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

**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा .सं/. F.NO. STC/15-220/OA/2020

DIN : 20221064WT000000BD74

आदेश की तारीख /

Date of Order : 30.09.2022

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-- 20 /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- 20 /2022-23**

M/s. BPS Mineral & Exports Private Limited, 8, 1<sup>st</sup> Floor, Arjun Complex, Nr. Saurabh High School, Nava Wadaj, Ahmedabad, were issued SCN No. STC/15-220/OA/2020 dated 30.03.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

**BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S. BPS MINERALS & EXPORTS PVT LTD, ARE AS FOLLOWS:**

M/s. BPS Mineral & Exports Private Limited, 8, 1<sup>st</sup> Floor, Arjun Complex, Nr. Saurabh High School, Nava Wadaj, Ahmedabad (hereinafter referred to as the 'assessee' for the sake of brevity) were engaged in providing taxable services. It also appeared that the assessee having PAN No. AAECB1952D, was not registered with Service tax department.

2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" in respect of M/s. BPS Minerals & Exports Pvt Ltd, was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, and details of the said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. It appeared that as per the information received from the Income Tax Department, the said assessee had earned substantial service income by way of providing taxable services during FY 2015-16, however, they had not obtained the service tax registration and had not paid service tax thereon.

4. Since the assessee had failed to provide the required details of services provided during the Financial Year 2015-16 sought vide letters dated 21.01.2021 and 01.03.2021 by the Range Office, the service tax liability was required to be ascertained on the basis of income from sale of service mentioned in the ITR Return OR amount paid to the assessee for providing services as per Form 26AS. Therefore, the figures/data provided by the Income Tax Department were considered to be total taxable value in terms of Section 67 of the Finance Act,

1994 for ascertaining the service tax liability on the assessee. By considering the Sales of services under Sales/ Gross Receipts from services (Value from ITR)" as



provided by the income tax department, the service tax liability for FY 2015-16 was calculated as under:

Sl. No.	F.Y.	Total Value for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	Total Sale of services (ITR)	Higher Value (Value of sale of services Or Total Value for TDS)	Service Tax Rate	Service tax Payable
1	2015-16	19,35,87,423	19,35,87,423	19,35,87,423	14.5%	2,80,70,176
					Total	2,80,70,176

Therefore, it appeared that the said assessee had not paid service tax to the extent of Rs. 2,80,70,176/- (including Cess) on the Gross receipts from Services.

It appeared that the activities carried out by the assessee for a consideration were falling under the definition of service and the said services appeared to be not covered under the negative list of services provided under Section 66D of the Finance Act, 1994 as well as not covered under exemption notification. Hence, the said services provided by the assessee, appeared to be subject to service tax under Section 66B of the Finance Act, 1994.

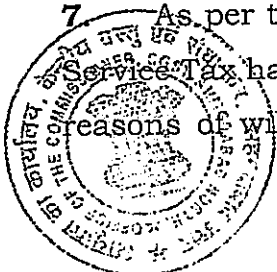
5. As per Section 68 of the Finance Act, 1994, every person liable to pay service tax shall pay service tax at the rate specified in Section 66B in such manner and within such period which is prescribed under Rule 6 of the Service tax Rules 1994.

6. As per the provisions of Section 70 (Furnishing of Returns) of the Finance Act, 1994:

“(1) 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.

(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.”

7. As per the provisions of Section 73(1) of the Finance Act, 1994 where any Service Tax has not been levied or paid or has been short levied or short paid by reasons of willful mis-statement or suppression of facts with intent to evade

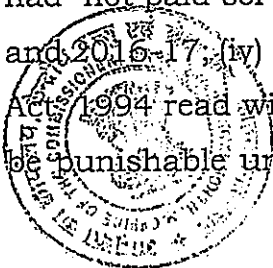


payment of Service Tax, the Central Excise Officer may within five years from the relevant date, serve a notice on the person chargeable with Service Tax which has not been levied or paid or which has been short levied or short paid requiring him to show cause why he should not pay the amount specified in the notice.

**8.** As per Rule 6 of the Service Tax Rules, 1994, the Service Tax shall be paid to the credit of the Central Government by 5<sup>th</sup> day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that the assessee shall submit their Service Tax returns in the form ST-3 within the prescribed time.

**9.** From the documentary evidence available at the relevant time, it appeared that the said assessee had failed to pay Service Tax to the extent of Rs. 2,80,70,176/- (including Cess) which was arrived at on the basis of "Sales /Gross Receipts from Services (ITR)" OR "Total Amount paid /Credited Under 194C, 194H, 194I, 194J" (as per Form 26AS). The said non payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 2,80,70,176/- (including Cess) worked out on value of Rs. 19,35,87,423/- and therefore, the said Service Tax was required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

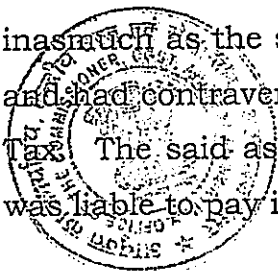
**10.** Therefore, it appeared that the said assessee had (i) failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994; (ii) failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994; (iii) failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they had not paid service tax as worked out in the Table for Financial Year 2015-16 and 2016-17; (iv) contravened the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 which appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as



amended from time to time; (vi) made themselves liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994; (vii) contravened the provision of Rule 7 read with Section 70 of the Finance Act, 1994 in as much as they failed to file ST-3 Returns by due date; (viii) also contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

**11.** 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. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 2,80,70,176/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the assessee which were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

**12.** As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (at such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appeared that the said assessee had short paid/not-paid Service Tax of Rs. 2,80,70,176/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 ibid not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee had suppressed the facts from the department and had contravened the provisions with an intent to evade payment of Service Tax. The said assessee had not discharged its Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.



**13.** All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax and they appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of Service Tax as discussed in the foregoing paras and therefore, the Service Tax amounting to Rs. 2,80,70,176/- (inclusive of Cess) not paid was required to be demanded and recoverable from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

**14.** No data was shared by the CBDT, for the period FY 2016-17 & 2017-18 (upto June-2017) and the assessee as well had failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of issuance of SCN it was not possible to quantify short payment of Service Tax, if any, for the period FY 2016-17 & 2017-18 (upto June-2017).

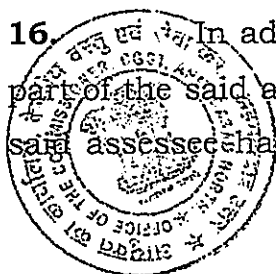
Unquantified demand at the time of issuance of SCN.

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified 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.'*

**15.** It appeared that the assessee was liable to penalty under the provisions of Section 77(1), 77(1)(C) and 77 (2) of the Finance Act, 1994, for failure to take registration in accordance with the provisions of section 69; and for failure to furnish information /documents called for from them.

**16.** In addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appeared that the said assessee had willfully suppressed the facts, nature and value of service



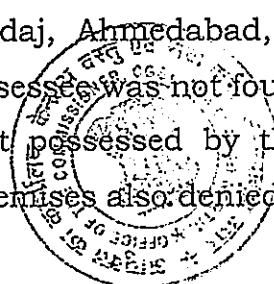
provided by them with an intent to evade the payment of Service Tax thus rendering them liable for penalty under Section 78 of the Finance Act,1994.

17. The assessee was given opportunity to appear for pre-SCN consultation on 26.03.2021, but the same was not attended by them. Therefore, there was no option left except to issue SCN on the basis of documents/evidences available on records

18. Therefore, Show Cause Notice dated 30.03.2021 was issued to the assessee asking them as to why:

- (i) Service Tax of Rs. 2,80,70,176/- (Rupees Two Crore Eighty Lakh Seventy Thousand One Hundred Seventy Six Only) not paid for the FY 2015-16 towards provision of those services, should not be confirmed and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.
- (ii) Service tax liability for the FY 2016-17 & 2017-18 (upto June 2017) to be ascertained, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them under Section 75 of the Finance Act,1994 for the delay in making payment of service tax as mentioned at (i) above;
- (iv) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994 for failure to pay service tax and suppressing the full value of service and material facts from the department.
- (v) Penalty should not be imposed upon them under the provision of Section 77(1)(a), 77(1)(C) and 77 (2) of the Finance Act, 1994 for failure to take registration in accordance with the provisions of Section 69; and for failure to furnish information /documents called for from them and also for contravention of various provision of Finance Act, 1994.

The Officer from the Division VII was nominated for delivering the SCN issued to the assessee. The nominated officer had visited the premises on 31.03.2021 i.e. 8, 1<sup>st</sup> Floor Arjun Complex, Nr. Saurabh High School, Nava Vadaj, Ahmedabad, for delivering the SCN to the assessee, however, the assessee was not found to be existing there. The said premise was found to be not possessed by the assessee and the person found residing at the said premises also denied having any information about the assessee. The SCN was



not delivered either in person or by way of pasting on the premises of the said assessee. The panchnama dated 31.03.2021 was also drawn in presence of independent panchas for visit of the said premises and non availability of existence of the said assessee at the said premises. However, the SCN dated 30.03.2021 was sent through the assessee's registered email-id [bpmineralexports@rediffmail.co](mailto:bpmineralexports@rediffmail.co) and was also dispatched through speed post also by Division Office of Division-VII.

It was also observed from GSTIN Portal that the assessee was registered with Kutch Commissionerate, Gandhidham having Registration No. 24AAECB1952D1Z6 at Plot No. 269, Ground Floor, Sector -1A, Gandhidham, Kachchh, Gujarat-370201.

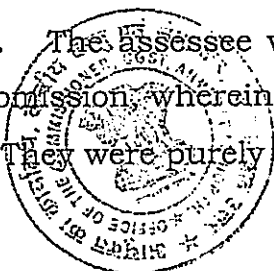
Therefore, a letter dated 20.04.2022 was written to the Commissioner, CGST Kutch, Gandhidham for inquiring whether the assessee was already in existence in the jurisdiction of Kutch Commissionerate or otherwise. In response to the letter dated 20.04.2022, the Joint Commissioner, CGST Kutch Commissionerate, Gandhidham, vide his letter dated 02.05.2022 informed that the said assessee was under the jurisdiction of State GST and their registration was cancelled with effect from 27.11.2021 as per assessee's request.

Meanwhile, mail dated 04.07.2022 was sent to the assessee on the registered mail- id "[bpmineralexports@rediffmail.com](mailto:bpmineralexports@rediffmail.com)" by the HQ Office, CGST Ahmedabad North, Ahmedabad for providing the current address and contact details. Similar action was also initiated by the Division/Range office. In response to the mails, the assessee provided the temporary current address and telephone number for contacting them. The assessee was contacted and letter dated 24.06.2022 for personal hearing was delivered to the authorized person Shri Raju C. Thakor, by the Superintendent, Range-IV, Div-VII, CGST Ahmedabad North. The assessee vide their letter dated 06.07.2022 sought extension of time for 15 days for adjournment of personal hearing fixed on 06.07.2022. Thereafter, the assessee filed their defence reply dated 25.07.2022.

**DEFENCE REPLY:**

18. The assessee vide their letter dated 25.07.2022 submitted their written submission wherein they inter alia have stated that:

- They were purely involved in the business of Trading of goods.





- They have not provided any services under service tax regime, therefore, they were not liable to pay service tax and therefore, there were not liable to obtain service tax registration.
- The department appears to have misinterpreted their income under the head of "sale of goods -Net of Discount" in financial records, to be their service income.

The assessee has submitted the following documents along with their written submission dated 25.07.2022, in their defence.

- CA certificate dated 22.07.2022 for clarification.
- Form 26AS of Income Tax for FY 2015-16 and 2016-17
- Income Tax Audited Balance Sheet for FY 2015-16 and 2016-17
- Sample sales and purchase bills of goods.

#### **PERSONAL HEARING:**

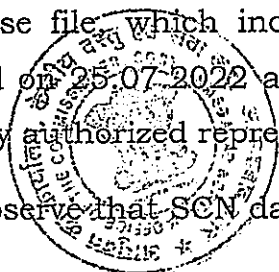
19. Personal Hearing was granted to the assessee on 20.04.2022 and 06.07.2022, however, no one attended the personal hearing on these dates. Thereafter, personal hearing was again granted on 02.08.2022 which was attended by Shri Sandeep Shah, CA and Shri Shankarlal Mundra, Advocate on behalf of the assessee. During the course of hearing, they stated that the assessee was engaged in the business of trading of fabrics. They also submitted that the same is exempt from service tax. They also made reference to their written submission dated 25.07.2022 to buttress their say.

The assessee vide letter dated 08.08.2022, has provided additional documents i.e. copies all sales invoices issued by them during FY 2015-16 and 2016-17, Sales Register for 2015-16 and 2016-17, Annual VAT return & VAT Audit report for FY 2015-16 in support of their arguments put forth during personal hearing.

#### **DISCUSSION AND FINDINGS:**

20. I have carefully gone through the facts of the case and records available in the case file which include the SCN, the defence reply and documents submitted on 25.07.2022 and the oral submission made during the course of hearing by authorized representative of the assessee.

21. I observe that SCN dated 30.03.2021 has been issued to the assessee by



the competent authority demanding Rs. 2,80,70,176/- as service tax liability. On going through the said SCN, I find that basically the essence of the case is that data of "Sales /Gross Receipts from Services (ITR)" / "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" (as per TDS Statement-Form 26AS) were shared by the CBDT with CBIC for FY 2015-16. It was observed from the data that the assessee had Sales/ Gross Receipt of Rs. 19,35,87,423/- for FY 2015-16 from providing services and they had not paid service tax on it. It was alleged that the assessee had not paid the service tax of Rs. 2,80,70,176/- on such sales/gross receipts, for providing the taxable service. Therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 2,80,70,176/- on the sales/gross receipts of Rs. 19,35,87,423/- as per the data shared by the CBDT for the Financial Year 2015-16 under proviso to section 73(1) of Finance Act, 1994 or not.

**22.** I find that the assessee in their defence reply dated 25.07.2022 has contested that they were engaged in Trading of fabrics and has also stated that they have not provided any services. In support of their arguments, they have provided the following documents:-

- CA certificate dated 22.07.2022 for clarification.
- Form 26AS of Income Tax for FY 2015-16 and 2016-17
- Income Tax Audited Balance Sheet for FY 2015-16 and 2016-17
- Copies Sale Invoices issued during FY 2015-16 and 2016-17.
- Sales Register for FY 2015-16 and 2016-17
- Annual Vat Return and Vat Audit Report for FY 2015-16

In order to verify the arguments put forth/tendered by the assessee, examination of Form 26AS, P&L accounts submitted by the assessee and Figures Considered in the subject SCN, is necessary. The figures of turnover/ amount paid /credited from FY 2015-16 and 2016-17, as per P&L accounts, Form 26AS and value of taxable service considered in the SCN, are reproduced herein below for ready reference:

FY 2015-16 - Details of Form 26AS			
Sr. No.	As per Form 26AS, Name of TDS Deductor (by whom the amount paid/credited to the assessee)	As per Form 26AS, amount paid/credited to the assessee (in Rs.) on which TDS has been deducted.	Section of IT Act, under which TDS deducted
1	No deduction	NIL	NIL
	Total for FY 2015/16	NIL	

FY 2016-17 - Details of Form 26AS			
Sr. No.	As per Form 26AS, Name of TDS Deductor (by whom, the amount paid/credited to the assessee)	As per Form 26AS, amount paid/credited to the assessee (in Rs.) on which TDS has been deducted	Section of IT Act, under which TDS deducted
1	No deduction	NIL	NIL
	<b>Total for FY 2016-17</b>	<b>NIL</b>	

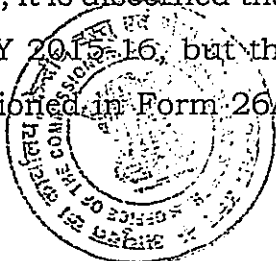
Turnover as per Profit and Loss Account (in Rs.)			
	FY 2015-16	FY 2016-17	Total
Revenue from Operation - Sale of Goods (Net of Discounts)	19,35,87,423	31,68,55,588	51,04,43,011
Other Income	13,46,190	0	0
<b>Total</b>	<b>19,49,33,613</b>	<b>31,68,55,588</b>	<b>51,04,43,011</b>

Figures / value of services considered in the subject SCN						
Sl. No.	F.Y.	Total Value for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	Total Sale of services (ITR)	Higher Value (Value of sale of services Or Total Value for TDS)	Service Tax Rate	Service tax Payable
1	2015-16	19,35,87,423	19,35,87,423	19,35,87,423	14.5%	2,80,70,176
					<b>Total</b>	<b>2,80,70,176</b>

**23.1** The details of above tables are summarized herein below for comparison of value of services rendered by the assessee, as appearing in different records.

Summarized Details of above tables			
FY	Amount paid as per Form 26AS (in Rs.) on which TDS has been deducted under Income tax Act.	Total Turnover as per P&L Accounts (Revenue from operation- Sale of Goods) (Rs.)	Value of services Rendered by the assessee as per SCN (in Rs.)
2015-16	NIL	19,35,87,423	19,35,87,423
2016-17	NIL	31,68,55,588	Amount was not ascertainable at the time of issuance of SCN
<b>Total</b>	<b>NIL</b>	<b>51,04,43,011</b>	<b>19,35,87,423</b>

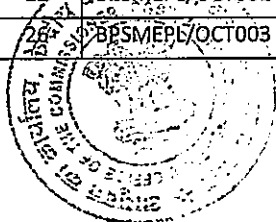
I find that the subject SCN mentions about the considering of the value of services as provided under "Total Value for TDS" or "Total Sale of Services (ITR)", for computation of service tax liability for FY 2015-16. The value of service considered for tax liability is Rs. 19,35,87,423/-. On comparing the said value, it is discerned that the said value is found to be tallying with P&L accounts for FY 2015-16, but the said value is found to be not tallying with the value mentioned in Form 26AS for FY 2015-16. It is also pertinent to mention here



that as per Form 26AS for FY 2015-16 and 2016-17, no TDS has been deducted under Income Tax Act. Further, on perusing the data shared by the income tax department, it is discerned that data of ITR for FY 2015-16 was shared by the CBDT with CBIC. Accordingly, I find that mentioning of value of service under the head of "Value for TDS" in the subject SCN for FY 2015-16, is not correct. Therefore, I would proceed with data of ITR or P&L for deciding the matter.

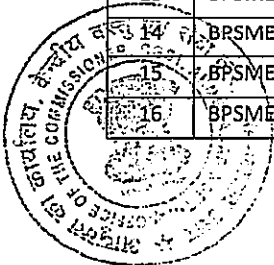
**23.2** The assessee has produced copies of all sale invoices (45 of FY 2015-16 & 44 of FY 2016-17) issued by them during FY 2015-16 and 2016-17 and Sales Accounts in support of their claim of exemption from service tax as their activities being trading of goods. The details forthcoming from the said sales invoices are as under:

FY 2015-16- Invoice details					
Sr. No.	Invoice No.	Dt of invoice	Buyer	Description of goods	Amount (in Rs.) (Excluding Tax)
1	BPSMEPL/JUN001	04-06-2015	Khushbu Vinyl Private Ltd	Dolphine Plain	2575400
2	BPSMEPL/JUN002	09-06-2015	Khushbu Vinyl Private Ltd	Cotton Coated Fabrics No-1	2629100
3	BPSMEPL/JUN003	11-06-2015	Khushbu Vinyl Private Ltd	Dolphine Plain	2477600
4	BPSMEPL/JUN004	12-06-2015	Khushbu Vinyl Private Ltd	Dolphine Plain Cotton Coated Fabrics No-1	3245843
5	BPSMEPL/JUN005	16-06-2015	Khushbu Vinyl Private Ltd	Dolphine Plain	2619410
6	BPSMEPL/JUN006	17-06-2015	Khushbu Vinyl Private Ltd	Cotton Coated Fabrics No-1	2930800
7	BPSMEPL/JUN007	19-06-2015	Khushbu Vinyl Private Ltd	Dolphine Plain	2689500
8	BPSMEPL/JUN008	20-06-2015	Khushbu Vinyl Private Ltd	Dolphine Plain	2630494
9	BPSMEPL/JUN009	22-06-2015	Khushbu Vinyl Private Ltd	Cotton Coated Fabrics No-1	3104493
10	BPSMEPL/JUN010	23-06-2015	Khushbu Vinyl Private Ltd	Dolphine Plain	3262282
11	BPSMEPL/JUN011	24-06-2015	Khushbu Vinyl Private Ltd	Dolphine Plain	3165750
12	BPSMEPL/JUN012	26-06-2015	Khushbu Vinyl Private Ltd	Cotton Coated Fabrics No-1	3003000
13	BPSMEPL/JUN013	29-06-2015	Khushbu Vinyl Private Ltd	Dolphine Plain	3290805
14	BPSMEPL/JUL001	02-07-2015	Khushbu Vinyl Private Ltd	Dolphine Plain Cotton Coated Fabrics No-1	3070900
15	BPSMEPL/JUL002	03-07-2015	Khushbu Vinyl Private Ltd	Cotton Coated Fabrics No-1	2868435
16	BPSMEPL/JUL003	06-07-2015	Khushbu Vinyl Private Ltd	Cotton Coated Fabrics No-1	4105633
17	BPSPL/2015160701	10-07-2015	P.N.K. Overseas Pvt Ltd.	Synthetic Thickener-I	1597200
18	BPSPL/2015160702	18-07-2015	P.N.K. Overseas Pvt Ltd.	Synthetic Thickener-I	936000
19	BPSPL/2015160703	18-07-2015	P.N.K. Overseas Pvt Ltd.	Synthetic Thickener-I	858000
20	BPSPL/2015160801	27-08-2015	P.N.K. Overseas Pvt Ltd.	Synthetic Thickener-I	980850
21	BPSPL/2015160901	04-09-2015	P.N.K. Overseas Pvt Ltd.	Synthetic Thickener-I	900900
22	BPSPL/2015160902	15-09-2015	P.N.K. Overseas Pvt Ltd.	Synthetic Thickener-I	900900
23	BPSPL/2015160903	21-09-2015	P.N.K. Overseas Pvt Ltd.	Synthetic Thickener-I	808500
24	BPSMEPL/OCT001	08-10-2015	Khushbu Vinyl Private Ltd	Cotton Coated Fabrics No-1	2618130
25	BPSMEPL/OCT002	09-10-2015	Khushbu Vinyl Private Ltd	Cotton Coated Fabrics No-1	1588650
26	BPSMEPL/OCT003	10-10-2015	Khushbu Vinyl Private Ltd	Cotton Coated Fabrics No-1	3605175



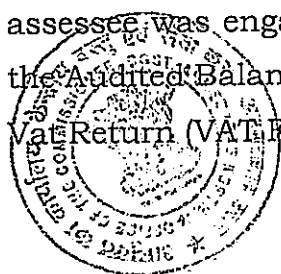
27	BPSMEPL/OCT004	17-10-2015	Khushbu Vinyl Private Ltd	Cotton Coated Fabrics No-1	3479490
28	BPSMEPL/OCT005	19-10-2015	Khushbu Vinyl Private Ltd	Cotton Coated Fabrics No-1	2469141
29	BPSMEPL/NOV001	23-11-2015	Khushbu Vinyl Private Ltd	Cotton Coated Fabrics No-1	4360573
30	BPSMEPL/NOV002	25-11-2015	Khushbu Vinyl Private Ltd	Cotton Coated Fabrics No-1	4582566
31	BPSMEPL/DEC001	02-12-2015	Khushbu Vinyl Private Ltd	Dolphine Plain	4068024
32	BPSMEPL/DEC002	13-12-2015	Khushbu Vinyl Private Ltd	Dolphine Plain Cotton Coated Fabrics No-1	4879221
33	BPSMEPL/CI/2015-16/001	01-01-2016	Zuci Overseas Pvt Ltd	Indian Raw Traditional Basmati Rice 900 Long.	14611992
34	BPSMEPL/CI/2015-16/002	02-01-2016	Zuci Overseas Pvt Ltd	Indian Raw Traditional Basmati Rice 900 Long.	15524160
35	BPSMEPL/CI/2015-16/003	12-01-2016	Zuci Overseas Pvt Ltd	Indian Raw Traditional Basmati Rice 900 Long.	12189452
36	BPSMEPL/CI/2015-16/004	25-01-2016	Zuci Overseas Pvt Ltd	Indian Raw Traditional Basmati Rice 900 Long.	13588806
37	BPSMEPL/CI/2015-16/005	27-01-2016	Zuci Overseas Pvt Ltd	Indian Raw Traditional Basmati Rice 900 Long.	16624930
38	BPSPL/20151601001	27-01-2016	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2851500
39	BPSMEPL/CI/2015-16/006	28-01-2016	Zuci Overseas Pvt Ltd	Indian Raw Traditional Basmati Rice 900 Long.	14784817
40	BPSPL/20151601002	28-01-2016	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2851500
41	BPSPL/20151601003	29-01-2016	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2851500
42	BPSPL/20151601004	30-01-2016	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2851500
43	BPSPL/20151601005	30-01-2016	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2851500
44	BPSPL/20151601006	30-01-2016	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2851500
45	BPSPL/20151601007	30-01-2016	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2851500
				Total for FY 2015-16	193587422

FY 2016-17- Invoice details					
Sr. No.	Invoice No.	Dt of invoice	Buyer	Description of goods	Amount (in Rs.) (Excluding Tax)
1	BPSMEPL/CI/2016-17-0401	05-04-2016	Vee Bee Associates	WHEAT	52797682
2	1	31-05-2016	Zuci Overseas Pvt Ltd	Indian Long Rice (25% Broken) Non Basmati	187500
3	BPSMEPL/CI/2016-17-0602	18-06-2016	Giriraj Exports	WHEAT	19332500
4	BPSMEPL/CI/2016-17-0402	20-06-2016	Vee Bee Associates	WHEAT	38720400
5	2	02-07-2016	Graffiti (India) Pvt Ltd	Other Misc.	6233774
6	Nil	04-07-2016	Graffiti (India) Pvt Ltd	Other Misc.	5196964
7	BPSMEPL/2016-17-0701	07-07-2016	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2469000
8	BPSMEPL/CI-1001	04-10-2016	P.N.K. Overseas Pvt Ltd.	Basmati Rice 1121	1110354
9	BPSMEPL/CI-1002	09-10-2016	P.N.K. Overseas Pvt Ltd.	Basmati Rice 1121	1026075
10	BPSMEPL/CI-1003	10-10-2016	P.N.K. Overseas Pvt Ltd.	Basmati Rice 1121	797788
11	BPSMEPL/CI-1004	14-10-2016	P.N.K. Overseas Pvt Ltd.	Basmati Rice 1121	1104645
12	BPSMEPL/CI-1005	20-10-2016	P.N.K. Overseas Pvt Ltd.	Basmati Rice 1121	953027
13	BPSMEPL/CI-1006	22-10-2016	P.N.K. Overseas Pvt Ltd.	Basmati Rice 1121	805231
14	BPSMEPL/CI-1007	23-10-2016	P.N.K. Overseas Pvt Ltd.	Basmati Rice 1121	962789
15	BPSMEPL/CI-1008	24-10-2016	P.N.K. Overseas Pvt Ltd.	Basmati Rice 1121	816924
16	BPSMEPL/CI-1009	28-10-2016	P.N.K. Overseas Pvt Ltd.	Basmati Rice 1121	962363



17	BPSMEPL/CI-1010	29-10-2016	P.N.K. Overseas Pvt Ltd.	Basmati Rice 1121	1089091
18	BPSMEPL/201617-1101	14-11-2016	Fivebro International Pvt Ltd	TMT Bar	12930866
19	BPSMEPL/201617-1201	06-02-2016	Fivebro International Pvt Ltd	TMT Bar	11428571
20	BPSMEPL/201617-1203	26-12-2016	Fivebro International Pvt Ltd	TMT Bar	7619048
21	BPSMEPL/201617-1202	26-12-2016	Fivebro International Pvt Ltd	TMT Bar	7619048
22	BPSMEPL/201617-0101	04-01-2017	Fivebro International Pvt Ltd	TMT Bar	23809524
23	BPSMEPL/201617-0102	12-01-2017	Fivebro International Pvt Ltd	TMT Bar	15238095
24	BPSMEPL/201617-0103	25-01-2017	Fivebro International Pvt Ltd	TMT Bar	14285714
25	BPSMEPL/CI/ALPS/001	01-02-2017	Alps Chemicals Pvt Ltd	SALT	6026800
26	BPSMEPL/201617/PNK01	03-02-2017	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2492700
27	BPSMEPL/201617-0106	08-02-2017	Fivebro International Pvt Ltd	TMT Bar	5714286
28	BPSMEPL/201617/PNK02	08-02-2017	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2492700
29	BPSMEPL/201617/PNK03	14-02-2017	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2490000
30	BPSMEPL/CI/ALPS/002	15-02-2017	Alps Chemicals Pvt Ltd	SALT	5990200
31	BPSMEPL/201617/PNK04	20-02-2017	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2490000
32	BPSMEPL/201617/RS01	24-02-2017	Ruby Shipping	Alluminium Scrap Tablet	2912476
33	BPSMEPL/201617/PNK05	28-02-2017	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2490000
34	BPSMEPL/201617-0203	01-03-2017	Fivebro International Pvt Ltd	TMT Bar	4761905
35	BPSMEPL/201617-0301	02-03-2017	Fivebro International Pvt Ltd	TMT Bar	10476190
36	BPSMEPL/CI/ALPS/003	03-03-2017	Alps Chemicals Pvt Ltd	SALT	6014600
37	BPSMEPL/201617/PNK06	05-03-2017	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2490000
38	BPSMEPL/CI/ALPS/004	07-03-2017	Alps Chemicals Pvt Ltd	SALT	6046188
39	BPSMEPL/201617/PNK07	09-03-2017	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2490000
40	BPSMEPL/CI/ALPS/005	13-03-2017	Alps Chemicals Pvt Ltd	SALT	6034380
41	BPSMEPL/201617/PNK08	14-03-2017	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2490000
42	BPSMEPL/201617/PNK09	18-03-2017	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2490000
43	BPSMEPL/201617-0302	23-03-2017	Fivebro International Pvt Ltd	TMT Bar	10476190
44	BPSMEPL/201617/PNK10	23-03-2017	P.N.K. Overseas Pvt Ltd.	Bright Yellow Sulphur Crude	2490000
				Total For FY 2016-17	316855588

It is apparent from the said invoices that the assessee has raised the said sale invoices for selling of various goods. It is also apparent from the said invoices that they contain the details of buyer, description of goods, Quantity/weight of goods sold, Rate and Bill amount. Therefore, it is evidently established that the assessee was engaged in trading of various goods. Further, on going through the Audited Balance Sheet/P&L accounts for FY 2015-16 and 2016-17, Annual Vat Return (VAT Form 205) for FY 2015-16 and Vat Audit report for FY 2015-16,



it is seen that they corroborate the sale of goods by the assessee and the income booked in the assessee's financial records was against the sale of goods. Further, from the financial records i.e. Balance Sheet and P&L accounts for FY 2015-16 and 2016-17, it becomes apparent that the assessee had purchased goods amounting to Rs. 20,48,52,473/- and Rs. 31,36,32,934/- during FY 2015-16 and 2016-17 respectively. Therefore, I am of the considered opinion that the assessee's contention that their income was not from providing services during FY 2015-16 and 2016-17, is evidently correct.

**23.3** I find that the assessee has further contested that they had not provided any services, rather they were engaged in trading of goods/selling of goods during FY 2015-16 and 2016-17, and the same was not subjected to service tax under Finance Act, 1944. To appreciate the issue in the correct perspectives, the relevant definitions provided in the Finance Act, 1994 are reproduced as follows:

Section 65B(44) of the Finance Act, 1944 provides the definition of "Service":

*"(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) .....*
- (b) ....."*

Goods have been defined under clause (25) of Section 65B of the Finance Act, 1994:

*(25) "goods" means every kind of movable property other than actionable claim and money; and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;*

On perusing the above legal definitions, I find that the definition of "Service" excludes - any activity that constitutes only a transfer in title of goods or immovable property by way of sale, gift or in any other manner. Therefore, in

view of the above legal definition, the activity of selling of goods by the assessee is not covered under the definition of "service" as provided under the Finance

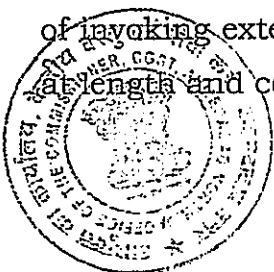


Act, 1944. Hence, service tax is not leviable under 66B of Finance Act, 1944 on selling of goods/trading of goods by the assessee. I also find the activity of "Trading of goods" is also covered under the negative list of service provided under Section 66D of Finance Act, 1944. Therefore, I find that the assessee is not liable to pay any service tax as demanded under the subject SCN as their activity of selling of goods being not covered under the definition of "service".

**24.** As regards the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. Since, the assessee has not provided any details/information/ documents for the F.Y.2017-18 (upto June,2017) and the department has also not adduced any information/evidence and the reason for the non disclosure has not been made known to the department, I refrain myself from entering in to the said period to determine liability or otherwise of assessee for service tax.

**25.** From the above factual, legal position and documents submitted by the assessee, I find the allegation of non payment of service tax on provision of service by the assessee as per the subject SCN, is evidently not correct, as there is no provision of service by the assessee. I find that the department has not adduced/ relied upon any other evidence or investigation to substantiate the allegations of provision of service as well as non payment of service tax by the assessee. Having considered these factual and documentary evidences available on records, I find that the assessee is not required to pay service tax as demanded in the subject SCN. Thus, the subject SCN is liable to be dropped on merits being incorrect and legally not sustainable.

**26.** In view of the aforementioned detailed discussion and in view of the facts and circumstances pertaining to the subject case, the demand is not tenable in law. Accordingly, I do not consider it necessary to delve on the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same



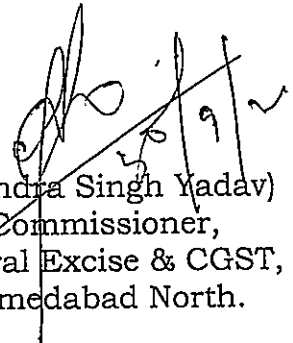


reasons, I am also not entering into discussions on the need or otherwise for imposing penalty.

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

**ORDER**

I drop the proceedings initiated against M/s. BPS Mineral & Exports Private Limited, 8, 1<sup>st</sup> Floor, Arjun Complex, Nr. Saurabh High School, Nava Wadaj, Ahmedabad, vide Show Cause Notice F. No. STC/15-220/OA/2020 dated 30.03.2021.

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

By Regd. Post AD./Hand Delivery  
F.No. STC/15-220/OA/2020

Date: .09.2022.

To,

M/s. BPS Mineral & Exports Private Limited,  
8, 1<sup>st</sup> Floor, Arjun Complex,  
Nr. Saurabh High School, Nava Wadaj,  
Ahmedabad



Copy to:

- 1 The Principal Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
- 2 The Deputy/Assistant Commissioner, CGST & C.Ex., Division-I, Ahmedabad North.
- 3 The Superintendent, Range-IV, Division-I, Ahmedabad North.
- 4 ✓ The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- 5 M/s. BPS Mineral & Exports Pvt Ltd., 58/15, Mohan Market, Sector-9C, Gandhidham-Kutch, Gujarat
6. Guard File.