

<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद -- उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>GST ONE NATION. ONE TAX. ONE MARKET</p> <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. STC/15-10/OA/2021

DIN- 20220964WT000000ED03

आदेश की तारीख/Date of Order :- 29.09.2022
जारी करने की तारीख/Date of Issue :- 29.09.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 45/JC/ LD /2022-23

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 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रू. 5.00 (पांच 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. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) 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।

(81) उक्त अपील की प्रति।

(82) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(81) Copy of accompanied Appeal.

(82) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.



विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-10/OA/2021 dated 23.04.2021 issued to M/s Yogesh Dhirajlal Upadhay, A/4, Sagun Plaza, Nr. Goyal Park, Judges Bungalow Road, Ahmedabad, Gujarat-380015.

BRIEF FACTS OF THE CASE

M/s.Yogesh Dhirajlal Upadhyay, A/4, Sagun Plaza, Nr.Goyal Park, Judges Bungalow Road, Ahmedabad, Gujarat -380015 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. AACPU5517ASD001 and was engaged in providing Taxable Services.

2. On going through the third party CBDT data for the Financial Year 2015-16 and 2016-17, it was observed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y. 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:

Sr. No.	F.Y.	Taxable Value as per ST-3 returns (In Rs.)	Gross Receipts From Services (Value from ITR/26AS) (In Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax short paid (in Rs.)
1	2015-16	0/-	51019042/-	51019042/-	7397761/-
2	2016-17	0/-	0/-	0/-	0/-
TOTAL					7397761/-

3. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said notice had not paid service tax as worked out as above in Table for Financial Year 2015-16 and 2016-17.

4. No data was forwarded by CBDT, for the period 2017-18 (upto June-2017) and the assessee has also failed to provide any information regarding rendering of taxable service for this period. Therefore, at this stage, at the time of issue of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017). With respect to issuance of un quantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies that:

"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, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs UOI, 1982 (010) 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."

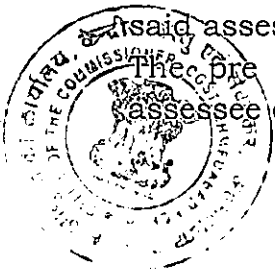


5. As per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it was noticed that the said service provider has not assessed the tax dues properly, on the services received by him, as discussed above, and failed to file correct ST-3 Returns thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

6. As per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the noticee along with interest under Section 75 of the Finance Act, 1994.

7. In view of above, it was noticed that the 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 73,97,761/-, 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.

8. It was further noticed that at no point of time, the 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 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 was noticed 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. 73,97,761/-. 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. Hence, the same is to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, 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 Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, thereby the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994. The said assessee was given opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 22.04.2021 but the said assessee did not appear for the same.



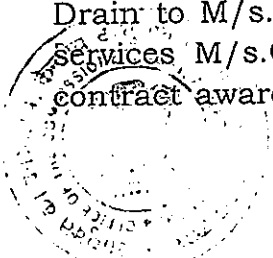
9. Therefore Show Cause Notices bearing No.STC/15-10/OA/2021 dated 23.04.2022 was issued to M/s.Yogesh Dhirajlal Upadhyay, called upon to show cause as to why:

- (i) The demand for Service tax to the extent of Rs.73,97,961/- short paid /not paid by them in F.Y. 2015-16 and 2016-17, 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.
- (iv) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

DEFENCE REPLY

10. The assessee vide letters dated 11.06.2021 & 12.05.2022 submitted their reply to SCN wherein they stated that they are proprietary concern and engaged in providing "Works Contract Services" as a sub contractor in the name of Eklingji Construction Co and was registered under Service Tax Reg No.AACPU5517ASD001, and are paying service tax and filing ST 3 returns regularly. They are providing services by way of works contract to another contractor and renting of residential immovable property. They further submitted that they are sub contractors and are exempted from payment of service tax as they are providing exempted services. In their reply they stated that the entire demand is based on mere assumption without any investigation that the entire amount stated in Form No.26 AS is taxable under the Finance act, 1994. They further stated that the invoice wise details of work done, amounts in Invoices, nature of work done, recipient of services etc are attached for the year 2015-16 as annexure I. Service tax of Rs.2,96,370/- is paid on Works Contract Service of construction of Storm Water Drain provided to M/s. GNFC Ltd. As the work was of original work and services are covered under RCM. They further stated that SCN is silent on such tax paid and declared in regular return. SCN at table given at para 2 states that they have not declared any value in ST 3 return for the concerned period. This fact is totally wrong and can be verified from the return. Thus SN has been issued without any investigation and such SCN should be scrapped.

11. They further stated that the total value of services provided is Rs.5,07,99,065/- out of which the income derived from services provided to M/s.Yogi Construction Co, the main contractor is Rs.4,05,94,074/-. They have provided works contract services for construction of RCC Storm Water Drain to M/s. Yogi Construction Co., a main contractor, for final recipient of Services M/s.Gujarat Industrial Development corporation (GIDC). Copy of contract awarded by GIDC to Yogi Construction dated 28.02.2014 for work of



contraction of RCC SWD at Dahej -II (Part II) is also attached alongwith a copy of contract awarded by them to the assessee. In terms of Entry No.12(e) read with Entry No.12A of the Notification No.25/2012 dated 20.06.2012, the service is exempt from service tax as contract is awarded prior to 01.03.2015. Further in terms of Entry No.29(h) of Notification No.25/2012 dated 20.06.2012 if the service of the main contractor is exempt and contract between the main contractor and sub contractor both are works contract, services provided by sub contractor is also exempt. From the copies of the contract attached, it is abundantly clear that both such contracts are works contract and services provided by the main contractor M/s.Yogi Construction Co is covered under entry No 12 of Noti.No.25/2012 dated 20.06.2012 and they are entitled for exemption under Entry No.29(h) of the said Notification.

12. The assessee further contended that it is undisputed fact that the above work was originally awarded by the GIDC, which is an entity set up by the Government of Gujarat under the GIDC Act, 1962 and is a wing of Government or a Governmental authority. They have also drawn to the order of Advance Ruling I the matter of GIDC (No.GJ/GAAR/88/2020 dated 17.09.2020 in which it has been opined that GIDC is a Government itself. Further as the name itself suggest the structure is for Storm Water Drain, it is being used for removal of rain and storm water and not for any commercial purpose. Hence it is covered under entry No.12(e) of Noti.No.25/2012-ST dated 20.06.2012.

13. They further submitted that the services covered under Notification No.25/2012 dated 20.06.2012 is of Rs.4,05,94,074/- and service tax has been paid on the taxable value of Rs.1,02,04,991/-. They have also reconciled the difference of Rs.2,93,023/- is pertaining to service tax which is booked as income in P & L. Further they stated that SCN is issued without any investigation and merely based on the false assumption that everything stated in form 26AS under the IT law is taxable under the ST law. The SCN is issued based on wrong facts and without any investigation and merely ITR/26AS data shall be quashed. They rely upon the following case laws in support of their claim

- M/s.Amrish Rameshchandra Shah Vs UOI (TS-77-HC-2021-Bom-ST)
- Sharma Facricators & Erectors P.Ltd (2017(5)GSTL 96 (Tri-All)
- Kush Construction Vs CGST NACIN 2019 (24)
- Alpha Management Consultant P.Ltd Vs CST 2007 (6) STR 181 (Tri-Bang)
- Tempest Advertising VsCCE 2007(5)STR 312 (Tri Bang)

14. They further submitted that SCN has been issued by invoking extended period under Section 73(1) of Finance Act, 1994. As they are not liable to pay any service tax charging suppression and extended period and levying service tax is not valid. In the absence of intention to evade tax, larger period of demand is not applicable and entire demand is time barred. They requested to set aside the SCN because their services falls under exemption notification so accordingly they are not liable to pay service tax. They requested to dispose the assessee accordingly. They have also filed details of invoices issued during the period under dispute.



PERSONEL HEARING

15. Personnel Hearing in the instant case was granted to the assessee on 02.08.2022. Shri Punit Prajapati, CA and authroitsed representative appeared for P.H on behalf of the assessee. He reiterated their written submissions dated 12.05.2022 and requested to decide the issue on merits.

DISCUSSION AND FINDINGS

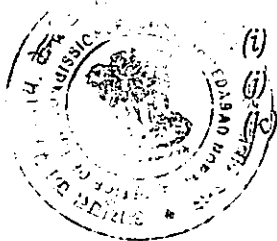
16. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding further.

17. I have carefully gone through SCN, Reply to the show cause notice, Form 26AS, audited Balance sheet for the year 2015-16, Ledger copy, copies of work orders, reconciliation statement, copies of invoices and copies of ST3 returns for the relevant period. In the instant case, Show Cause Notices were issued to the assessee demanding Service Tax of Rs. 73,97,761/- for the financial year 2015-16 & 2016-17 on the basis of Form 26AS received from Income Tax authorities. On perusal of the above referred records, I find that the assessee is registered under Service Tax and also filed STR except for the period April 2015-16 to Sept.2015. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77(2) and 78 of the Finance Act, 1994.

18. On perusal of the reply to SCN and other documents available on record, I find that the assessee is engaged in providing Works Contract Service for construction of Storm Water Drainage to M/s. Yogi Corporation, a main contractor for final recipient of services M/s.Gujarat Industrial Development Corporation(GIDC) for which they have taken service tax Registration and accordingly filed ST 3 Returns for the relevant period except April to Sept 2015. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified according to the different category of services. 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
- Admission to Entertainment Events & Amusement Facilities
- Transmission or distribution of electricity



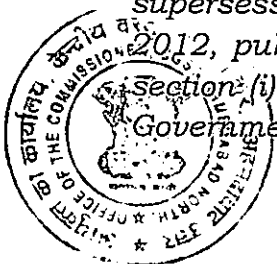
- (l) Educational Services
- (m) Renting of Residential dwelling for use as residence
- (n) Financial services by way of extending deposits, loans or advances and inter se sale or purchase of foreign currency
- (o) Transportation of Passenger with or without accompanied belongings
- (p) Transportation of goods.
- (q) Mortuary/Funeral services

19. In view of the above, I find that the activities carried out by the assessee 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 works contract service provided for the period 2015-16.

20. On perusal of reply to SCN and other documents submitted by the assessee, I find that they have provided works contract services for construction of RCC SED (Storm Water Drainage) at Dahej -II (Part.II) to M/s. Yogi Construction Co., a main contractor for final recipient of services M/s.Gujarat Industrial Development corporation(GIDC). Further, the assessee in their submissions stated that the total value of services provided is Rs.5,07,99,065/- and out of which, services provided to M/s.Yogi Construction Co is Rs.4,05,94,074/- during the year 2015-16. I have gone through the copies of works contract, ledger income account, copies of invoices , Form 26AS and other documents and find that the said works contract services is provided by the assessee to GIDC, which is a government authority, and therefore the said service is exempted from levy of whole of service tax leviable thereon under Sl. No.12(e) & 29(h) of Notification No. 25/2012-ST, dated 20-06-2012 with effect from 01-07-2012.

In this connection, I would like to reproduce herewith the relevant portion of the said Notification :

MEGA EXEMPTION Notification No. 25/2012-Service Tax dated 20th June, 2012 Incorporating the following Notifications indicated suitably Notification number Date of issue Date of effect 7/2016-Service Tax 18 February 2016 1 April 2016 9/2016-Service Tax 1 March 2016 1 April 2016 22/2016-Service Tax 13 April 2016 13 April 2016 26/2016-Service tax 20 May 2016 20 May 2016 32/2016-Service Tax 6 June 2016 6 June 2016 39/2016-Service Tax 2 September 2016 2 September 2016 40/2016-Service Tax 6 September 2016 6 September 2016 47/2016 -Service Tax 9 November 2016 1 December 2016 52/2016-Service Tax 8 December 2016 8 December 2016 1/2017-Service, tax 12 January 2017 12 January 2017 5/2017-Service Tax 30 January 2017 30 January 2017 7/2017-service Tax 2 February 2017 2 February 2017 10/2017-service Tax 8 March 2017 1 April 2017 17/2017-Service Tax 04 May 2017 04 May 2017 G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do,



hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

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) ***

according to which the services provided to Government, a local authority or a governmental authority by way of erection, construction, maintenance, repair, alteration renovation or restoration of pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewage treatment or disposal is exempted from the ambit of service tax.

29. Services by the following persons in respective capacities -

...

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

According to which exempted works contract services provided by a sub contractor to another contractor is also exempted from the ambit of service tax.

21. On perusal of reply to SCN and other above referred documents submitted by the assessee, I find that they have provided works contract services for construction of RCC Storm Water Drain at Dahej -II to M/s. Yogi Construction Co., a main contractor for final recipient of services M/s.Gujarat Industrial Development corporation.(GIDC). Copy of contract agreement dated 28.02.2014, between GIDC and M/s.Yogi Construction for work of contraction of RCC SWD at Dahej -II (Part II) is also attached alongwith a copy of sub contract awarded by M/s.Yogi Construction to the assessee. The assessee claimed exemption under Entry No.12(a) & 12(e) of Noti.No.25/2012 dated 20.06.2012 from payment of service tax

22. In this connection, I have also gone through the Entry Sr. No. 12(e) of Notification No. 25/2012-ST wherein the services provided to Government, a local authority or a governmental authority by way of erection, construction, maintenance, repair, alteration renovation or restoration of pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewage treatment or disposal is exempted from the ambit of service tax. In the instant case, I find that the assessee has provided Works Contract Services to Gujarat Industrial Development Corporation(GIDC) which was established under the Gujarat Industrial Development Act of 1962. The term Government authority has been defined in the Noti.No.25/2012 dated 20.06.2012 which reads as follows:

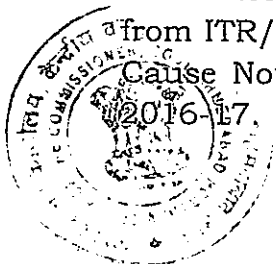


- (s) "governmental authority" means an authority or a board or any other body;
 (i) set up by an Act of Parliament or a State Legislature; or
 (ii) established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

In the instant case, I find that GIDC is a government authority set up by Gujarat Industrial Development Act of 1962 and therefore covered under the definition of Government authority as envisaged in the Exemption Notification. In view of the above, the works contract services provided by the assessee to GIDC is rightly covered under Entry No.12(e) of Exemption Notification No.25/2012 dated 20.06.2012. Further, on perusal of the records, I find that the work was originally allotted to M/s.Yogi Construction, main contractor and subsequently sub contracted the works contract to the assessee. In this connection, I have gone through the Entry 29(h) of Noti.No.25/2012 dated 20.06.2012 according to which exempted works contract services provided by a sub contractor to another contractor is also exempted from the ambit of service tax.

23. On Perusal of SCN, Reply to the show cause notice, Form 26AS, Balance sheet, Ledger copy, copies of work orders, reconciliation statement, copies of invoices and copies of ST3 returns for the for the year 2015-16, I find that gross receipts from services as per the SCN and Form No. 26AS is Rs.5,10,19,042/-. However on perusal of audited balance sheet, I find that the income derived is shown as Rs.5,10,92,094/-for the year 2015-16. Therefore, I consider Rs.5,10,82,094/- as the income for the year 2015-16 being the same is on the higher side. On perusal of the above records, I find that out of the said gross receipts of s.5,10,82,094/-, Rs.4,05,94,074/- is the income derived from providing works contract services to GIDC. As the services provided to GIDC is exempted from the ambit of service tax vide entry No.12(e) and services provided by the assessee being a sub contractor is exempted vide entry No.29(h) of Notification No.25/2012 dated 20.06.2012, I find that the income of Rs.4,05,94,074/- is exempted from the ambit of service tax and therefore not liable to be taxed as discussed.

24. On perusal of the documents referred above, I further find that the assessee has provided Works Contract Service to GNFC amounting to Rs.1,02,04,991/- which is taxable service and on which service tax amounting to Rs.2,96,370/- has been paid by the assessee and declared in their Service Tax Return for the FY 2015-16 also. On consideration of the above revenue of Rs.5,07,99,065/- (Rs.4,05,94,074/- + Rs.1,02,04,991/-) from the gross receipt of Rs.5,10,92,094/-, I find that there is a difference of Rs.2,93,029/- (Rs.5,10,92,094/- - Rs.5,07,99,065/-). The said difference of Rs.2,93,029/- has been explained by the assessee that the said income is the service tax amount added to the total receipts and the same has been debited from the expenses for the FY 2015-16. I have gone through the balance sheet and Annexures of the accounts and find that the differential amount of Rs.2,93,029/- has no taxable effect and therefore I have no option but to accept the claim of the assessee. Further, I do not discuss the taxability of any other income for the year 2016-17 as the difference between value of services from ITR/26AS and Gross Value in Service Tax Provided is shown in the Show Cause Notice is "0" and also no service tax has been demanded for the year



25. Further, as mentioned in the SCN, I find that the levy of Service Tax for the financial year 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of 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 proviso to Section 73(1) read with master Circular No. 1053/02/2017-CX dated 10.03.2017, the service tax liability was to be recovered from the assessee accordingly, I however, do not find any charges leveled for the demand for the year 2017-18 (Up to June 2017), in charging para of the SCN, hence I refrain from discussing the taxability of any income for the period 2017-18 (upto June 2017).

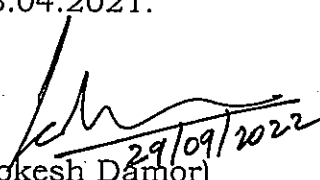
26. The Balance sheet and profit and loss account of an assessee is vital statutory records. Such records are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for evincing true financial position. Assessee was legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in unorganized method. The statute provides mechanism for supervision and monitoring of financial records. It is mandate 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 fair conclusion in respect of the balance sheet and profit and loss accounts. It is also onus upon 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. The Chartered Accountant, who audited the accounts of the assessee, being qualified professional has given declaration that the balance sheet and profit and loss accounts of the noticee reflect true and correct picture of the transaction and therefore, I have no option other than to accept the classification of incomes under profit and loss account as true nature of the business and to proceed to conclude instant proceedings accordingly.

27. In view of the above discussion and findings and also on perusal of SCN, reply to SCN, Form 26AS, ST3 returns, reconciliation statement, submissions made by the said assessee and other documents, I find that the income of Rs.4,05,94,074/- derived from providing works contract services to M/s. Yogi Construction by the assessee is rightly eligible for exemption under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 as discussed. I further find that there is a taxable income of Rs.1,02,04,991/- derived from services provided to GNFC on which the assessee has paid the service tax. Finally the difference of Rs.2,93,029/- is the service tax and the same is shown as income in their income side which was later debited in the accounts, therefore the same is also not taxable. In view of the above, I find that the assessee is not liable to pay service tax of Rs.73,97,761- demanded vide above referred SCN and therefore the SCN is requires to be dropped. Accordingly they are also not liable to pay Penalty under Section 77 and 78 and interest under Section 75 of Finance Act, 1994.

28. In view of the above discussion and findings, I pass the following orders:-

ORDER

29. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 73,97,761/- along with interest and penalties against M/s. Yogesh Dhirajlal Upadhyay, vide SCNs No.STC/15-10/OA/2021 Dated 23.04.2021.


(Lokesh Damor)

Joint Commissioner
Central GST & Central Excise
Ahmedabad North
Date:

F.No. STC/15-10/OA/2021

To,

M/s.Yogesh Dhirajlal Upadhyay,
A/4, Sagun Plaza, Nr.Goyal Park,
Judges Bungalow Road, Ahmedabad,
Gujarat -380015

Copy to:

- 1) The Commissioner Central GST & Central Excise, Ahmedabad North.
- 2) The A.C, Central GST & Central Excise, Division-VII, Ahmedabad North.
- 3) The Supdt., C GST & Central Excise, Range-I , Division-VII, Ahmedabad North
- ✓ 4) The Supdt. Systems ,CGST& CX, Ahmedabad North for uploading the order
- 5) Guard File.

