



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

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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-56/OA/2020

आदेश की तारीख/Date of Order:-22.12.2021

जारी करने की तारीख/Date of Issue :-22.12.2021

DIN NO: 20211264WT000000D930

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

संयुक्त आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 33/JC/GB/2021-22

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

This copy is granted free of charge for private use of the person(s) to whom it is sent.

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-380015को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

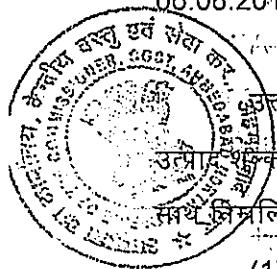
Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp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

(1) उक्त अपील की प्रति।







- c) Penalty should not be imposed upon them under the provisions of 78 of the Finance Act, 1994.

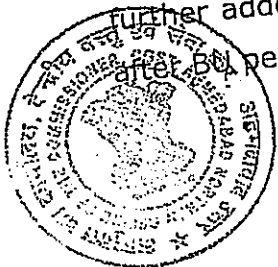
10. M/s. SAMKEET DEVELOPERS, Samkeet Developers Ahmedabd are hereby required to produce at the time of showing cause all the evidences upon which they intend to rely in support of their defense. They should also indicate in their written reply whether they wish to be heard in person, or through their 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 evidences available on record, without affording them any further opportunity in the matter.

#### DEFENCE REPLY :

11. The assessee vide letter dated 21.01.2021 has submitted their defence reply, wherein they stated that their firm had carried out service of construction of Residential complex namely "Samanvay Residency" and service tax on which paid on collection basis; that there are total four blocks called A, B, C & D for residential flats and one block called E is for club house ; that they have received completion certificate (BU permission for block A, B & E on 16.06.2012 and for block C & D on 15.10.2013; that they had paid Service Tax on booking of flats before completion certificate received and as per Service Tax Notification No. 26/2012, they have not collected any service tax on booking of flats after receiving completion certificate ; that during the financial year 2014-15, there was a sell receipt (Both of flat booking before and after completion certificate) of Rs. 12,10,24,001/-, in which amount of Rs. 11,96,69,001/- is for booking and collection made after completion certificate received hence service tax is not collected and not paid as per Notification NO. 26/2012; that on remaining balance amount of Rs. 13,55,000/- for flat book prior to completion certificate and collection received after completion certificate, service tax was collected @12.36% and paid accordingly; that they have enclosed the details thereof; that they had enclosed balance sheet, profit and loss account , copy of ledger, gross trial balance, ITR, for 26AS , ST-3 returns for the year 2014-15; that they have not defaulted in collection of service tax and depositing of same.

#### 12. PERSONNEL HEARING

Personnel hearing was granted to the assessee on 18.11.2021. Shri Hitenkumar K. Alwani, Chartered Accountant appeared for personnel hearing on behalf of the assessee wherein he stated that the written submission has already made on 21.01.2021, he reiterated the written submission made on 21.01.2021. He further added that there is not liability of service tax , as the booking were made after BU permission. Hence, requested to drop all proceeding.



### **13. DISCUSSION AND FINDINGS:**

13.1 I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 21.01.2021, alongwith documents submitted by the assessee.

13.2. On going through the SCN, I find that data of Sales /Gross receipt from services as per ITR were shared by the CBDT with CBIC for FY 2014-15, provided by the assessee. The difference in value of service to the extent of Rs. 11,96,69,001/- was noticed and therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 1,47,91,089/- on the differential value of Rs 11,96,69,001/- under proviso to section 73(1) of Finance Act, 1944 or not.

13.3 On going through the Service Tax returns, I find that the Assessee is registered with the Service Tax department under Registration No.ABHFS7059PSD001 and filing returns under construction of residential complex services. They have contended that the services provided by them are covered under Sr. No 12 of Notification number 026/2012 dated 20.06.2012 "Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority" there is abatement of 75% subject to following condition:

- (i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004.
- (ii) The value of land is included in the amount charged from the service receiver.

13.4 Hence, I find that the Services provided by the assessee for a consideration are squarely covered under Sr. No 12 of Notification No. 26/2012 dated 20.06.2012. The assessee has submitted the copies of Balance Sheet, Profit and Loss Account, Ledger of the customers, ST-3 returns for Year 2014-15.

13.5 I have also gone through Service Tax returns filed by the assessee and I observe that the assessee has filed returns under construction of residential complex services. I also find from the filing of Service Tax returns for the year 2014-15 that the assessee has not availed the Cenvat Credit during the year. The assessee has availed the benefit of Sr. No. 12 of Notification No. 26/2012 dated 20.06.2012 and has paid the proportionate Service Tax on 25% value after availing abatement of 75% .



**13.6 The show Cause Notice shows the difference as detailed below :**

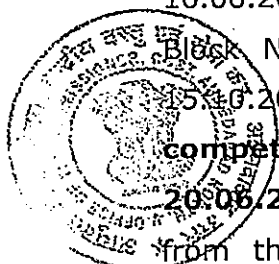
Sr. No.	Financial Year	VALUE DIFFERENCE in ITR & STR / TDS & STR) (Whichever is higher) (in Rs.)	Service Tax @12.36% (in Rs.)
01	2014-15	119669001/-	1,47,91,089/-

On going through their financial records i.e. Profit and Loss Account and Balance sheet for the year 2014-15 according to the return i.e Sales as per ITR and ST-3 returns as under;

Sr. No.	Financial Year	Sales as per ITR	Value of Services shown in ST-3	VALUE DIFFERENCE in ITR & STR / TDS & STR) (Whichever is higher) (in Rs.)
01	2014-15	12,10,24,001/-	13,55,000/-	11,96,69,001/-

13.6 I find that the aforementioned records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company/ individual during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs of the company/ individual. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

13.7 I have also gone through the reconciliation statement for the year 2014-15 provided by the assessee. While going through the same, I find that the assessee has constructed scheme of 144 Flats divided into four Blocks A, B, C, D namely Samanvay Residency and Block No. E i.e. Club House. In respect of Block No. A,B,E , the assessee has received completion certificate (BU permission) on 16.06.2012 from the Ahmedabad Urban Development Authority and with regard to Block No. c and D, the received completion certificate (BU permission) on 15.10.2013 from the Ahmedabad Urban Development Authority i.e. **the competent authority as defined under notification No. 26/2012 dated 20.06.2012.** I have verified the completion certificate as stated above. I find from the reconciliation statement, out of total 144 Residential Flats, only 5



residential Flats have been booked prior to obtaining completion certificate I.e Building Use Permission from competent authority, out of the total amount to be received for all the 5 flats, an amount of Rs. 13,55,000/- has been received in the year 2014-15 ( most of the receipt are prior to 2014-15), the remaining 139 residential flats have been booked after obtaining Building Use Permission from competent authority. As per Sr. No. 12 of the notification No. 26/2012 dated 20.06.2012, the assessee has paid the service tax of Rs. 41,870/- @ 12.36% on the 25% abated value of Rs. 3,38,750/-. The assessee has availed benefit of 75% abatement i.e 10,16,250/- out of the total amount of **Rs.13,55,000/-** I have verified the same from the records i.e Service Tax returns and the ledger of the assessee.

13.8 With regard to the differential value of Rs. 11,96,69,001/-, I find that with effect from 01.07.2012, certain activities have been made chargeable to Service Tax, as 'declared services' by virtue of Section 66E of the Finance Act, 1994. One of such declared services is Construction Services and the relevant text of the statute reads as under:

" Section 66E: The following shall constitute declared services, namely :

a) -----

b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, **except where the entire consideration is received after issuance of completion-certificate by the competent authority.**

**Explanation.** — For the purposes of this clause, —

(I) .....

(II) ..... "

13.9 When the construction is completed and the "Completion Certificate" is obtained, what turns out is an immovable property. When such property is sold/transferred after 'Completion Certificate' is received, it is deemed to be sale of immovable property which is specifically excluded from the definition of service, in terms of Section 65 (B) (44) of the Finance Act 1994, of which the relevant text reads as under:

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, **but shall not include--**

(a) an activity which constitutes merely,—

(i) **a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or**



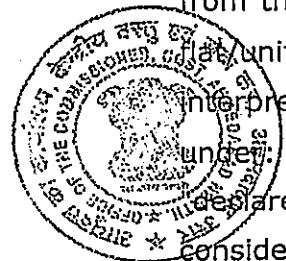
13.10 From the above definition, it is clear that sale/transfer of title of immovable property, by way of sale, gift or in any other manner is excluded from the definition of service. Therefore, such a sale does not constitute 'Service'.

13.11 A conjoint reading of the above provisions of law makes it explicit that, the activity of construction attracts Service Tax, if a part or whole of the consideration towards such construction is received prior to Completion Certificate/Building Use permission is received. The activity of construction in which the entire consideration is received after Building Use permission, has been kept out of the scope of 'declared services'.

13.12 Accordingly, the said assessee is liable to pay Service Tax only for those units, which have been booked/sold before the issue of Building Use (BU) permissions dated 16.06.2012 and 15.10.2013, under Section 66 of the Finance Act, 1994 read with Service Tax Rules, 1994 and consequentially no Service Tax would be paid for those units which have been sold after the issue of B.U. Permission.

13.13 Though construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, is considered to be a declared service under Section 66E (b) of the Finance Act, 1994, the developer/builder cannot be said to have provided or agreed to provide such service in respect of each individual unit, till such unit is booked/sold on full or part payment, before the requisite permission is obtained from the competent authority. **This situation exists because the sale of unit after receipt of "completion certificate" does not constitute service.**

13.14 In the typical case of Construction service, service is said to be provided to each individual who books/purchases flats/ units, on payment of part/full consideration and not in respect of the entire building constructed. In other words, the builder is agreeing to provide or provide services to multiple service recipients in respect of individual units of the same project. Till the time, an individual units is booked/sold, there is no element of service involved in as much as there is no service recipient and the natural corollary that follows is that no service is provided or agreed to be provided. In such a situation, it is service to self and therefore the developer/builder cannot be said to be the provider of output service (emphasis supplied) for the flats/units not booked/sold, at the time the requisite permission from the competent authority was issued. This will be the case for each individual flat/unit/shop constructed. This is the crux of the matter especially in light of the interpretation of the term 'declared service' under Sec. 65B(22) which read as **declared service" means any activity carried by a person for another person for consideration and declared as such under section 66E"**.





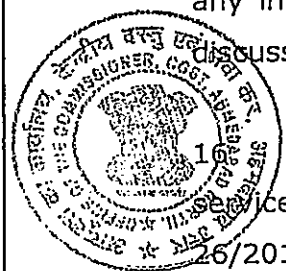
13.15 In other words, the developer/builder is deemed to be the provider of output service only in those cases where the flats/units are booked/sold prior to obtaining the 'Completion Certificate' from the competent authority. Consequentially, no Cenvat credit can be availed in terms of Rule 3(1) supra, till the time a unit is booked on part/full payment of consideration, as till such time the person indulged in construction cannot be said to be the "Service provider" and is providing service to self, in so far as the units not booked/sold. Fact remains that the builder is very well aware of the booking status of the individual flats/ units and this leads to his knowledge of the fact whether he is an Output Service Provider for that particular units or otherwise. This position is very clear in light of the provisions of Sec. 65B(22) supra to which the builder cannot claim ignorance. Thus, the assessee cannot be held to be an Output Service Provider for the individual units still such time every single units is booked, prior to obtaining Completion Certificate. This is especially, so in light of the fact that in the event that the unit is booked after receipt of Completion Certification, the builder is engaged in the activity of sale of immovable property and if the unit is booked before receipt of Completion Certification, the builder is engaged in providing Construction services to the proposed owner of the unit.

13.16 In a nutshell, till the time a units is booked on payment of part/full consideration, no service is provided or agreed to be provided. Thus, the assessee cannot be said to be an Output Service Provider in respect of such units in as much as there is no service recipient for such units and resultantly no service is provided or agreed to be provided.

14. I find that the SCN shows the difference in value to the tune of Rs. **11,96,69,001/-** for FY 2014-15 when value of sales/gross receipt as per ITR are compared with gross value declared in ST-3 as mentioned in forgoing paras. I have also gone through the Service Tax Returns, Balance Sheet for the year 2014-15. On going through the ST-3 returns and financial records for FY 2014-15, it is noticed that the assessee has declared service tax liability on the value of Rs. 13,55,000/- rightly in the ST-3 returns as narrated in aforesaid paras and paid Service Tax proportionate accordingly.

15 From the SCN, I find that the SCN has not questioned the taxability on any income other than the income from sale of services. I therefore refrain from discussing the taxability on other income other than the sale of service.

16 Keeping in view the aforementioned detailed discussions, I find that the services rendered by the assessee is squarely covered under 12 of Notification No. 26/2012 dated 20.06.2012. The abatement claimed by the assessee is quite clearly available to them. I therefore hold that no service tax is payable by the



assessee as demanded in the subject SCN as the tax payer has already paid eligible service tax as stated in Reconciliation statement.

17. In view of the facts and circumstances pertaining to the case, the demand is not tenable in law, accordingly I do not consider it necessary to delve in the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise of imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

18 Since I am fully convinced with the arguments put forth by the assessee, I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

19. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. Accordingly, it is my considered view that the assessee has established their case quite unambiguously that the value of service as discerned by the department by comparing the value of services in ITR/TDS is basically on account of the exempt service rendered by the assesseeas.

**ORDER**

20 I drop the proceedings initiated against M/s. SAMKEET DEVELOPERS, B-604, Shapath 4, Opp. Karnavati Club, S. G Highway, Ahmedabad. GUJARAT 380051 having Registration No. ABHFS7059PSD001, vide Show Cause Notice F.No. STC/15-56/OA/2020 dated 28.09.2020.



*R. Gulzar* *22/11/20*  
(R. GULZAR BEGUM)  
Joint Commissioner  
Central GST & Central Excise  
Ahmedabad North

F.No. STC/15-41/OA/2020

Dated-

**BY REGD. POST A.D./SPEED POST/Hand Delivery**

To,  
M/s. SAMKEET DEVELOPERS,  
B-604, Shapath 4, Opp. Karnavati Club,  
S. G Highway, Ahmedabad.  
GUJARAT 380051

**Copy to:**

1. The Commissioner of CGST & C. Ex., Ahmedabad North.
2. The Assistant Commissioner, CGST & C. Ex., Division-VI, Ahmedabad North.
3. The Superintendent, Range-IV, Division-VI, Ahmedabad North.
- ✓ 4. The Superintendent (System), CGST, Ahmedabad North for uploading on website.
5. Guard File