 01.03.2015 and according to which if the service provider is individual/HUF/Proprietor/partnership Firm and service receiver is business entity registered as body corporate, entire (100%) service Tax is payable by service receiver with effect from 01.04.2015.

16. The said assessed has submitted balance sheet, Audit Report duly audited by Chartered Accountant copies of ledger account, profit and loss account, copies of ITR, copies of Form 26AS and reconciliation statement to in support of their claim to drop the Show Cause Notice. For the sake of clarity, I intend to discuss the matter year wise as the entire SCN is spread into the dispute for three years i.e.2014-15, 2015-16 and 2016-17.

FINANCIAL YEAR 2014-15

17. On perusal of Show Cause Notice, I find that total income credited as per 26AS is Rs. 2,77,01,485/- (90,57,878/- + 1,86,43,607/-) during the year against the declared as taxable income of Rs. 90,57,878/- in their ST-3 Returns filed. Hence the SCN is proposed for demanding service tax on differential income of Rs. 1,86,43,607/- (Rs.2,77,01,485/- - Rs. 90,57,878/-). The said assessee submitted copy of Form No. 26AS, ITR, Balance Sheet/ Profit and Loss account and other documents for financial year 2014-15. On perusal of Profit and Loss account as well as Income Tax Return, I find that they declared an income of Rs. 2,75,01,137/- in both the documents. The said income is Rs.2,00,348/- less than the income reflected in Form No. 26AS i.e.Rs.2,77,01,485/-. In this regard, the said assessee vide their letters dated 23.09.2021 clarified that there is no difference in turnover as per IT return filed with the Department and as per Audited Balance Sheet. They contented that many parties (service recipients) deducted TDS on gross amount of invoice including service tax therefore gross receipts as per 26 AS are inclusive of Service Tax. Further receipts shown in 26AS also

includes pension income of Rs.2,00,794/- in FY2014-15 and interest income received from banks of Rs.2,32,829/- for the year 2014-15 which are not taxable and accordingly the Form 26AS is showing more income than Audited Balance Sheet and ITR.

18. On perusal of Sr.No.8 of Noti.No.30/2012-ST dated 20.06.2012, I find that Service Tax shall be payable in respect of service provided or agreed to be provided in respect of security service by service provider to the extent of service tax on 25% of value of taxable service and balance service tax of 75% of value of taxable service to be paid by the person receiving the service under partial reverse charge mechanism, if services are provided by any individual/HUF/proprietary concern/partnership firm to the business entity registered as Body corporate until 31.03.2015. On verification of reconciliation statement and copies of ledger account and other details submitted by the said assessee, I find that the said assessee has provided security service to the entities not covered under the definition of corporate body to the tune of Rs.29,10,124/- on which liability to pay service tax on the entire amount, is on the said assessee and accordingly they have paid service tax and filed ST 3 Returns for the FY 2014-15. I further find that Service Tax liability on the income of Rs.2,45,91,013/- lies on both the service receiver as well as service provider as per the No.30/2012-ST dated 20.06.2012 vide Sr.No.8. According to which, the liability to pay service tax on 25% of the said income of 2,45,91,013/- falls on the said assessee which comes to Rs.61,47,753/- and accordingly they have paid the entire service tax and filed ST-3 return accordingly (Rs.61,47,753/- + Rs.29,10,124/- = Rs.90,57,877/-). The liability to pay the service tax on the remaining 75 % is lies on the service receivers only under RCM as they are falling under the definition of body corporate. For the sake of clarity, the worksheet are tabulated and reconciled as under:

| Financial Year | 2014-15 |
|---|-------------|
| Income as per 26 AS and as mentioned in SCN | 2,77,01,485 |
| Taxable Value of services provided as per ST 3 (Rs.29,10,124/- taxable value provided to proprietary firms and Rs.61,47,754/- (25% of taxable value of Rs.2,45,91,013/- provided to body corporate under partial RCM and covered under Noti.No.30/2012 (Rs.29,10,124/- + Rs.61,47,754/-) | 90,57,878 |
| Difference on which service tax demanded | 1,86,43,607 |
| Services provided to entity covered under partial RCM under Noti.30/2012 (75% of Rs.2,45,91,013/- i.e.taxable value of service provided to body corporate | 1,84,43,260 |
| Difference in income between income shown in 26 AS and total taxable service | 2,00,347 |
| Interest income & salary income shown in 26 AS | 4,33,623 |

On perusal of the above reconciliation and other records available, I find that out of the differential value of Rs.1,86,43,607/-, an amount of Rs.1,84,43,260/- pertains to services provided to entities covered under partial RCM as stipulated under Noti.No.30/2012 and the difference in remaining income of Rs.2,00,347/- is due to inclusion of interest income and salary income in their 26 AS. In view of the above facts, I find that the said assessee has discharged all the obligations to pay service tax and therefore the demand of Service Tax of Rs. 23,04,350/- on differential income of Rs.1,86,43,607/- for the year 2014-15 is not maintainable.

FINANCIAL YEAR 2015-16

19. On perusal of Show Cause Notice, I find that total income credited as per 26AS is Rs. 2,58,80,958/- (Rs.29,41,077/- + Rs.2,29,39,881/-) during the year against the declared as taxable income of Rs. 29,41,077/- in their ST-3 Returns filed. Hence the SCN is proposed for demanding service tax on differential income of Rs. 2,29,80,958/-. The noticee in their reply to SCN submitted copy of Form No. 26AS, ITR, Balance Sheet/ Profit and Loss account and other documents for financial year 2015-16. The said assessee has shown an income of Rs. 2,58,80,958/- in their profit and loss account, Income Tax Return and 26 AS statement. Noti. No. 30/2012-ST dated 20.06.2012 was amended through Noti.No.7/2015 dated 01.03.2015 and according to which if the service provider is individual/HUF/Proprietor/partnership Firm and service receiver is business entity registered as body corporate, entire (100%) service Tax is payable by service receiver w.e.f 01.04.2015. On perusal of reconciliation statement, copies of ledger accounts and other details submitted by the said assessee, during the F.Y 2015-16 the said assessee earned Rs.2,58,80,958/- as Security Service income by providing Security services to various Service receivers including body corporate. The said assessee clarified that out of the total income of Rs.2,58,80,958/- earned by them by providing security service during the year 2015-16, service tax liability of Rs.2,28,92,268/- has to be discharged by the service receivers under RCM according to Noti.No.07/2015 dt.01.03.2015 as they are all falling under the definition of corporate entity. The said assessee further confirmed that being a proprietary concern they are liable to pay service tax on the income of Rs.29,86,690/-(Rs.2,58,80,958/- - Rs.2,28,92,268/-) only against which they have paid service tax on Rs.29,41,077/- as shown in their ST 3 return for the year 2015-16. In this regard the said assessee submitted that they have discharged the remaining service tax liability of Rs.6,904/- on the differential value of Rs.47,613/- (Rs.29,86,690/- - Rs.29,41,077/-) vide challan dt.21.05.2021 and produced copy of challan for ready reference. For the sake of clarity, the consolidated worksheet are tabulated and reconciled as under:

| Financial Year | 2014-15 |
|--|--------------------------------------|
| Income as per 26 AS and as mentioned in SCN | 2,58,80,958 |
| Taxable Value of services provided as per ST 3 (Rs.29,41,077/- taxable value provided to proprietary firms) | 29,41,077 |
| Difference on which service tax demanded | 2,29,39,881 |
| Services provided to entity covered under RCM under Noti.07/2015 | 2,28,92,268 |
| Difference in income between income shown in 26 AS and total taxable service | 47,613 |
| Remarks | ST of Rs.6,904/- along with interest |

From the above submissions, I find that the said assessee has discharged all his liability of service tax of Rs.29,86,690/- for the year 2015-16. In view of the above facts and submissions, I find that the liability to pay the service tax on the remaining income of Rs.2,28,92,268/- lies on the service receiver as they falls under the definition of body corporate and therefore the demand of Service Tax of Rs. 33,26,283/- on differential amount of Rs. 2,28,92,268/- proposed in the SCN for the year 2015-16 is not sustainable.

FINANCIAL YEAR 2016-17

20. On perusal of SCN, I find that total income credited as per 26AS is Rs. 2,38,65,615/- (Rs.37,00,045/- + Rs.2,01,65,570/-) during the year against the declared taxable income of Rs. 37,00,045/- in ST-3 returns filed and thereby the SCN is proposed demanding service tax on differential income of Rs. 2,01,65,570/-. The said assessee in reply to SCN, submitted copy of Form No. 26AS, ITR and Balance Sheet/ Profit and Loss account for financial year 2016-17 declaring total income of Rs. 2,38,05,539/-. The said assessee in their Profit and Loss account as well as Income Tax Return declared an income of Rs. 2,38,05,539/- which is less than the income reflected in Form No. 26AS i.e.Rs.2,38,65,615/-. In this regard, the said assessee vide their letters dated 23.09.2021 clarified that there is no difference in turnover as per IT return filed with the Department and as per Audited Balance Sheet. They contented that many parties (service recipients) deducted TDS on gross amount of invoice including service tax therefore gross receipts as per 26 AS are inclusive of Service Tax. Further receipts shown in 26AS also includes pension income of Rs.14,831/- in FY2016-17 and interest income received from banks of Rs.2,75,730/- for the year 2016-17 which are not taxable and accordingly the Form 26AS is showing more income than Audited Balance Sheet and ITR.

21. In the instant case I find that Noti. No. 30/2012-ST dated 20.06.2012 was amended through Noti.7/2015 dated 01.03.2015 and according to which if the service provider is individual/HUF/Proprietor/partnership Firm and service receiver is business entity registered as body corporate, entire (100%) service Tax is payable by service receiver w.e.f 01.04.2015. On perusal of reconciliation statement, copies of ledger accounts and other details submitted by the said assessee, I find that the said assessee earned Rs.2,38,05,539/- as Security Service income by providing Security services to various Service receivers including body corporate. The said assessee clarified that out of the total income of Rs. 2,38,05,539/- earned by them by providing security service during the year 2016-17, service tax liability of Rs.2,01,05,494/- has to be discharged by the service receivers under RCM according to Noti.No.07/2015 dt.01.03.2015 as they are all falling under the definition of corporate entity. The said assessee further confirmed that being a proprietary concern they are liable to pay service tax on the income of Rs.35,45,172/- (2,38,05,539 – 2,02,60,367) only against which they have paid service tax on Rs.37,00,045/- as shown in their ST 3 return for the year 2016-17 which is in excess to the tune of Rs.1,54,873/-. In view of the above facts, I further find that the liability to pay the service tax on taxable value of Rs.2,01,65,570/- lies on the service receiver as they falls under the definition of corporate body and therefore the demand of Service Tax of Rs. 30,24,836/- on differential amount of Rs. 2,01,65,570/- proposed in the SCN for the year 2016-17 is not sustainable. For the sake of clarity, the consolidated worksheet are tabulated and reconciled as under:

| Financial Year | 2016-17 |
|--|-------------|
| Income as per 26 AS and as mentioned in SCN | 2,38,65,615 |
| Taxable Value of services provided as per ST 3 | 37,00,045 |
| Difference on which service tax demanded | 2,01,65,570 |
| Services provided to entity covered under RCM under Noti.07/2015 | 2,01,05,494 |
| Difference in income between income shown in 26 AS and total taxable service | 60,076 |
| Interest income & salary income shown in 26 AS | 2,90,561 |

22. On perusal of the above reconciliation, I find that out of the differential value of Rs.2,01,65,570/-, an amount of Rs.2,01,05,494/- is arrived from services provided to entities covered under RCM as stipulated under Noti.No.07/2015 and the difference in remaining income of Rs.60,076/- is due to inclusion of interest income and salary income in their 26 AS.

In view of the above facts, I find that the said assessee has discharged all the obligations to pay service tax and therefore the demand of Service Tax of Rs.30,24,836/- on differential income of Rs.2,01,65,570/- for the year 2016-17 is not maintainable

23. In view of the above discussion and findings and also on perusal of SCN, audited Balance Sheet for the year 2014-15 to 2016-17, ITR, reconciliation statement, copies of ledger accounts and other details as well as submissions made by the said assessee, I find that the service tax demand of Rs. Rs. 86,55,468/- is not sustainable and accordingly Show Cause Notice dt.29.09.2020 is liable to be dropped. Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty upon the said assessee on this count.

24. In view of the above I pass the following order;

ORDER

25. I hereby order to drop the proceedings initiated for recovery of service tax of Rs. 86,55,468/- along with interest and penalties vide SCN No. STC/15-72/OA/2020 dated 29.09.2020.

R. Gulzar Begum 24/11/20

(R.GULZAR BEGUM)

Joint Commissioner
Central GST & Central Excise
Ahmedabad North

Dated- 24/11/20

F.No. STC/15-72/OA/2020

To

M/s Dolphin Security & Service,
Maitri Ashoka Bunglows, A/4,
Swastik School Road, Motera,
Ahmedabad-380005

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Deputy Commissioner Division-VII, Central Excise & CGST, Ahmedabad North.
3. The Superintendent, Range-V, Division-VII, Central Excise & CGST, Ahmedabad North
- ✓ 4. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
5. Guard File

Recd.
07.12.21