


<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/15-47/OA/2021

DIN- 20220964WT000000D7A6

आदेश की तारीख/Date of Order :- 30.09.2022
जारी करने की तारीख/Date of Issue :- 30.09.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 47/JC/ L.D /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 रु. 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।

(85) उक्त अपील की प्रति।

(86) 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 रु .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:

(85) Copy of accompanied Appeal.

(86) 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/15-47/OA/2021 dated 23.04.2021 issued to M/s Balwant Tak, Sona Mahal, 11/12, Modh Chapaner Society, Usmanpura, Ahmedabad, Gujarat-380013.

BRIEF FACTS OF THE CASE

M/s Balwant Tak, Sona Mahal, 11/12, Modh Champener Society, Usmanpura Ahmedabad, Gujarat 380013 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. ADVPT9070BSD001 and was engaged in 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:

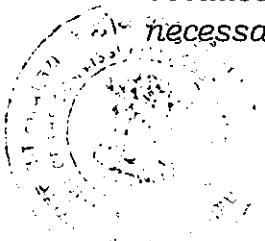
Sr. No.	F.Y.	Taxable Value as per ST-3 returns (In Rs.)	Gross Receipts From Services (Value from ITR/26AS) (In Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax short paid (in Rs.)
1	2015-16	189000/-	50369867/-	50369867/-	7276226/-
2	2016-17	0/-	17062047/-	17062047/-	2559307/-
TOTAL					9835533/-

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 is not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

5. With respect to issuance of unquantified 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."

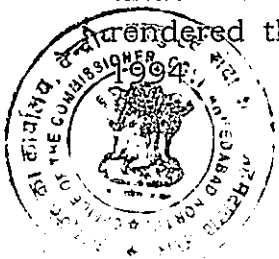


6. As per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appears 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.

7. 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.

8. 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.98,35,533/-, 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.

9. Further, it has been 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 found that 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. 98,35,533/-. 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, it appears that the Assessee has



10. 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. Accordingly Show Cause Notice bearing F.No.STC/15-47/OA/2021 DATED 23.04.2021 was issued to the assessee asking them to show cause as to why:

- (i) The demand for Service tax to the extent of Rs 98,35,533/- 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

11. The assessee vide letter dated 11.07.2022 filed their reply to SCN wherein they submitted that they are engaged in the business of selling spare parts of motor vehicles as well as providing manpower and repair and maintenance services. They are operating their business from the state of Gujarat and Rajasthan both are duly registered for service tax vide registration No.ADVPT9070BSD001 and ADVPT9070BSD002 for Gujarat and Rajasthan branch respectively. They have also taken VAT TIN 24073303014 for Gujarat and VAT TIN 08954702784 for Rajasthan

12. During the FY 2015-16 from both the branches together, they have sold goods worth Rs.7,11,15,572/- and provided total services of Rs.2,54,85,050/-. The bifurcation of goods sold as well as services provided from both the branches are as under:

Particulars	VAT Rajasthan	VAT Gujarat	Service Tax Rajasthan	Service Tax Gujarat	Total
Trading Sales	36062318	35053254	0	0	71115572
Services	0	0	25345750	139300	25485050
Total	36062318	35053254	25345750	139300	96600622

13. Copies of quarterly VAT returns filed with Rajasthan VAT Department and Annual Returns of Gujarat VAT Department are attached by the assessee alongwith their reply. The details of turnover as per ST 3 Jaipur (STC ADVPT9070BSD002) is furnished as under:

Period	Manpower Supply 100% RCM	Maintenance or repair	Total
Apr-Sept	0	0	0
Oct to march	21829229	3516521	25345750
Total	21829229	3516521	25345750
Service Tax	100%RCM	509504	509504
Paid by cash	100% RCM	509504	509504

Details of turnover as per ST3 Ahmedabad (STC ADVPT9070BSD001) is furnished as under:

PERIOD	MAINTANANCE AND REPAIR	TOTAL
APRIL TO SEPT	10500	10500
OCT TO MARCH	128800	128800
TOTAL	139300	139300

14. The assessee is providing manpower services as well as repair and maintenance service to Jaipur City Transport Services Limited (JCTSL), Jaipur and during the FY 2015-16 JCTSL had deducted TDS on Rs.5,03,69,867/-. They have provided two types of services to JCTSL, first repairs and maintenance services of Rs.35,16,521/- and man power services of Rs.2,18,29,229/- provided which covered under full RCM and on which JCTSL had already discharged service tax liability.

15. During the year 2016-17 from both the branches together, they had sold goods worth Rs.10,06,31,978/- and provided total services of Rs.1,40,24,772/- They have provided the bifurcation as under:

Particulars	VAT: Rajasthan	VAT Gujarat	Service Tax Rajasthan	Service Tax Gujarat	Total
Trading Sales	82324052	18307926	0	0	100631978
Services	0	0	14024772	0	14024772
Total	82324052	18307926	14024772	1569618	116226368

Copies of quarterly VAT returns filed with Rajasthan VAT Department and Annual Returns of Gujarat VAT Department are attached by the assessee alongwith their reply. The details of turnover as per ST 3 Jaipur (STC ADVPT9070BSD002) IS FURNISHED AS UDNER:

Period	Manpower Supply 100% RCM	Maintenance or repair	Total
Apr-sept	9043418	407460	9450878
Oct to march	1682302	2891592	4573894
Total	10725720	3299052	14024772
Service Tax	100%RCM	59081	59081
Paid by cash	100% RCM	433741	433741

16. The assessee is providing manpower services as well as repair and maintenance service to Jaipur City Transport Services :Limited(JCTSL), Jaipur and during the FY 2015-16 JCTSL had deducted TDS on Rs.1,70,62,047/-. They have provided two types of services to JCTSL, first repairs and maintenance services of Rs.35,16,521/- and man power services of Rs.2,18,29,229/- provided which covered under full RCM and on which JCTSL had already discharged service tax liability.

17. The assessee further contended SCN is issued without investigation and merely based on ITR/26AS based on the false assumption that everything

stated in ITR Form under the IT Law is taxable under the service tax law and therefore the SCN is to be quashed. They have relied upon a number of case laws in this regard. They further submitted that charging of suppression and invoking of extended period are not and levying service tax is not valid. Hence they requested to set aside the SCN.

PERSONEL HEARING

18. Personal Hearing was granted to the assessee on 02.08.2022. In response to P.H. Notice, Shri Punit Prajapati C.A & authorised representative attended the P.H. and reiterated their written submissions dated 12.07.2022.

DISCUSSION AND FINDINGS

19. 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.

20. I have carefully gone through SCNs, Reply to the show cause notices, Form 26AS, Balance sheet for the year 2015-16 and 2016-17, Ledger copy, 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. 98,35,533/- for the financial year 2015-16 & 2016-17 on the basis of data based on 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 for the relevant period. 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.

21. On perusal of the reply to SCN and other documents available on record, I find that the assessee is engaged in trading activity, man power supply agency services and maintenance and repair services in Gujarat and Rajasthan. For which they have taken service tax Registration No. .ADVPT9070BSD001 for Gujarat and ADVPT9070BSD002 for Rajasthan and accordingly paid service tax and filed ST 3 Returns for the relevant period. 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:

22. The term 'Service' as defined in Section 66B (44) of Finance Act, 2012 excludes the activity of transfer title in goods by of sale, which is nothing but Trading.

(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*



- (ii) *such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the constitution or*
- (iii) *a transaction in money or actionable claim.*
- (b) *A provision of service by an employee to the employer in the course of or in relation to his employment.*
- (c) *fees taken in any court or tribunal established under any law for the time being in force.*

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*

23. In view of the above, I find that the services of man power supply services and maintenance and repair services 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 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 man power supply services and maintenance and repair services provided for the period 2015-16 & 2016-17.

22. Further, the assessee vide their submissions stated that during the financial year 2015-16 & 2016-17, they have income from trading of goods also. On perusal of the relevant Sections and definitions, I find that trading of goods falls under the negative list of services specified in Section 66D (e) of Finance Act, 1994 as defined above, and therefore the said activity is out of purview of taxable service.

23. Further, on perusal of various documents available on record, I find that Sale/trading of goods is taxable under the Gujarat Value Added Tax Act and assessee has paid the requisite VAT on the Sales and submitted VAT returns

for the period 2015-16 & 2016-16. Accordingly while considering the above provisions, I find that the assessee is not liable to pay Service Tax on the trading of goods as the same falls under the services covered under Negative List as specified under Section 66 D of Finance Act, 2012.

24. Further, on perusal of the reply to SCN, and other documents, I find that the assessee is having the PAN No. of ADVPT9070B on which he has obtained two service tax registrations one for Gujarat and other for Rajasthan as they are providing services in both the states. They have also furnished copies of STR for both the registrations i.e. ADVPT9070BSD001 for Gujarat and .ADVPT9070BSD002 for Rajasthan. They are providing man power recruitment agency services and maintenance and repair services and on which they have paid service tax and filed ST 3 returns. They have also filed quarterly VAT returns (VAT Form 10) with Rajasthan VAT Department and Annual VAT return (VAT FORM 205) with Gujarat VAT Department. For the sake of clarity, I would like to discuss the issue year wise.

FINANCIAL YEAR 2015-16

25. I have carefully gone through SCN, Reply to the show cause notices, Form 26AS, Balance sheet for the year 2015-16, Ledger copy, reconciliation statement, and copies of ST3 returns for the relevant period. On perusal of SCN, I find that Rs.5,03,69,867/- is considered as the gross receipts from services as per 26AS/ITR. However on perusal of audited balance sheet and other financial records, I find that the gross receipts is Rs.9,66,00,622.77. Hence I take Rs.9,66,00,622.77 as the income for the year 2015-16 as the same being on higher side.

26 On perusal of the reply to SCN and other documents such as VAT returns for the relevant period, I find that the assessee claimed that Rs.7,11,15,572.77 is the total income derived from sale of goods out of the total income of Rs.9,66,00,622.77. I have gone through the quarterly VAT returns (VAT Form 10) for Rajasthan and Annual VAT return (VAT FORM 205) for Gujarat and find that the turnover of sale of goods for both the state declared is correct and accordingly total amount of Rs.7,11,15,572/- is not taxable as the trading activity is exempted from the purview of service tax as per the negative list of services specified in Section 66D of Finance Act, 1994. I further find that for the remaining amount of Rs.2,54,85,050/-, the assessee has declared Rs.2,53,45,750/- under Man power supply service under RCM in their ST 3 return filed in Service Tax, Rajasthan under the Reg No. ADVPT9070BSD002 for Rajasthan. Further, Service taxable amount of Rs.1,39,300/- is declared in the STR filed in Service Tax, Gujarat under ADVPT9070BSD001 for Gujarat on which the assessee has paid the service tax. I have gone through the relevant ST 3 returns of both the registration numbers and find that the assessee has fulfilled the tax liability and therefore there is no demand outstanding. In view of the above, the service tax demand of Rs.72,76,226/- is not sustainable and therefore requires to be dropped. For the sake of Clarity, I reconcile the figures as under:

Sl.No.	Particulars	Amount
01	Gross receipts as per audited B/s.	9,66,00,622/-
02	Less: Value declared in their STR As discussed	2,54,85,050/-
03	Difference	7,11,15,572/-
04	Trading sales (Rajasthan + Gujarat)	7,11,15,572/-
05	Difference	0

FINANCIAL YEAR 2016-17

27. I have carefully gone through SCN, Reply to the show cause notice, Form 26AS, Balance sheet for the year 2016-17, Ledger copy, reconciliation statement, and copies of ST3 returns for the relevant period. On perusal of SCN, I find that Rs.1,70,62,047/- is considered as the gross receipts from services as per 26AS/ITR. However on perusal of audited balance sheet and other financial records, I find that the gross receipts of the assessee is Rs.11,62,26,368.91, hence I take Rs. 11,62,26,368.91 is as the income for the year 2016-17 as the same being on higher side.

28. On perusal of the reply to SCN and other documents such as VAT returns for the relevant period, I find that the assessee claimed that Rs.10,06,31,978/- is the total income derived from sale of goods out of the total income of Rs. 11,62,26,368.91. I have gone through the quarterly VAT returns (VAT Form 10) for Rajasthan and Annual VAT return (VAT FORM 205) for Gujarat and find that the turnover of sale of goods Rs.10,06,31,978/- for both the states declared is correct and accordingly the said amount of RS.10,06,31,978/- is not taxable as the trading activity is exempted from the purview of service tax as per the negative list of services specified in Section 66D of Finance Act,1994. I further find that for the remaining amount of Rs.1,55,94,390/-, the assessee has declared Rs.1,07,25,720/- under Man power supply service under RCM and Rs.32,99,052/- under Repair and Maintenance Service which was declared in their ST 3 return. Further, an amount of Rs.15,69,618/- is declared as income from exempted services i.e. reimbursement of expenses related to bus service. The assessee has produced all the invoices wherein I find that the said amount was reimbursement expenses from M/s.Tak Bus Operations P.Ltd and reflected in the relevant P & L account of the assessee. As the said income is reimbursable in nature, I find that the same is exempted from payment of service tax. In view of the above facts and findings, I find that the service tax demand of Rs.25,59,307/- demanded for the FY 2016-17 is not sustainable and therefore the same is requires to be dropped. For the sake of Clarity, I reconcile the figures as under:

Sl.No.	Particulars	Amount
01	Gross receipts as per audited B/s.	11,62,26,368/-
02	Less: Value declared in their STR	1,40,24,772/-
03	Difference	10,22,01,596/-
04	Reimbursed expenses as discussed	15,69,618/-
05.	Balance	10,06,31,978/-
04	Trading sales (Rajasthan + Gujarat) as discussed	10,06,31,978/-
05	Difference	0/-

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 he 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). Further on perusal of 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.

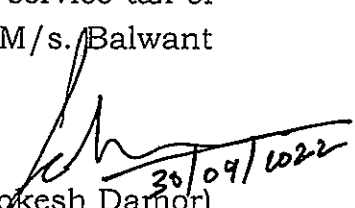
21. The Balance sheet and profit and loss account of an assessee is vital statutory records. Such records are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before 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.

22. 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 the assessee is not liable to pay service tax of Rs.98,35,533/- demanded vide above referred SCN. Accordingly they are also not liable to pay Penalty under Section 77 and 78 and interest under Section 75 of Finance Act, 1994.

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

ORDER

24. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 98,35,533/- each along with interest and penalties against M/s. Balwant Tak vide SCN No.STC/15-47/OA/2021 Dated 23.04.2021.


(Lokesh Darnor)

Joint Commissioner
Central GST & Central Excise
Ahmedabad North



F.No. STC/15-47/OA/2021

Date:

To,
M/s Balwant Tak,
Sona Mahal, 11/12, Modh Champener Society,
Usmanpura Ahmedabad, Gujarat 380013

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.

