


| | | |
|--|---|---|
| <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> |
| <p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- aaahmedabad2@gmail.com</p> | | |

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. **STC/15-198/OA/2021-22**

DIN- 20221264WT000000D33E

आदेश की तारीख / Date of Order : 15.12.2022
जारी करने की तारीख / Date of Issue : 15.12.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-30/2022-23

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

This copy is granted free of charge for private use of the person(s) to whom it is sent.

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 Girdharnagar Bridge, Girdharnagar, 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

हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल, उसकी भी उतनी ही की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से कम प्रतियाँ संलग्न की जाएंगी म एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970, की अनुसूची, 1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रुपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice No. STC/15-198/OA/2021-22 dated 23.04.2021 issued to M/s. Pithadai Transport & Carting, 1st Floor, 36-A, Vaibhav Shopping Complex, Bhavya Park, Bopal, Ahmedabad - 380058 (Gujarat)

ORDER-IN-ORIGINAL NO. AHM-EXCUS - 30/2022-23

M/s. Pithadai Transport & Carting, 1st Floor, 36-A, Vaibhav Shopping Complex, Bhavya Park, Bopal, Ahmedabad – 380058 (Gujarat) were issued Show Cause Notice No. STC/15-198/OA/2021-22 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

Brief facts of the case pertaining to Show Cause Notice No. STC/15-198/OA/2021-22 dated 23.04.2021 are as follows:

1. 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” by M/s. Pithadai Transport & Carting, 1st Floor, 36-A, Vaibhav Shopping Complex, Bhavya Park, Bopal, Ahmedabad – 380058 (Gujarat) (hereinafter referred to as the 'Assessee' for the sake of brevity) was carried out by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17. The details of the said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC). On the basis of the data shared by the CBDT, it appeared that the assessee had earned income by providing services on which Service Tax was leviable; it also appeared that the Assessee had rendered such taxable services without obtaining registration and thereby had also not made the payment of applicable Service Tax on the services rendered.
2. With effect from 01.07.2012, the negative list regime came into existence under which all services were taxable and only those services which were mentioned in the negative list were exempted. The nature of activities carried out by the Assessee appeared to be covered under the definition of service and the same appeared to be not covered under the Negative List as given in the Section 66D of the Finance Act, 1994, as amended from time to time.
3. Since the Assessee had not declared the above income in their Service Tax Return and had not paid Service Tax on the said income, it was necessary to initiate statutory demand from the Assessee for confirmation of their Service Tax liability under the relevant provisions of the Finance Act, 1994 and Service Tax Rules, 1994. Therefore, in order to ascertain the veracity of the issue, the assessee was given opportunity to appear for pre show-cause notice consultation on 23.04.2021, but the assessee did not avail the same.

4. Since the assessee did not submit the required details of services provided during the Financial Year 2015-16 and 2016-17, nor did they avail the opportunity of pre show cause consultation, the service tax liability of the assessee had to be ascertained on the basis of income mentioned in the ITR returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department was considered as the total taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.

5. By the act of non-compliance and non-submission of any information to the department, it appeared that the Assessee had contravened the following provisions of Chapter-V of the Finance Act, 1994, the Service Tax Rules, 1994:

- i. Section 69(1) of the Finance Act, 1994 read with Notification No. 33/2012-Service Tax dated 26.06.2012 in as much as they had failed to obtain Service Tax Registration
- ii. Section 67 of the Finance Act, 1994 in as much as they had failed to determine the correct value of taxable service provided by them
- iii. Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules 1994 in as much as they had failed to assess their tax liability and had also failed to furnish returns in such form i.e. ST3 Returns, in such manner and at such frequency as mandated
- iv. Section 66B and Section 68 of the Finance Act, 1994 read with Rules 6 of the Service Tax Rules, 1994 in as much as they had failed to pay the Service Tax at the appropriate rate within the prescribed time and in such manner as provided under the said provision

6. It appeared that the assessee had not paid the service tax by way of suppression of facts and in contravention of provision of the Finance Act, 1994 and rules made there under relating to levy and collection of service tax, with intent to evade payment of service tax. Hence, the service tax liability arising due to said contraventions 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. The assessee also appeared 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. The provisions of Finance Act, 1994 read with Service Tax Rules, 1994 framed there under, were saved by the Section 174(2) of the CGST Act, 2017.

7. All these acts of contravention on the part of the Assessee of the provisions of Section 68 and 70 of the Finance Act, 1994 read with Rule 6 and 7 of Service Tax Rules, 1994 appeared to be liable for penalty under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

8. As the assessee failed to furnish the information in their Service Tax Returns and they appeared to have contravened various provision of Finance Act, 1994 and Rules made there under, thereby rendering themselves liable for penalty under Section 77 of the Finance Act, 1994.

9. Therefore, as per the analysis shared by the CBDT, the Service tax payable on the basis of value of "sales of services under Sales/Gross Receipts From Services (Value from ITR)" or "Total Amount Paid/Credited Under Section 194C, 194I, 194H, 194J" for the financial year 2015-16 and 2016-17 was assessed as below:-

(Amount in Rs)

| Sr. No. | F.Y. | Sales/Gross Receipts from Services as per Form 26AS (In Rs.) | Resultant Service Tax short paid (in Rs.) |
|---------|---------|--|---|
| 1 | 2015-16 | 12,23,50,930/- | 1,70,70,335/- |
| 2 | 2016-17 | 12,43,25,233/- | 1,85,44,896/- |
| TOTAL | | 24,66,76,163/- | 3,56,15,231/- |

Therefore, it appeared that the Assessee had not discharged their Service Tax liability and the Assessee was liable to pay Service Tax including Cess [@12.36% for F.Y. 2015-16 from 01.04.2015 to 31.05.2015]; [@14% from 01.06.2016 to 14.11.2015]; [@14.50% from 15.11.2015 to 31.05.2016] and [@15% from 01.06.2016 to 31.03.2017] alongwith applicable interest and penalty for the F.T. 2015-16 to 2016-17.

10. 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 assessee 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.'

11. As per the provisions of Section 72 of the Finance Act, 1994, if any person, liable to pay Service Tax -

- (a) fails to furnish the return under section 70;
- (b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder,

the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

12. The Assessee was also given the opportunity for pre-SCN consultation on 23.04.2021, but they did not avail the same.

13. Therefore, a Show Cause Notice No. STC/15-198/OA/2021-22 dated 23.04.2021 was issued by the Commissioner, Central GST & Central Excise, Ahmedabad North to the Assessee (M/s. Pithadai Transport & Carting) asking them as to why;

- i. The services rendered by them should not be considered as "taxable services" under Section 65 of the Finance Act, 1994, as amended, and the total/gross amount of Rs. 24,66,76,163/- received towards rendering such services should not be considered as taxable value of the said taxable services charged by them for the F.Y. 2015-16 to 2016-17;
- ii. Service Tax of Rs. 3,56,15,231/- (Rupees Three Crore Fifty Six Lakh Fifteen Thousand Two Hundred Thirty One only) which was not paid for the F.Y. 2015-16 to 2016-17 as per the Table in para 9 above should not be demanded and recovered from them under the proviso to Sub-section (1) of Section 73 of the Finance Act, 1994; read with relaxation provisions of Section 6 of the Chapter V of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No. 2 of 2020) promulgated on 30.03.2020 by invoking extended period of time limit;
- iii. Interest at the prescribed rate should not be demand and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;

- iv. Prescribed late fee, should not be recovered from them for each ST-3 return filed late for the relevant period, under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994;
- v. Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for the failure to make payment of service tax payable by them within prescribed time-limit;
- vi. Penalty should not be imposed upon them under Section 77(1) of the Finance Act, 1994 for failure to take Service Tax Registration as per the provisions of Section 69 of the Finance Act, 1994;
- vii. Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for non-payment of Service Tax by wilfully suppressing the facts from the department with intent to evade the payment of Service Tax as explained herein above.

DEFENCE REPLY:

14. The Assessee vide their letter dated 26.04.2022 (submitted to the department on 28.04.2022) submitted their reply to the Show Cause Notice dated 23.04.2021, wherein they have inter alia stated as under –

- i. That they have provided service of works contract to the government (Sardar Sarovar Narmada Nigam Limited) as a subcontractor of M/s. Jalaram Project Pvt. Ltd.
- ii. That their work is exempted from service tax as per Notification No. 25/2012-Service Tax dated 20.06.2012.

14.1 The Assessee, in support of the arguments put forth by them, has submitted the following documents –

- a) 26AS [FY 2015-16, FY 2016-17]
- b) P&L Account Statement [FY 2015-16, FY 2016-17]
- c) Income Tax returns [FY 2015-16, FY 2016-17]
- d) Work Order Copy of Sardar Sarovar Narmada Nigam Limited bearing No. CPC/Vallabhipur/LD-4B/Upper Portion/2015/924 dated 18.04.2015 issued to M/s. Jalaram Constructions for the work of “Constructing Earthwork, C.C. Lining, Structures and Service Road of the Distributory only (without minors) Kamatalav Distributory (LD-4B: Upper Portion from ch. 13765 m) offtaking from Vallabhipur Branch Canal @ ch,64.795 km including Operation, Maintenance and Security for Five years”
- e) Contract of M/s. Jalaram Project Pvt. Ltd. bearing No. Jalaram Projects Pvt. Ltd./Work Order/LD-4B Upper Portion dated

01.01.2016 to M/s. Pithadai Transport & Carting for the same work i.e. "Constructing Earthwork, C.C. Lining, Structures and Service Road of the Distributory only (without minors) Kamatalav Distributory (LD-4B: Upper Portion from ch. 13765 m) offtaking from Vallabhipur Branch Canal @ ch,64.795 km including Operation, Maintenance and Security for Five years"

14.2 The Assessee, further vide their letter dated 15.09.2022 have contended that they have provided services to the government falling under entry No. 12(d) of the Notification No. 25/2012-ST. They also submitted the following documents -

- a) RA Bills
- b) Certificate of Incorporation of M/s. Jalaram Projects Pvt. Ltd.
- c) Articles of Association of M/s. Jalaram Projects Pvt. Ltd.

14.3 The details of the RA Bills are as under -

| Sl. No. | RA Bill Number | Name of the Recipient of Service | Work Order No. & date | 2015-16 | 2016-17 |
|---------|----------------|--------------------------------------|--|-------------------|-------------------|
| | | | | RA Bill Submitted | RA Bill Submitted |
| 1 | RA Bill No. 6 | Jalaram Projects Private Ltd. | Jalaram Projects Pvt. Ltd./Work Order/LD-4B Upper Portion dated 01.01.2016 | 18726696 | 0 |
| | RA Bill No. 5 | | | 38331125 | 0 |
| | RA Bill No. 4 | | | 20514107 | 0 |
| | RA Bill No. 12 | | | | 25211211 |
| | RA Bill No. 11 | | | | 14910417 |
| | RA Bill No. 10 | | | | 1716554 |
| | RA Bill No. 8 | | | | 33237269 |
| | RA Bill No. 9 | | | | 9882521 |
| | RA Bill No. 7 | | | | 39367261 |
| 2 | RA Bill No. 3 | Prakashkumar Chunilal Patel | Jalaram Projects Pvt. Ltd./Work Order/LD-4B Upper Portion dated 01.01.2016 | 11182444 | 0 |
| | RA Bill No. 2 | | | 17575191 | 0 |
| | RA Bill No.1 | | | 16021367 | 0 |
| | | Total Income as per Form 26AS | | 122350930 | 124325233 |

PERSONAL HEARING:

15. Personal hearings were granted to the assessee on, 12.05.2022, 24.06.2022, 29.07.2022 and 13.09.2022. However the Assessee did not appear

for personal hearing on any of the above mentioned dates. Finally the personal hearing was fixed on 20.10.2022 and the same was attended by Shri Mitesh Udani, Accountant on behalf of the Assessee. During the course of personal hearing, Shri Mitesh Udani reiterated the contents of their written submission dated 26.04.2022 and 15.09.2022. He further stated that they have provided Canal and Irrigation related work service to government and local authority and that they are exempt from payment of Service Tax.

DISCUSSION AND FINDINGS:

16. I have carefully gone through the facts of the case and records available in the case file, the Show Cause Notice dated 23.04.2021, the defence reply dated 26.04.2022 and 15.09.2022, the documents submitted alongwith the defence replies and oral submissions made by the assessee during the course of personal hearing on 20.10.2022. Accordingly, I find that the following issues are required to be decided by me as an adjudicating authority –

- a. Whether the Service Tax has been correctly demanded vide the Show Cause Notice dated 23.04.2021.
- b. Whether the contention of the Assessee that the services provided by them are exempted as per Notification No. 25/2012 dated 20.06.2012 is sustainable or not.

17. I find that the genesis of the demand has risen from the analysis of the 26AS and ITR of the Assessee by the CBDT and the same being shared with the department for the period 2015-16 and 2016-17. The CBDT found that during the year 2015-16 and 2016-17, the Assessee had rendered services and had received income on such services. Therefore for verification of the apparent non-payment of Service Tax by the Assessee, the department, prior to the issuance of Show Cause Notice, had given the opportunity for pre-SCN consultation to the Assessee on 23.04.2021, but they did not avail the same. Therefore, the department had no option but to issue a formal demand for recovery of unpaid Service Tax from the Assessee. Accordingly SCN dated 23.04.2021 was issued to the Assessee demanding service tax of Rs. **3,56,15,231/-** (Rs. 1,70,70,335/- + Rs. 1,85,44,896/-) on the value of total taxable service, provided by the Assessee amounting to Rs. **24,66,76,163/-** (Rs. 12,23,50,930/- + Rs. 12,43,25,233/-) for F.Y. 2015-16 and 2016-17.

18. Further, the income of the assessee as per 194(C) reflected in Form 26AS and their income as per the P&L Account for the relevant period is as under:

| Sl. No. | Name of the source | 2015-16 | 2016-17 |
|---------|--|------------------|------------------|
| 1 | Total Income as per Form 26AS as per 194(C) | 122350930 | 124325233 |
| 2 | Income as per Profit & Loss Account | 122350930 | 124325233 |

18.1 I also find that the demand for the year 2015-16 and 2016-17 in the Show Cause Notice has been raised based on the income reflected in the 26AS of the Assessee for the relevant F.Y. 2015-16 and 2016-17, and therefore, for the sake of consistency in computation of tax, I would also rely on the Income reflected in the 26AS for the period 2015-16 and 2016-17.

18.2 Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the taxable value of Rs. **24,66,76,163/-** for the Financial Year 2015-16 and 2016-17.

19. I find that the Assessee has not contested the computation of the value of taxable services in the SCN and there is no dispute as far as the receipt of the consideration for provision of service by the assessee is concerned. The only contention of the Assessee is that they are engaged in providing Canal and Irrigation related work services to government and local authority; that the services provided by them are exempted services; that accordingly they were not liable to pay service tax on provision of such services. Therefore I find that there is no dispute as far as the provision of services as well as receipt of income on provision of such services by the assessee for the period from 2015-16 and 2016-17 as given below:

| Sl. No. | Year | Total Taxable Value (Rs.) |
|---------|----------------|---------------------------|
| 1 | 2015-16 | 12,23,50,930/- |
| 2 | 2016-17 | 12,43,25,233/- |
| | TOTAL | 24,66,76,163/- |

20. Therefore, the one and only issue that needs to be decided is whether the services provided by the assessee were eligible for exemption under Notification No. 25/2012-ST or otherwise as claimed by the assessee.

20.1 The Assessee has claimed that they are engaged in activity of providing Canal and Irrigation related service to government and local authority and the services provided by them are exempted services falling under entry No. 12(d) of Notification 25/2012-ST dated 20.06.2012. To

appreciate the issue in the correct perspectives, relevant extracts/entries of Notification No. 25/2012-ST under which the services rendered by the Assessee falls, are reproduced as follows:

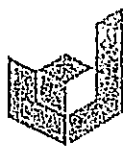
Relevant Entry Numbers of Notification No. 25/2012-ST dated 20.06.2012:

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

- (a)
- (b)
- (c)
- (d) **canal, dam or other irrigation works;**

20.2 On scrutiny of the income reflected in the Form 26AS, I find that the income has been received from 2 entities i.e. M/s. Jalaram Projects Pvt. Ltd. and M/s. Prakash Chunilal Patel. Further, it is found that the work order has been awarded to M/s. Jalaram Construction by Sardar Sarovar Nigam Limited, whereas, the sub-contract was given to the assessee by M/s. Jalaram Projects Pvt. Ltd. However, on the basis of Certificate of Incorporation, it is observed that M/s. Jalaram Projects Pvt. Ltd. was incorporated on 01.01.2016 with (1) Shri Prakash Chonical Patel and (2) Shri Dilip T. Patel as its directors. Further, the Articles of Association clearly mentions that the company i.e. M/s. Jalaram Projects Pvt. Ltd. is liable for obligations of M/s. Jalaram Construction, a proprietary firm owned by Shri Prakash Chunilal Patel. Accordingly, the variation in the names with regard to the main contract awarded by SSNL to M/s. Jalaram Construction, and the sub-contract for the same work given to the Assessee by M/s. Jalaram Projects Pvt. Ltd. is clarified.

20.3 Further, on perusal of the main work order issued by SSNL to M/s. Jalaram Construction and the sub-contract on the basis of which the service was rendered by the Assessee, it is observed that the Assessee has rendered the work related to construction of Canal and Irrigation related works which are clearly exempted vide Entry No. 12(d) of the Notification No. 25/2012-Service Tax read with Entry No. 29(h) of the Notification No. 25/2012-Service Tax. The copies of the main contract of SSNL to M/s. Jalaram Construction and the sub-contract is reproduced below for reference -



**JALARAM
PROJECTS
PVT. LTD.**

401 Vallab Villa,
Nr. Sakinaka Circle, Sola Road,
Thaltej, Ahmedabad - 380 061
Tel.: 079 - 2749 9014 Fax: 2749 5739
CIN No. U45200GJ2016PTC085577

admin@jalaramprojects.in | info@jalaramprojects.in | www.jalaramprojects.in

No. Jalaram Projects Pvt Ltd /Work order/LD-4B Upper Portion/

Dt.01-01-2016

To,

✓ Pithadai Transport & Carting
C-303, Titanium square,
S.G Highway
Thaltej
Ahmedabad

WORK ORDER

Name of Work : Work order for Work of Constructing Earth work, C,C Lining, Structures and Service Road of the Distributary only (Without Minors) of Kamatalav Distry (LD-4B : Upper Portion from Ch. 0 to 13765 m) offtaking from Vallabhipur Branch Canal @ Ch.64.795 Km including Operation ,Maintenance & Security for five years.

Dear Sir,

This is reference to the above mention work, we are please to award the work to execute the Earth work, C,C Lining, Structures and Service Road of the Distributary only (Without Minors) of Kamatalav Distry (LD-4B : Upper Portion from Ch. 0 to 13765 m) offtaking from Vallabhipur Branch Canal @ Ch.64.795 Km including Operation ,Maintenance & Security for five years.under this work order.

The work should be executed as per terms and conditions of the agreement signed by the Jalaram Projects Pvt Ltd and the Owner and further terms and conditions are as follows:

Terms & Condition

1. The entire work shall be carried out strictly as per tender specification and to satisfaction of client.
2. The Rates are fixed and firm for the entire work.
3. You should implement the safety regulation of clients.
4. In case any dispute arising under this contract the same is sorted out at Ahmedabad with Mutual discussion. The decision of under signed is final and binding on both the parties.
5. The work should be completed in all respect up to 30-09-2016 without fail.
6. All applicable taxes will be deducted from your bill.



Sardar Sarovar Narmada Nigam Ltd.

(A Wholly owned Govt. of Gujarat undertaking)

Deputy General Manager (CPC)
6th Floor, Block No.12, New Sachivalaya Complex,
Gandhinagar - 382 010, Gujarat - INDIA
Phone : 079-23252742
Email : dgmcpeessnl@gmail.com
FAX No. -079-23252394, 23223056



URGENT
BY FAX

No. CPC/Vallabhipur/LD-4B/Upper Portion/2015/924
Date 18-04-2015

FAX No. 079-27495739

To,
Jalaram Construction,
401, Vitthal Villa, Satadhar Circle,
Sola Road,
Ahmedabad

Sub. : Tender for the work of Constructing Earthwork, C.C. Lining, Structures and Service Road of the Distributary only (without minors) Kamatalav Distributary (LD-4B: Upper portion from ch.13765 m) of taking from Vallabhipur Branch Canal @ ch.64.795 km including Operation, Maintenance and Security for Five years

SSNNL – Tender Notice no.1 of 2014-15 (Tender ID – 165918)

- Acceptance of Tender cum work order.

Dear Sir,

Sardar Sarovar Narmada Nigam Ltd. had invited tenders for the above referred work vide tender notice no. 1 of 2014-15.

The Sardar Sarovar Narmada Nigam Ltd., has accepted your tender for Rs. 29,14,10,147.90 (Rupees Twenty nine crore fourteen lac ten thousand one hundred forty seven & ps. Ninety only) (including O & M) which is 19.2988% below the Estimated cost of Rs.36,10,97,598.50 put to tender at SOR 2012-13 (including O & M).

You are hereby notified to pay the Security Deposit as under as per Clause 6 of Section-1 of Volume One – B of the Bid Documents within ten days from the date of issuance of this "Letter of Acceptance – cum- work order" i.e. on or before dt. 28-04-2015 in the office of the Executive Engineer, S.B.C.Dn.No.1/3, Limbdi and sign and execute a contract:

Page 1 of 2

20.4 As furnished in para 14.2 above, the Assessee has submitted all the relevant RA Bills also evidencing the receipt of income with respect to the exempted service rendered by them. Copies of the RA Bills are reproduced here for reference -



1

Pithadai Transports & Carting

C-303, Titanium square, S.G. Highway, Thaltej, Ahmedabad.
Tele. No. : 079-40326488 • Email : pithadai@gmail.com

Shram Construction
Ahmedabad

Date :

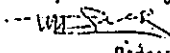
Sub : Constructing Earth work, C.C. Lining, Structures and Service Road of the Distributary only (without Minors) of Karnata Jay Dstry (11-46, Upper Portion from ch.0 to 13765 m) off-taking from Vallabhipur Branch Canal @ Ch. 64.795 KM Including Operation, Maintenance & Security for five years.

A Bill No :- 1 (RA Bill No. 1)

| Item No | Item | Total Qty | Pre. Qty. | Qty. | FR | PR | Total Amount | Pre. Bill Amount | Amount |
|-------------------------------|-------------------------|------------|-----------|------------|------|--------|--------------------|------------------|--------------------|
| EARTHWORK | | | | | | | | | |
| 1 | Clearing the canal land | 43.229 | 0.000 | 43.229 | 1000 | 950.00 | 42364.42 | 0.000 | 42364.42 |
| 2 | Stripping | 36617.000 | 0.000 | 36617.000 | 15 | 14.50 | 530946.50 | 0.000 | 530946.50 |
| 3 | Excavation 1 Km. Lead | 0.000 | 0.000 | 0.000 | 47 | 0.00 | 0.00 | 0.000 | 0.00 |
| 4 | E/W Lead up to 11 Km. | 158629.090 | 0.000 | 158629.090 | 100 | 98.50 | 15624965.37 | 0.000 | 15624965.37 |
| 5 | Compaction of E/w | 166977.990 | 0.000 | 166977.990 | 10 | 9.50 | 1586290.91 | 0.000 | 1586290.91 |
| Total | | | | | | | 17784567.19 | 0.00 | 17784567.19 |
| Bill Deduction 2.6 % | | | | | | | | | 462298.60 |
| Total | | | | | | | | | 17322269 |
| Other Deduction 7.51 % | | | | | | | | | 1300902 |
| Total | | | | | | | | | 16021367 |
| Recovery | | | | | | | | | 1305784 |
| Amount to be PAY | | | | | | | | | 14715583 |

| Recovery Statement | |
|--------------------|----------------|
| D 5 % | 889228 |
| D 5 2% | 320427 |
| Est. D. | 96128 |
| Total | 1305784 |

Thank You.

For, Pithadai Transports & Carting
A/O. 
Pithadai





3

Pithadai Transports & Carting

Transports & Carting

C-303, Titanium square, S.G. Highway, Thaltej, Ahmedabad.
Tele. No. : 079-40326488 • Email : pithadai@gmail.com

Bill No : 5

Dt.

TO,
Jalaram Porjects Pvt Ltd
Ahmedabad

EE S.B.C Dn No.1/3 Limbdi Bill 5 RA

Sub :-Constructing Earth work,C.C. Lining,Structures and Service Road of the Distributary only (without Minors) of Kamatalav Distry (LD-4B: Upper porton from ch.0 to 13765 m) offtaking from Vallabhipur Branch Canal @ CH. 64.795 KM. Including Operation, Maintenance & Security for five years

| Sr.No. | Description | Qty | Amount |
|--------|---|---------------------|----------|
| 1 | Constructing Earth work,C.C. Lining,Structures and Service Road of the Distributary only (without Minors) of Kamatalav Distry (LD-4B: Upper porton from ch.0 to 13765 m) offtaking from Vallabhipur Branch Canal @ CH. 64.795 KM. Including Operation, Maintenance & Security for five years | As per 5 th RA Bill | 42549830 |
| | | TOTAL | 42549830 |
| | Bill Deduction 2.6 % + Testing charges | | 1106296 |
| | Total | | 41443534 |
| | Other Deduction 7.51 % | | 3112409 |
| | Total | | 38331125 |
| | Recovery | | 3224102 |
| | Amount to be PAY | | 35107023 |

| | |
|--|---------|
| SD 5 % | 2127492 |
| Addi 5 D Slow Progress & labour linces | 100000 |
| TDS 2% | 766623 |
| Vat 0.6 % | 229987 |
| Total | 3224102 |

M. Pithadai
Pithadai Transports & Carting

Prepared by me

Checked by me

Passed by me



Pithadai Transports & Carting

C-303, Titanium square, S.G. Highway, Thaltej, Ahmedabad.
Tele. No. : 079-40326488 • Email : pithadai@gmail.com

Bill No : 8

DI. ✓

TO,
Jalaram Porjects Pvt Ltd
Ahmedabad

EE S.B.C Dn No.1/3 Limbdi Bill No.8 th RA

Sub :-Constructing Earth work,C.C. Lining,Structures and Service Road of the Distributory only (without Minors) of Kamatalav Distry (LD-4B: Upper porton from ch.0 to 13765 m) oftaking from Vallabhipur Branch Canal @ CH. 64.795 KM. Including Operation, Maintenance & Security for five years

| Sr.No. | Description | Qty | Amount |
|--------|--|------------------------|------------|
| 1 | Constructing Earth work,C.C. Lining,Structures and Service Road of the Distributory only (without Minors) of Kamatalav Distry (LD-4B: Upper porton from ch.0 to 13765 m) oftaking from Vallabhipur Branch Canal @ CH. 64.795 KM. Including Operation, Maintenance & Security for five years | As per 8 th RA Bill | 36895347 |
| | | TOTAL | 36895347 |
| | | Bill Deduction 2.6 % | 959279 |
| | | Total | 35936068 |
| | | Other Deduction 7.51 % | 2698799 |
| | | Total | 33237269 ✓ |
| | | Recovery | 1027305 ✓ |
| | | Amount to be PAY | 32209964 ✓ |

50,00,000/-
2,50,00,000/-
5,00,00,000/-
2,50,00,000/-
2,50,00,000/-

| | |
|--|---------|
| SD 5 % | 113136 |
| Addi S D Slow Progress & labour linces | 50000 |
| TDS 2% | 664745 |
| Vat 0.6 % | 199424 |
| Total | 1027305 |

For, Pithadai Transports & Carting

Pithadai Transports & Carting

Prepared by me

Checked by me

Passed by me



Pithadai

Transports & Carting

C-303, Titanium square, S.G. Highway, Thaltej, Ahmedabad.
Tele. No. : 079-40326488 • Email : pithadai@gmail.com

Bill No : 7

DL *5-5-16*

TO,
Jalaram Projects Pvt Ltd
Ahmedabad

EE S.B.C Dn No.1/3 Limbdi Bill 7 RA

Sub :-Constructing Earth work,C.C. Lining,Structures and Service Road of the Distributary only (without Minors) of Kamatalav Distry (LD-4B: Upper porton from ch.0 to 13765 m) offtaking from Vallabhipur Branch Canal @ CH. 64.795 KM. Including Operation, Maintenance & Security for five years

| Sr.No. | Description | Qty | Amount |
|--------|---|---------------------|----------|
| 1 | Constructing Earth work,C.C. Lining,Structures and Service Road of the Distributary only (without Minors) of Kamatalav Distry (LD-4B: Upper porton from ch.0 to 13765 m) offtaking from Vallabhipur Branch Canal @ CH. 64.795 KM. Including Operation, Maintenance & Security for five years | As per 7 th RA Bill | 43700003 |
| TOTAL | | | 43700003 |

| | |
|--|----------|
| Bill Deduction 2.5 % + Testing charges | 1136200 |
| Total | 42563803 |
| Other Deduction 7.51 % | 3196542 |
| Total | 39367261 |
| Recovery | 3308549 |
| Amount to be PAY | 36058712 |

| | |
|---------------------------------------|---------|
| SD 5 % | 2185000 |
| Addi S D Slow Progress & labur linces | 100000 |
| TDS 2% | 787345 |
| Vat 0.6 % | 236204 |
| Total | 3308549 |

For, Pithadai Transports & Carting

Partner

Pithadai Transports & Carting

[Signature]
Prepared by me

Checked by me

[Signature]
Passed by me

21. Now, as discussed in the foregoing paras, I find that the Assessee has submitted all the documentary evidence viz. Form 26AS, Work Order, corresponding contract, all RA Bills for the period of 2015-16 and 2016-17, to prove that the services rendered by them are exempt in terms of Entry No. 12(d) of Notification No. 25/2012-ST dated 20.06.2012. The demand has also

been made vide the subject SCN on the grounds that the Assessec has not obtained Service Tax registration, and they have not reflected the income in their ST-3 returns. Apart from the charge of non-reflection of income in the ST-3 returns, no other documentary evidence was adduced by the department to substantiate the allegations. However the Assessee has convincingly proved that the income received by them were for the provision of exempted services i.e. activity of Canal and Irrigation related work/service to government, as discussed in the preceding paras. Accordingly, I hold that the Assessee is not liable to pay the Service Tax on the demand raised against them vide the SCN No. STC/15-198/OA/2021-22 dated 23.04.2021.

22. In view of the facts and circumstances pertaining to the case, I find that the demand is not tenable. Accordingly I also do not consider it necessary to delve in the merits of invoking extended period of limitation. For the same reasons, I am also not entering into discussions on the need or otherwise of imposing penalty. Therefore, from the factual matrix as discussed in the foregoing paras, I pass the following order: -

ORDER

I hereby drop the proceedings initiated against M/s. Pithadai Transport & Carting, 1st Floor, 36-A, Vaibhav Shopping Complex, Bhavya Park, Bopal, Ahmedabad - 380058 (Gujarat), vide Show Cause Notice STC/15-198/OA/2021-22 dated 23.04.2021



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

Date: __.12.2022.

By Registered Post AD/By Hand Delivery
F.No. STC/15-198/OA/2021-22

To,
M/s. Pithadai Transport & Carting,
1st Floor, 36-A, Vaibhav Shopping Complex,
Bhavya Park, Bopal,
Ahmedabad - 380058 (Gujarat)

Copy for information to:

1. The Principal Chief Commissioner of CGST & Central Excise, Ahmedabad Zone.
2. The Deputy/Asst. Commissioner, Division-VI, CGST & C.Ex., Ahmedabad North.
3. The Superintendent, Range-I, Division-VI, CGST & C.Ex., Ahmedabad North.
4. The Superintendent (Systems), Hq., CGST & C.Ex., Ahmedabad North.
5. Guard File.