


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-154/OA/2020

DIN-20211264WT0000620775

आदेश की तारीख / Date of Order : 24.11.2021
जारी करने की तारीख / Date of Issue : 02.12.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV
आयुक्त / COMMISSIONER

मूल आदेश संख्या / AHM-EXCUS-002-COMMR-34/2021-22

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-34/2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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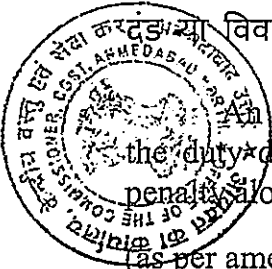
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं विवादग्रस्त दंड शामिल है ।

An appeal against this order shall lie before the Tribunal 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)



BRIEF FACTS OF THE CASE:

M/s. JALARAM PROJECTS PVT LTD, 401,VITTHAL VILLA,SATADHAR CHAR RASTA,SOLA ROAD, AHMEDABAD-380060, GUJARAT, (hereinafter referred to as 'Assessee') are holding Service Tax Registration No. AADCJ6296PSD001. They are providing taxable services pertaining to Works Contract Service and Goods Transport Agency Service (RCM).

2. On preliminary verification of Third Party Data received from CBDT, the Sales/Gross Receipt from Services (Value from ITR) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return for the F.Y. 2015-16. It was observed that there was difference in Value of Services in ITR/TDS and Gross Value of Services provided in ST-3 returns to the tune of Rs. 65,13,47,504/-. It therefore appeared that the service provider had less/not discharged their service tax liability of Rs. 9,44,45,388/- on the aforesaid differential amount of Rs. 65,13,47,504/- for the F.Y. 2015-16.

3. To explain the reasons for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form 26AS, Service Income and Service Tax Ledger and Service Tax Returns (ST-3) for the Financial Year 2015-16, Letter dated 06.10.2020 was issued by the department to the said assessee. The assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner. Due to this reason, no further verification could be carried out in this regard by the department.

4. Since, the assessee had not submitted the required details of services provided during the Financial Year 2015-16, the service tax liability was ascertained on the basis of income mentioned in the ITR returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department was considered as the total taxable value in order to ascertain the Service Tax liability under Section 67 of the Finance Act, 1994.

The service provider appeared to have not discharged their service tax liability on the actual value received towards taxable services provided by them, hence, there appeared to be short payment of Service Tax of Rs. 9,44,45,388/- during the material period. Further, the service provider appeared to have

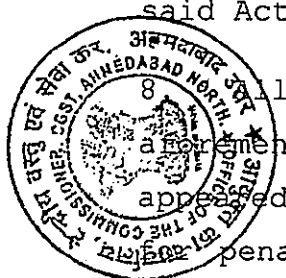


contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994, inasmuch as they appeared to have failed to pay Service Tax to the extent of Rs. 9,44,45,388/- as per their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services provided/received by them; they also appeared to have contravened Section 70 of Finance Act 1994 inasmuch as they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

6. In view of the above, the service provider appeared to have short paid/not paid Service Tax of Rs. 9,44,45,388/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the said Act along with interest under Section 75 *ibid* not paid by them under Section 68 of the said Act read with Rule 6 of Service Tax Rules, 1994, inasmuch as the said service provider had suppressed the facts from the department and contravened the provisions with intent to evade payment of service tax.

7. In terms of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, every person providing taxable service to any person is required to pay Service Tax at the rate specified in Section 66 in such manner and within such period as may be prescribed. In the present case, on the basis of Third party Data/information from CBDT for the F.Y. 2015-16, the service provider appeared to have less discharged their service tax liability on the actual value received towards taxable services provided at the rate prescribed under Section 66 of the said Act. All these acts of contravention on the part of the service provider appeared to have been committed by way of suppression of the facts by not declaring/not considering the correct value of taxable services provided by them for payment of Service Tax to the Central Government for the period in question, with intent to evade payment of Service Tax and therefore the service tax which was not paid at the material time was required to be demanded under the proviso to Section 73(1) along with interest as per provision of Section 75 of the said Act.

All the above acts of contravention as discussed in the above mentioned paras on the part of the service provider appeared to be punishable; therefore, they appeared to be liable to pay penalty under Section 76 of the said Act. Further, as per



Section 70 of the said Act, the person liable to pay Service Tax shall himself assess the tax due on the services provided by him and shall furnish a prescribed return as per Rule 7 of the Service Tax Rules, 1994. As they have failed to do so, they appeared to be liable to penalty in terms of Section 77 of the said Act. The penalty under Section 78 of the said Act also appeared to be invocable in the instant case as they had suppressed the taxable value.

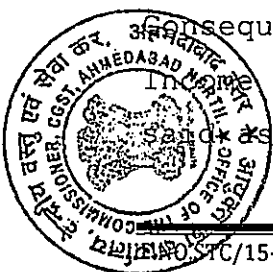
9. The provisions of the repealed Central Excise Act, 1944, the Central Excise Tariff Act, 1985 and amendment of the Finance Act, 1994 have been saved vide Section 174 (2) of the CGST Act, 2017, and therefore the provisions of the said repealed/amended Acts and Rules made thereunder are enforced for the purpose of demand of duty, interest, etc. and imposition of penalty under Show Cause Notice.

10. Further, Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified as under :

'2.8 Quantification of duty demanded. It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the notice are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI, 1982 (OIO) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'

11. From the facts and circumstances as narrated above, it appeared that the "Total Amount Paid/Credited under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts from Services (From ITR)" for the F.Y. 2016-17 to F.Y. 2017-18 (up to June'2017) had not been disclosed thereof by the Income Tax Department, nor the reason for the non-disclosure was made known to this department. The said assessee had also failed to provide the required information even after the issuance of letters from the Department. Therefore, the assessable value for the year F.Y.2016-17 to F.Y. 2017-18 (up to June'2017) was not ascertainable at the time of issuance of Show Cause Notice.

Consequently, if any other amount was to be disclosed by the Tax Department or any other sources/agencies, against the assessee, action was to be initiated against them under the



proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period F.Y. 2016-17 to F.Y. 2017-18 (up to June'2017) covered under this Show Cause Notice, was to be recoverable from the said assessee accordingly.

12. Therefore, a Show Cause Notice No.STC/15-154/OA/2020 dated 21.10.2020 was issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North to M/s. Jalaram Projects Pvt. Ltd., 401, Vitthal Villa, Satadhar Char Rasta, Sola Road, Ahmedabad-380 060, asking them as to why:

(i) The Service Tax to the extent of Rs. 9,44,45,388/- (Rupees Nine Crore Forty Four lakhs Forty Five thousand Three hundred Eighty Eight only) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;

(ii) Service Tax liability not paid during the financial year 2016-17 and 2017-18 (upto June-2017),ascertained in future, as per paras no. 7 and 8 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.

(iii) Interest at the appropriate rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;

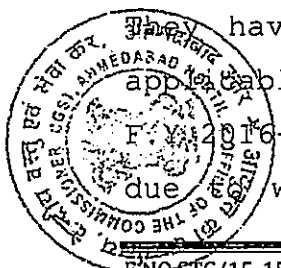
(iv) Penalty under the provisions of Section 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.

(v) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

12. DEFENCE REPLY:

The assessee vide letter dated 18.12.2020 submitted their written submission. They submitted that M/s. Jalaram Projects Private Limited was incorporated on 01.01.2016. That they are working in field of construction of works awarded by Government and as per clause 12,13 & 14 of Notification No.25/2012-Service Tax, said services qualified for exemption, so they were not liable for service tax on the said services. That they had paid service tax on taxable works contract services (not covered under Notification NO.25/2012) and reverse charge on Goods Transport Agency Services. They submitted the sample copy of works orders issued by the Government Authority.

They have further informed that they had paid service tax on taxable services during F.Y.2015-16 (Jan to March-16), F.Y.2016-17 & F.Y.2017-18 (April to June). They informed that due to heavy workload they had forgotten to file service tax return



for F.Y.2015-16 (Jan to March-16), F.Y.2016-17 & F.Y.2017-18 (April to June). They have submitted that they have filed all pending service tax return along with penalty. They further submitted the reconciliation of Works Contract Income with Service Tax Return and Income Tax Return is as below;

F.Y.	Works Contract Income as per Income Tax Return	Works Contract Income as per Service Tax Return	Difference between ITR and Service Tax Return
2015-16	651347504/-	651347504/-	0
2016-17	1417629955/-	April to Sept 700524959/- Oct to March 719273861/- Total 1419798820/- Less:2168945* Net: 1417629875/-	80/-
2017-18 (upto June,17)	712347197/-	712347197/-	0

*The amount 2168945/- denotes value of works contract service received on which Reverse Charge is applicable.

They have submitted the documents i.e. audited balance sheet & profit and loss account, Service Tax return for F.Y.2015-16 (Jan to March-16), F.Y.2016-17 & F.Y.2017-18 (April to June), copy of Service Tax Challan, Copy of Challan for late filling of Service Tax Return, Copy of 26AS, sample copy of Works Orders. They have submitted that there had no difference in turnover as per income tax return and service tax return. They have further, requested to drop the demand.

PERSONAL HEARING:

Personal hearing on the subject issue was held on 06.10.2021. Shri Dhiraj Patel, C.A., appeared for personal hearing on behalf of the assessee. He reiterated the contention/arguments made in the written submission made earlier. He also submitted closure order given by DGGI dated 08.11.2019 vide which case against M/s. Jalaram Construction has been closed on similar issue.

DISCUSSION & FINDINGS:

14. 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 20.11.2020 and documents submitted by the



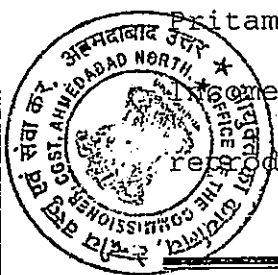
On going through the SCN, I find that data of Sales/Gross receipt from services as per ITR was shared by the

CBDT with CBIC for FY 2015-16, which was then compared with the gross value declared in ST-3 Returns filed by the assessee for FY 2015-16. The difference in value of service to the extent of Rs. 65,13,47,504/- was noticed and therefore, the subject SCN for recovery of Service Tax of Rs. 9,44,45,388/- was issued. Apart from the aforementioned difference noticed, no other concrete documentary tangible evidence was adduced by the department to substantiate the allegations. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the differential value of Rs. 65,13,47,504/- under proviso to section 73(1) of Finance Act, 1944 or not.

14.2 Thus, first and foremost it is important to understand the liability or otherwise of the noticee for paying Service Tax. I feel it necessary to understand the activities being carried out by the assessee. I observe that after introduction of new system of taxation of services in negative list regime, any services for a consideration is taxable except those services specified in the negative or exempt list by virtue of mega exemption notification.

14.3 I discern that the assessee in his defence reply dated 18.12.2020 has stated that they have rendered service of works contract services awarded by the Government and the same are Exempted vide Notification No.25/2012-ST dated 20.06.2012 , Clause 12,13 &14 and they were not liable to pay service tax on the said services. That they had also provided the taxable services under works contracts and service tax had been paid on that taxable services of works contract. They have submitted that they have paid service tax under category of GTA (RCM). They have submitted the sample copies of works order awarded to them.

14.4 The assessee has also submitted the Audit Report for the F.Y.2014-15, 2015-16 and 2016-17 issued by Mukesh R. Choksi & Co., Chartered Accountants, Ahmedabad, Membership No.36270, 401/A, Harekrishna Complex, Opp. Kothawal Flats, Nr. Pritamnagar, Paldi, Ahmedabad-380 006 under Section 44AB of the Income Tax Act,1961. Section 44AB of Income Tax, Act,1961 is reproduced below;



Audit of accounts of certain persons carrying on business or profession.

44AB. ²Every person,—

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year ⁷[***]:

⁸[Provided that in the case of a person whose—

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment:

⁹[Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash.]

this clause shall have effect as if for the words "one crore rupees", the words "¹⁰[ten] crore rupees" had been substituted; or]

(b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or

(e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :

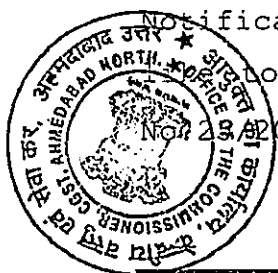
I find that in Form No.3CD issued by the auditor (Mukesh R. Choksi), in para 4 of the said form it has been established that the assessee are liable to pay Service Tax and they are holding Service Tax registration, para 11 of the said audit report states that Cash Book, Bank Book, Income Register, Journal Register, Ledger have been examined, to the best of their information and knowledge, that the said accounts, read with notes thereon financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and other matters as may be prescribed. I find that the assessee has submitted the copy of Audit Report under Section



44AB of the Income Tax Act,1961 for F.Y.2014-15,2015-16 and 2016-17 alongwith Profit & Loss Accounts including all Annexure.

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 assessee 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. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

14.5 I find that the Notification No. 25/2012-ST dated 20.06.2012 issued under Section 93(1) of the Act, grants exemption to the taxable services enlisted therein from whole of Service Tax leviable under section 66B of the Act. I find that the assessee has contested the demand of Service Tax on services rendered by them being service provided under the Works Contract. The noticee has claimed the exemption from levy of service tax under Sr. No.12, 13 & 14 of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. I therefore would reproduce the said Sr. No. 12,13 & 14 of Notification No. 25/2012-St dated 20.06.2012 ibid hereinunder:



12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) ***

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) ***

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) ***

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

(c) a building owned by an entity registered under section 12 AA of the Income Tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;

(d) a pollution control or effluent treatment plant, except located as a part of a factory; or (e) a structure meant for funeral, burial or cremation of deceased;

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(a) railways, excluding monorail and metro; Explanation.-The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro;

(b) a single residential unit otherwise than as a part of a residential complex;

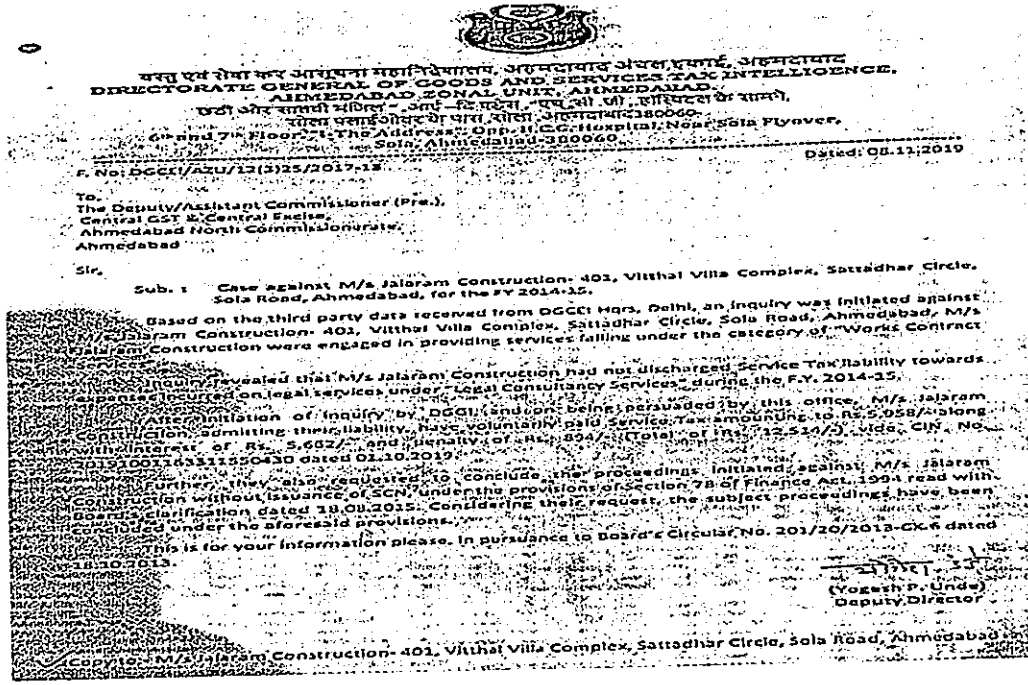
(c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

(d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

(e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

14.6 I find during personal hearing assessee had submitted the copy of closure report issued by the DGGI, Ahmedabad, in connection with inquiry initiated against the assessee by the Directorate General of Goods and Service Tax Intelligence, AZU, Ahmedabad for the F.Y. 2014-15 on the basis of the same set of party data received by them from the DGCEI, Hqrs. Delhi. The subject proceedings have been concluded by the Directorate General of Goods and Service Tax Intelligence, AZU, Ahmedabad

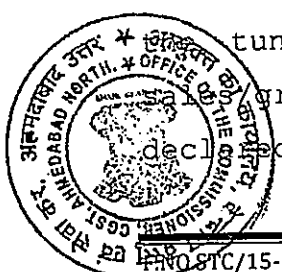
and the closure report has been issued by them vide F.No.DGCEI/AZU//12(3)25/2017-18 dated 08.11.2019 for F.Y.2014-15.



On perusal of the above letter is established that the assessee were engaged in providing taxable services falling under the category of Works Contract Service and inquiry against the assessee had been concluded by the Directorate General of Goods and Services Tax Intelligence, Ahmedabad for the F.Y. 2014-15.

14.7 Keeping in view the aforementioned detailed discussions, I find that the works contract service provided for e.g. canal, dam, irrigation works, railways, water supply projects, roads, drainage/sewage projects rendered by the assessee were squarely covered under the Sr. No. 12,13 & 14 of the Notification No. 25/2012-ST dated 20.06.2012 and I find that the exemption is quite clearly available to the assessee as claimed by them. Since I am 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 for F.Y.2015-16.

15. I find that the SCN shows the difference in value tune of Rs.39,97,57,341/- for FY 2015-16 when value of gross receipt as per ITR are compared with gross value declared in ST-3 as mentioned in forgoing paras. Further para 6



of the SCN states that the levy of service tax for FY 2016-17 and FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly.

15.1 The assessee vide letter dated 11.10.2021 have submitted the relevant documents for the F.Y.2015-16, 2016-17 and 2017-18 (April to June) i.e. Copy of sales register, copy of work orders, copy of bills issued by the Government.

15.2 I find that the assessee had been awarded work by the (i) Additional City Engineer (Drainage Project), Ahmedabad Municipal Corporation (ii) Addl.City Engineer (Road/Bridge) Ahmedabad Municipal Corporation (iii)Additional City Engineer (Water Project) Ahmedabad Municipal Corporation (iv) Chief Engineer (Construction) South, Western Railway (v) Executive Engineer, Dharoi Head Works Division NO.1, (vi)Executive Engineer, GIDC, Bharuch (vii)Chief Engineer, SSNNL, Patan (viii)Sanchalak/Deputy General Manager(CPC)/Deputy General Manganer (Canals-II),SSNNS,Gandhinagar (ix)Executive Engineer, Nadiad Irrigation Department (x)Executive Engineer, N.P. Main Canal Dn No.20, Patan (xi)Executive Engineer, NPMCC Division no.24, Radhanpur(xii)Executive Engineer, Construction Division, Dahej-II, GIDC, Bharuch (xiii) Executive Engineer, SSNNL, Mahesana (xiv)Executive Engineer, GWSSB, Deesa (xv)Executive Engineer, GIDC, Ahmedabad (xvi)Executive Engineer, Dharoi Canal Division no.3,Visnagar (xvii) Sr. General Manager (Engg.)Container Corporation India Limited, New Delhi (xviii)Narmada Water Resources Water supply and Kalpsar Department (xix) Executive engineer, Deesa (xx)Executive Engineer, N.P. Main Canal Division no.1, Vadodara, (xxi) Executive Engineer, Kachchh Branch Canal Dn.no.3/1, tharad (xxii)Executive Engineer, KRBC Division, Surat(xxiii) Hydraulic Engineer, Surat Municipal Corporation (xiv) B. Shrinivasa Reddy, President (BD&P),Megah Engineering & Infrastructure Ltd (xv)Construction of Head Regulator-Karannagar Dhadhusan Pipeline (xxv) Chief Engineer (Gen), GSECL TPS, Ukai, Gujarat

State Electricity Corporation Limited (xxvi) Dy. Chief Engineer (construction), Western Railway, Vadodara(xxvii) Executive Engineer(Purchase), Bharat Heavy Electricals Limited, Nagpur.

15.3 I find that work carried out by the assessee for the Container Corporation India, Bharat Heavy Electricals, Gujarat State Electricity Corporation do not fall under exemption category of Notification NO.25/2012-ST dated 20.06.2012. The assessee however has paid the service tax on taxable income which does not fall under the exemption category.

15.4 I find that assessee has filed the ST3 return for the period October-15 to March-16 only on 23.10.2020, i.e. After issuance of the subject SCN. Therefore, while calculating the difference on taxable value the said ST-3 Returns was not considered. The details shown in the SCN are as under.

(Amount in Rs.)						
Sr No	F. Y.	Total Sale of Service as per ITR	TOTAL VALUE (STR)	GROSS PROVIDED	VALUE DIFFERENCE in ITR and STR	Resultant Service Tax short paid (including Cess)
1	2015-16	651347504/-	0		651347504/-	9,44,45,388/-

However, assessee had filed the ST3 returns for the period from April,2015 to March,2016 with taxable value of Rs.65,13,47,504/-. While issuing SCN no data was available with the department, accordingly, STR value was shown as zero(0) in SCN. The total gross value Rs.65,13,47,504/- provided in STR was not considered for the reason that the assessee had filed ST3 returns on 23.10.2020 which was much after sharing of the data by CBDT. The assessee had already filed the ST3 returns on 23.10.2020 for taxable value of Rs.65,13,47,504/-, and paid the Service Tax other than on exempted service. Hence, there is clearly no short payment of Service Tax.

15.5 I find that the assessee has filed the ST3 returns for the F.Y.2016-17 and 2017-18 (up to June-2017) under the category of Works Contract Service. The assessee has paid the service tax on the taxable service which were not exempted vide Notification NO.25/2012-ST dated 20.06.2012.

Having considered these factual and documentary evidences available on records, I find no reason to disregard assessee's arguments. Accordingly, it is my considered view

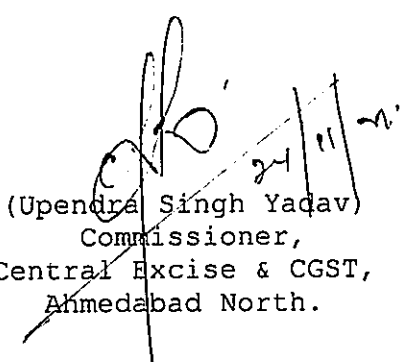


that the assessee has established their case quite unambiguously that the difference in value of service as discerned by the department by comparing the value of services in ITR/TDS and gross value of services provided in ST-3 Returns is basically due to the late filing of ST3 returns by the assessee as discussed hereinabove which was not shown in ST-3 Returns at the time of data shared by the CBDT. I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

16. 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: -

ORDER

I drop the proceedings initiated against M/s. Jalaram Projects Pvt. Ltd., 401, Vitthal Villa, Satadhar Char Rasta, Sola Road, Ahmedabad - 380060, vide Show Cause Notice F. No. STC/15-154/OA/2020 dated 21.10.2020.


(Upendra Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.

Date:

By Regd. Post AD./Hand Delivery

F.No. STC/15-154/OA/2020

To,
M/s. Jalaram Projects Pvt. Ltd.,
401, Vitthal Villa,
Satadhar Char Rasta,
Sola Road,
Ahmedabad-380060.

Copy to:

1. The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
2. The Assistant Commissioner, CGST & C.Ex., Division-VII, Ahmedabad North.

The Superintendent, Range-III, Division-VI, Ahmedabad North.

The Superintendent (System), CGST, Ahmedabad North for uploading website.

Guard File.

