


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(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>
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निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO. STC/15-112/OA/2021

DIN : 20221064WT0000666D84

आदेश की तारीख /

Date of Order : 29.09.2022

जारी करने की तारीख /

Date of Issue : 12.10.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव /

UPENDRA SINGH YADAV

आयुक्त /

COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 19 /2022-23

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 दंड या 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)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 19 /2022-23

M/s. Keya Infracon situated at 208-209, Saman-II, Opp. Shell Petrol Pump, 100FT. Anandnagar Road, Vejalpur, Satellite, Ahmedabad, Gujarat-380015, were issued SCN F. No. STC/15-112/OA-2021 dated 23.04.2021 by the Commissioner, CGST & Central Excise, Ahmedabad North.

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S. KEYA INFRACON, ARE AS FOLLOWS:

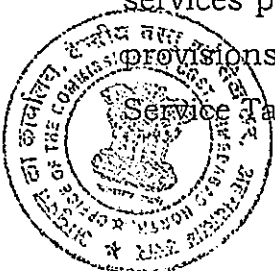
M/s. Keya Infracon situated at 208-209, Saman-II, Opp. Shell Petrol Pump, 100FT. Anandnagar Road, Vejalpur, Satellite, Ahmedabad, Gujarat-380015 (hereinafter referred to as the 'Assessee' for the sake of brevity) are engaged in providing taxable services and are holding Service Tax Registration No.AAPFK7514GSD001.

2. On going through the third party data shared by the CBDT with the Central Board of Indirect Taxes (CBIC) for F.Y.2015-16 and 2016-17, it appeared that the assessee had declared less taxable value in ST-3 returns for F.Y.2015-16 and 2016-17 as compared to Income Tax Return (ITR)/Form 26AS. The details 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/-	0/-	0/-	0/-
2	2016-17	0/-	151402538/-	151402538/-	22710380/-

3. In terms of Section 68 of the Finance Act, 1994, 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 as may be prescribed under Rule 6 of Service Tax Rules,1994. In the present case, the assessee had not paid service tax as worked out above in Table for F.Y.2015-16 and 2016-17.

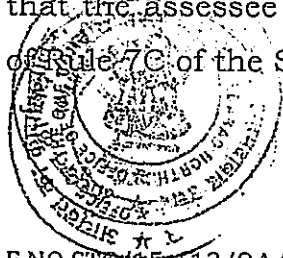
4. As per the provisions of Section 70 of the Finance Act, 1994, every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed under the Finance Act,1994. It appeared that the assessee had not assessed the tax dues properly on the services provided by them, and had failed to file correct ST3 returns under the provisions of Section 70(1) of the Finance Act,1994 read with Rule 7 of the Service Tax Rules,1994.



5. 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. It appeared that as the assessee had failed to pay the service tax in the prescribed time limit, they were liable to pay the said amount alongwith interest under Section 75 of the Finance Act, 1994.

6. It appeared that the assessee had contravened the provisions of Section 68 of Finance Act, 1994 readwith Rule 6 of Service Tax Rules, 1994 in as much as they had failed to pay/short paid/deposit service tax of Rs.2,27,10,380/-, by declaring less value in their ST3 returns vis-à-vis their ITR/Form26AS.

7. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value that had 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 had from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc., bases on mutual trust and confidence are in place. It appeared that the assessee had knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value of Rs. 15,14,02,538/- and thereby not paid/short paid/not deposited service tax thereof Rs.2,27,10,380/-. It appeared that the above act of omission on the part of the assessee resulted in non-payment of service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intend to evade payment of service tax. Hence, the same appeared to be recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, alongwith interest thereof at appropriate rate under the provisions of section 75 of the Finance Act, 1994. Since, the assessee constituted offence of the nature specified under section 78 of the Finance Act, 1994, it appeared that the assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994. The assessee had also filed their returns later than the due date and it appeared that the assessee had rendered themselves liable for penalty under provisions of Rule 7C of the Service Tax Rules, 1994.



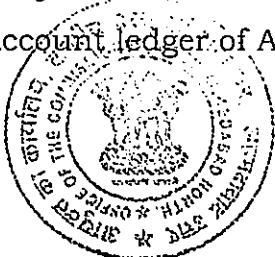
8. The assessee was given opportunity for pre-SCN consultation, which was fixed on 22.04.2021, however, the assessee did not appear for the same.

9. Therefore, a Show Cause Notice No. STC/15-112/OA/2021 dated 23.04.2021 was issued by the Commissioner, Central GST & Central Excise, Ahmedabad North to M/s. Keya Infracon, asking them as to why;

- (i) The demand of Service Tax to the extent of Rs.22710380/- 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 demanded and 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 should not be imposed upon them for late filing of ST-3 returns under the provisions of Rule 7C of the Service Tax Rules,1994.
- (v) Penalty under the provisions of Section 77(2) of the Finance Act, 1994, should not be imposed on them for their failure to assess their correct service tax liability and failure 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.

10. DEFENCE REPLY:

The assessee tendered their written submission on 07.05.2021 and 20.05.2022. The assessee submitted that they had earned contract income from Ajay Project Private Limited of Rs. 15,11,19,700/- on sub-contract basis. They submitted that Ajay Project Private Limited had received contract work from Rachna Construction. They have submitted that Rachna Construction in turn had received work from PWD Bridge Construction Zone Bhopal i.e. government agency, and the same service income was attributable to the negative list of services contained in Section 66D i.e. construction of bridge. They submitted that they had paid tax on GTA. They also submitted that the construction of bridge is fully exempted under Notification NO.25/2012-ST, entry no.13. They submitted that sub-contract work is also exempt under Notification NO.25/2012-ST, entry no. 29(h). They submitted that they are not liable to pay any service tax on the service provided by them. They have submitted the copy of Notification, work order, 26AS , income tax return, copy of sub-contract agreement between Rachna Construction and Ajay Project Pvt. Ltd., and sub-contract agreement between Ajay Project Pvt. Ltd., and Keya Infracon. The assessee tendered additional submission dated 20.05.2022. They have submitted Bank Statement, income ledger alongwith RA Bills, Account ledger of Ajay Protect Pvt. Ltd, Copy of ST-3 returns.



11. PERSONAL HEARING:

Personal hearing on the matter was fixed on 06.09.2022. Shri Prakash Bhavsar, CA appeared for personal hearing on behalf of the assessee. They reiterated the arguments/ contentions raised in their written submission dated 07.05.2021 and 20.05.2022. He made the submission that since the assessee is in the business of construction of bridge on behalf of the government, they are covered under the Exemption Notification No.25/2012-ST, and are exempt from payment of Service Tax.

12. DISCUSSION AND FINDINGS:

12.1 I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 07.05.2021, 20.05.2022 and the documents submitted by the assessee.

12.2 On going through the SCN, I find that data of Sales/Gross receipt from services (value from ITR/26AS) was shared by the CBDT with CBIC for FY 2015-16 & 2016-17, which was then compared with the gross value declared in ST-3 Returns filed by the assessee for FY 2015-16 & 2016-17. The difference in value of service to the extent of Rs. 15,14,02,538/- was noticed and therefore, the subject SCN for recovery of Service Tax of Rs.2,27,10,380/- 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. 15,14,02,538/- under proviso to section 73(1) of Finance Act, 1944 or not.

12.3 I find that the assessee vide their letter dated 07.05.2021 & 20.05.2022 has tendered their written submission along with supporting documents. The assessee has contested that they have provided service of construction of bridge for use by general public and the said service was exempt from levy of service tax vide Entry No. 13 (a) of Notification No. 25/2012-ST dated 20.06.2012. In support of their defence, they have submitted the documents i.e. Form 26AS for 2015-16, 2016-17, Bank Statement showing receipt from M/s. Ajay Protech Pvt. Ltd., income ledger along with department RA bills, work order issued to the main contractor ie.

M/s. Rachna Construction, and sub contract agreements with main contractors.

13. I find from the data shared by the CBDT that the assessee were paid/credited amount of Rs. 0/- and Rs. 15,14,02,538/- during FY 2015-16 and 2016-17 respectively, as disclosed by the tax deductor under section 194C of the Income Tax Act. I find that Section 194C of the Income Tax Act deals with the tax deducted at source (TDS) which is to be compulsorily deducted from any payments that have been made to any person who is a resident contractor or a subcontractor. I find that in form 26AS TDS had been deducted under Section 194C of the Income Tax Act. Section 194C of the Income Tax Act, 1961 is reproduced herein below:

194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family, of such sum as income-tax on income comprised therein.

It is clear from the above that any amount paid/credited to the assessee on which TDS has been deducted under Section 194C is a contract income, the same falls under category of "Works Contract Service" of the Finance Act, 1994. I find that the assessee has admittedly stated in their written submission that they had provided the service of construction of bridge to government; therefore, there is no dispute as regard to the provision of service by the assessee.

14. I find that the SCN mentions about the sharing of data from ITR/26AS. However, on going through the data shared by the CBDT, it is seen the value of service is taken from the amount paid/ credited to the assessee as disclosed by the tax deductor (service recipients) under Section 194C of the Income Tax Act, and the said amount is found tallying with Form 26AS for FY 2015-16 and 2016-17. Accordingly, I proceed ahead with these data sets for deciding the matter.

Since the assessee has claimed the exemption from service tax under Sr. No. 13 (a) of Notification 25/2012-ST dated 20.06.2012 on



construction service of Bridge, the relevant extracts of the said notification is reproduced as under for ready reference.

Notification No. 25/2012-Service Tax dated 20th June, 2012

"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":-

.....

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)

16. In order to ascertain the availability of the exemption from payment of service tax under Notification No. 25/2012- ST (Sr, No. 13(a)) or otherwise to the services rendered by the assessee, I would like to examine the documents submitted by the assessee alongwith their written submission. On going through the Form 26AS and department bill (RA bills) issued by the Executive Engineer, P.W.D. Bridge Construction, Bhopal, the following facts are emerging as under:

2015-16

Name of TDS deductor	Amount paid/credited (total Rs.)	Break up of amount paid credited (Rs.)	TDS deducted	Description of the work done by the assessee as per RA bill produced by the assessee	Remarks
NA	0	0	0	NA	

2016-17

Name of TDS deductor	Amount paid/credited (total Rs.)	Break up of amount paid credited (Rs.)	TDS deducted	Description of the work done by the assessee as per RA bill produced by the assessee	Remarks
Ajay Protech Private Limited	151402538		3028050		
		37365972		Construction of Basoda R.O.B. at Railway X-ing NO.288 of Bhopal-Bina section on Basoda-Teonda	Original work allotted to M/s. Rachna Construction Co., vide letter No. No.4231/G/Con/492/B/2015 dated 11.09.2015 by the Chief Engineer, PWD Bridge, Construction Zone, Bhopal. The same was Sub contracted to M/s.

			road Vidisha	distt.	Ajay Protech Private Limited and subsequently, sub-contracted to the assessee vide agreement dated 30.12.2012.
		18656401		-do-	-do-
		8019000		-do-	-do-
		16356810		-do-	-do-
		28283760		-do-	-do-
		42720595		-do-	-do-

16.1 It is apparent from the above mentioned tables that the RA bill clearly describes the work carried out by the assessee to be "Construction of Bridge" and the same was originally awarded by the Chief Engineer, PWD Bridge, Construction Zone, Bhopal to the main contractor (M/s. Rachna Construction), and subsequently the same was sub-contracted to M/s. Ajay Protech Private Limited by the main contractor. Subsequently, the same was sub-contracted by M/s. Ajay Protech Private Limited to the assessee. It is also evident from the above that the assessee have been paid for the aforesaid work awarded to the assessee and the same was reflected in to the Form26 AS of the assessee. I find that assessee have submitted the copy RA bills issued by the Executive Engineer, PWD Bridge, Bhopal and sub-contract agreements with M/s. Ajay Protech Private Limited & sub-contract agreement with M/s. Ajay Protech Private Limited and M/s. Rachna Construction Company for Construction of Basoda R.O.B. at Railway X-ing NO.288 of Bhopal-Bina section on Basoda-Teonda road distt. Vidisha.

Further, on going through the Form-26AS submitted by the assessee, it is seen that the assessee has received payment from the tax deducter under Section 194C i.e. payment to contractors and sub-contractors under Income Tax Act,1961, that the assessee had provided the works contract services and amount received from tax deducter under Section 194C for issuance of SCN. The details are as given below;

F.Y.	Taxable value as per ST-3 returns (in Rs.)	Gross Receipts from services (Value from ITR/26AS) (in Rs.) as per SCN	Gross Receipts from services as per 26AS submitted by the assessee under Section 194C & 194J (in Rs.)	Difference.(in Rs.)
2015-16	0/-	0/-	0/-	0/-
2016-17	0/-	15,14,02,538/-	15,14,02,538/-	0/-

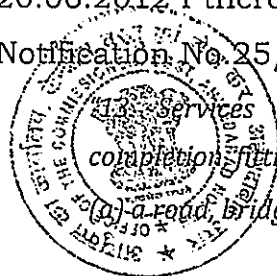


On going through the above table, I find that in the subject SCN demand has been raised on Gross Receipt from Services (Value from ITR/26AS)

considered as Rs.15,14,02,538/- for F.Y. 2016-17, the same is tallied with the Form 26AS submitted by the assessee.

16.2 I find that the assessee in their reply dated 07.05.2021 has stated that they have sub-contract income of Rs.15,11,19,700/- from M/s. Ajay Protech Private Limited. M/s. Ajay Project Private Limited has received contract work from M/s. Rachna Construction. M/s. Rachna Construction has received contract work from PWD Bridge Construction zone, Bhopal i.e. government agency. I find that Chief Engineer, PWD Bridge Construction Zone, Bhopal on behalf of Governor of M.P. issued letter to M/s. Rachana Construction Company, Plot NO.1815, Phase-I, GIDC Panoli, Ta-Ankleshwar Distt. Bharuch for acceptance No.4231/G/Con/492/B/2015 dated 11.09.2015 that Bid dated 02.07.2015 for Construction of Basoda R.O.B. at Railway X-ing NO.288 of Bhopal-Bina section on Basoda-Teonda road distt. Vidisha has been accepted by the Govt. of M.P. I find that sub-contract agreement dated 30.12.2012 was made between M/s. Rachana Construction Company and M/s. Ajay Protech Pvt. Ltd., 59, 1st Floor, Pratap Chambers, Near Railway Crossing, Station Road, Unjha-384170 for the above work. I find that sub-contract agreement dated 30.12.2012 was made between M/s. Ajay Protech Pvt. Ltd., 59, 1st Floor, Pratap Chambers, Near Railway Crossing, Station Road, Unjha-384170 and M/s. Keya Infracon, 1, Revani Apartment, Near Vaibhavlaxmi Temple, B/H. Drive Cinema, Opp. Sarthi Bunglows-3, Thaltej, Ahmedabad-380054 for the said work.

16.3 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 Construction of Road for use by the General Public and the assessee has claimed the exemption from levy of service tax under Sr. No. 13 (a) of Notification No. 25/2012-ST dated 20.06.2012. I also find that the assessee has contested the demand of Service Tax on services rendered by them holding that the were sub-contract work and the same were covered under the Sr. No. 29(h) of Notification No. 25/2012-ST dated 20.06.2012 I therefore would like to reproduce the said Sr. No. 13 (a) & 29(h) of Notification No. 25/2012-St dated 20.06.2012 ibid hereinunder:



*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;"*

"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."

As discussed hereinabove, the assessee is a contractor and had provided the services for construction, erection, commissioning, installation, completion, fitting out, repair ,maintenance, renovation or alteration of bridge as per work orders issued to the main contractor and subsequently awarded to the assessee through sub-contract agreement, and the same is rightly covered under the Sr. No. 13(a) & 29 (h) of the Mega Exemption Notification No.25/2012-ST.

I find that the assessee have provided the reconciliation statement alongwith invoices issued to M/s. Jay Protech Private Limited for the F.Y.2016-17. I find that invoices have been issued for the ROB Construction Work Income, hence, it is established that the assessee has carried out the construction work of ROB and they are eligible for benefit of exemption notification no.25/2012, Sr.No.13(a). The detail submitted the by assessee are as under;

Particular	Turnover as per Books	Turnover as per 26AS	Difference	Remarks
Invoice No.1	42720595	42720595	0	
Invoice No.2	28000922	28283760	-282838	Sub-let charges excluded by party while filing TDS
Invoice No.3	16356810	16356810	0	
Invoice No.4	8019000	8019000	0	
Invoice No.5	18656401	18656401	0	
Invoice No.6	37365972	37365972	0	
	151119700	151402538	-282838	

16.4. Keeping in view the aforementioned detailed discussions, I find that the services rendered by the assessee are squarely covered under the Sr. No. 13(a) & 29(h) of the Notification No. 25/2012-ST dated 20.06.2012 and find that the exemption is quite clearly available to the assessee as claimed by them. Therefore, I hold that no service tax is payable by the assessee as demanded in the subject SCN for F.Y.2015-16 & 2016-17.

17. Further, It is quite clear that contrary to the bland assertion of the department that the assessee had not filed the ST-3 Returns for the period 2016-17, the facts are totally different. The assessee had indeed filed the service tax returns (ST-3 returns) for the period 2015-16 (October to March) & 2016-17. Further, it is discerned from the said service tax returns



that the assessee had provided the services under category of "Works Contract Service" and had availed the benefit of Notification No. 025/2012-ST, Sr.No.13(a).

18. From the above factual matrix, and documents submitted by the assessee, I find the difference in the value of service as alleged in the subject SCN is on account of the taxable value of service disclosed in ST-3 returns filed by the assessee being not taken into consideration while computing the service tax liability for FY 2015-16 and 2016-17 by the department. Therefore, I find that the entire demand has been raised on the presumption and assumption that the amount credited to the assessee as per Form 26AS/ITR was the differential value of taxable service. I also find that apart from the differences noticed in the figures reported in ST-3 returns and in Form 26AS/ITR, that too based on wrong set of facts, the department has not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non payment of such high quantum of service tax. I find that the SCN is basic and crucial foundation of adjudication process. If the allegations in SCN are not specific and on the contrary vague, lack details and /or unintelligible, then the SCN is not tenable and sustainable in eyes of law. In this regard, I rely on the decision of the Hon'ble Supreme Court in the case of BRINDAVAN BEVERAGES (P) LTD [2007 (213) E.L.T. 487 (S.C.)], wherein it was held that "*SCN is foundation on which the Department has to build up its case - If allegations in show cause notice not specific and on the contrary vague, lack details and/or unintelligible, sufficient to hold that noticee not given proper opportunity to meet allegations indicated in show cause notice*". I also rely on the decision of the Hon'ble Supreme Court in the case of GARWARE NYLONS LTD [1996 (87) E.L.T. 12 (S.C.)] wherein it was held that "*The burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority*". Having considered these factual and documentary evidences available on records and legal precedents, I find that there is no short payment of service tax by the assessee. Thus, the subject SCN is liable to be dropped on merits being incorrect and legally not sustainable.

I rely on the order passed by the Hon'ble CESTAT, New Delhi in the case of M/s. SOTC Travels Services Pvt. Ltd., Vs. Pr. Commissioner of C.Ex., Delhi-I, reported in 2021(55)GSTL 332 (Tri.-Del.), where in it was held that;

Demand (Service Tax) - Limitation - ST-3 returns mentioned availing of exemption - In such case, department cannot contend that assessee suppressed any fact, much less with intent to evade Service Tax - Extended period of limitation not invoked - Section 73 of Finance Act, 1994. [paras 35, 36, 41] (Emphasis Supplied)

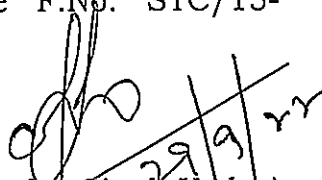
Accordingly, the SCN fails on this count as well and issuance of SCN beyond 30 months from the relevant date is barred by limitation.

19. I find that no data for the period 2017-18 (up to June,2017)is available in the instant case file, and the same has also not been provided by the assessee or the department. Hence, I refrain myself from entering into any discussion for the period 2017-18 (up to June,2017) to determine the liability or otherwise of Service Tax for the period 2017-18 (upto June,2017).

20. In view of the above discussion and findings, I pass the following order:

ORDER

I drop the proceedings initiated against M/s. Keya Infracon,208-209, Saman-II, Opp.Shell Petrol Pump, 100Ft.Anand Nagar Road, Vejalpur, Satellite, Ahmedabad, Gujarat-380 015, vide Show Cause Notice F.No. STC/15-112/OA/2021 dated 23.04.2021.


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

BY SPEED POST/HAND DEVLIVERY

F. No. STC/15-112/OA/2021

To

M/s. Keya Infracon,208-209,
Saman-II, Opp.Shell Petrol Pump,
100Ft.Anand Nagar Road,
Vejalpur, Satellite,
Ahmedabad,
Gujarat-380 015.



Date:29.09.2022.

Copy for information to:

- 1 The Principal Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
- 2 The Assistant Commissioner, CGST & C.Ex., Division-VII, Ahmedabad North.
- 3 The Superintendent, Range-II, Division-VII, Ahmedabad North.
- 4 The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- 5 Guard File