
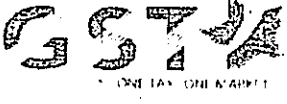


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निवन्धित पावती डाक द्वारा/By R.P.A.D

DIN-20230864WT0000444ACC

फ़ा.सं./F.No. STC/15-236/OA/2021

आदेश की तारीख/Date of Order :- 03.08.2023

जारी करने की तारीख/Date of Issue :- 03.08.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त /Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 26/JC/ LD /2023-24

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाडी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

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

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

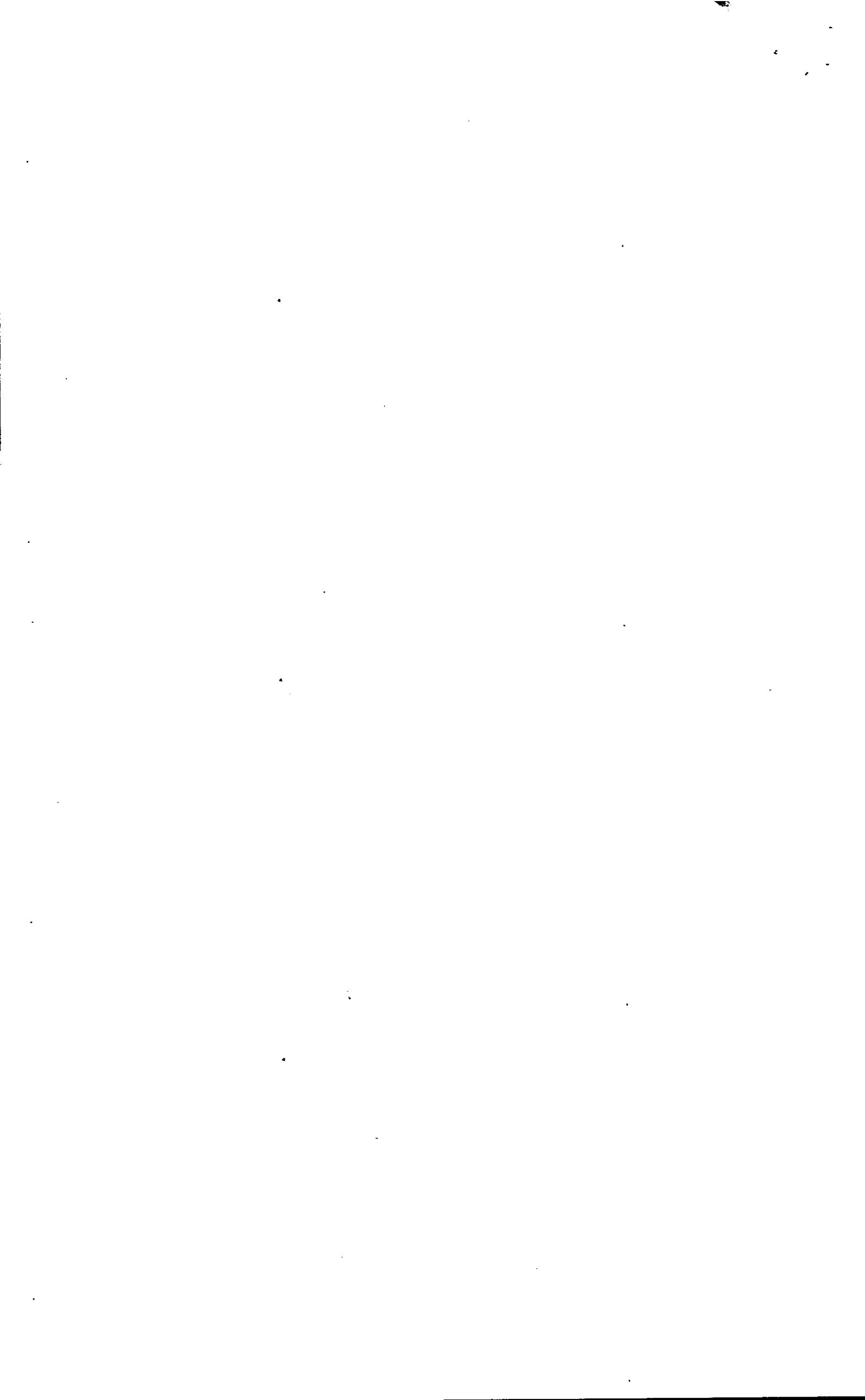
उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5.00 पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए)।

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

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

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-236/OA/2021 dated 23.04.2021 issued to M/s Dharmendrabhai Bhanushankar Sompura, F-104, Kalasagar Heights, Opp. Anmol Bunglows, 80 Ft. Road, Ahmedabad-382480.



BRIEF FACTS OF THE CASE

M/s. Dharmendrabhai Bhanushankar Sompura, F - 104, Kalasagar Heights, Opp. Anmol Bunglows, 80 Ft. Road, Ahmedabad-382480 having PAN No. DNPPS7720N (hereinafter referred to as the assessee) was engaged in providing taxable services without taking registration.

2. On going through the third party CBDT data for the Financial Year 2015-16 and 2016-17, it has been observed that the Assessee has earned substantial service income by way of providing taxable services but has neither obtained service tax registration nor paid service tax thereon.

3. With effect from 01.07.2012, the negative list regime came into existence under which all the services are taxable and only those services that are mentioned in the negative list are exempted.

4. The nature of activities carried out by the assessee as service provider appeared to be covered under the definition of service and 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. These services also not be exempted under mega exemption notification No.25/2012-ST dated 20.06.2012, as amended from time to time, and hence the aforesaid service provided by the assessee appears to be subjected to service tax.

5. The service tax liability of the service tax assessee is ascertained on the basis of income mentioned in their ITR returns and Form 26AS filed by the assessee with the IT Department. The figures/data provided by the IT Department is considered as total taxable value in order to ascertain the service tax liability under section 67 of the Finance act, 1994. By considering the said amount as taxable income, the service tax liability is calculated as detailed below.:

Sr. No.	F.Y.	Total Value for TDS (including 194C, 194Ia, 194Ib, 194) (In Rs.)	Service Tax Rate	Resultant Service Tax short paid (in Rs.)
1	2015-16	031435454	14.50%	4558141
2	2016-17	27524130	15%	4128620
	TOTAL			8686761

6. No data was forwarded by CBDT, for the period 2017-18 (upto June-2017) therefore at the time of issue of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

7. Un quantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies that:

"2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the

show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient."

8. From the facts, it appeared that the "total amount paid /credited under Section 194C, 194H, 194I, 194J for the FY 2017-18 (upto June 2017) has not been disclosed thereof by the income tax department or any other sources/agencies, against the said assessee, action will be initiated against the said assessee under the proviso to Section 73(1) of Finance Act read with Para 2.8 of the Master Circular No.1053/02/2017-CX dated 10.03.2017 in as much as the service tax liability arising in future for the period 2017-18 (upto June 2017) covered under SCN will be recoverable from the assessee accordingly.

9. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the assessee, M/s. Dharmendrabhai Bhanushankar Sompura have contraventions of the provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004:

- (i) Section 69(1) of the Finance Act, 1994 read with Noti.No.33/2012 dated 20.06.2012 as much as they failed to obtain service tax registration.
- (ii) Section 67 of the Finance Act, 1994 as much as they failed to determine the correct value of taxable service provided by them as discussed above.
- (iii) Failed to register with the Department and fail 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 Finance Act, 1994 read with Rule 6 & 7 of the service Tax Rules, 1994.
- (iv) Section 66B and Section 68 of Finance Act, 1994 and Rule 2&6 of Service Tax Rules, 1994 in as much as they failed to pay service tax correctly at the appropriate rate within the prescribed time in the manner and a the rate as provided under the said provision.
- (v) Section 77 of Finance Act, 1994, in as much as failed to take registration.
- (vi) All the above acts of contravention on the part of the said assessee appear to have been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid is required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years. All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appears to be publishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.
- (vii) The said assessee is also 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.

10. The above said service tax liabilities of the assessee has been worked out on the basis of limited data/ information received from the Income tax department for the financial years 2015-16 & 2016-17. Thus, the present

notice relates exclusively to the information received from the Income Tax Department.

11. It was observed that the assessee has not obtained the ST registration from the Department for the services provided by them for the period FY 2015-16 to 2017-18 (upto June 17). Therefore, it was noticed that the assessee had not paid actual service tax by way of willful suppression of facts and in contravention of provisions of Finance Act, 1994 an rules made thereunder relating to levy and collection of service tax with intent to evade payment of service tax. The service tax amounting to Rs.86,86,761/- is therefore recoverable from them by invoking extended period of five years as per first proviso to sub section (1) of Section 73(1) of Finance Act, 1994 along with interest u/s.75 of Finance Act, 1994 and penalty u/s.78 of Finance act, 1994.

12. Further, the assessee is liable to pay penalty under the provisions of Section 77(1)(a), 77(1)(c) & 77(2) of the Finance Act, 1994 for failure to take registration in accordance with the provisions of section 69 and failure to furnish information/documents called for from them.

13. Therefore the Show Cause Notice No.STC/15-236/OA/2021 dated 23.04.2021 was issued to the assessee called upon to show cause as to why:

- (i) Service Tax of Rs.86,86,761/- which was not paid for the financial year 2015-16 & 2016-17 as mentioned above, should not be demanded and recovered from them under proviso to sub section (1) of Section 73 of the Finance Act, 194.
- (ii) Service Tax liability not paid during the financial year 2017-18 (upto June-2017), ascertained in future, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of 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 under the provisions of Section 77(1)(a), 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.
- (iv) Penalty under Section 78 of the Finance Act, 1994. should not be imposed upon them for suppressing the full value of taxable services and material facts from the department resulting into non payment of service tax as explained hereinabove.

DEFENCE REPLY

14. The assessee vide their letter dated 29.06.2023 & 24.07.2023 submitted their reply to SCN wherein they stated that they have been engaged in the business of construction of temple (Shree Swaminarayan Mandir) only. The entity " Shree Narnarayan Mandir Trust , Bhuj" for which they have been

rendering services of construction and is registered under section 12A of IT Act, 1961. Hence they are entitled exemption from service tax under clause 13 (c) of Mega Exemption Notification No.25/2012- service tax dated 17.03.2012 which exempts services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a building owned by an entity registered under Section 12AA of IT Act, 1961 (43 of 1961) and meant predominantly for religious us by general public". They have also attached the documents such as ITR, 26AS, Balance Sheet, P & L, Tax Audit report for the FY 2015-16 & 2016-17, Copy of certificate of registration under Section 12A, agreement between Shree Narnarayan Mandir Trust, Bhuj and the assessee.

15. The assessee further stated that total value as per section 194C mentioned for FY 2015-16 and 2016-17 is Rs.3,14,35,454/- and Rs.2,75,24,130/- respectively in the notice mentioned in reference above need to be corrected. The actual and correct figure of turnover as per 26AS and P & L is for FY 2015-16 & 2016-17 are Rs.1,57,17,728/- and Rs.1,82,19,185/- respectively. They have also attached the copies of Form 26AS and P & L for the F Y 2015-16 & 2016-17 in support of their claim.

PERSONAL HEARING

16. In the instant case, the Personal Hearing was held on 27.07.2023. Shri Gaurav Zinzuwadiya, CA, authorised representative, appeared on behalf of the assessee. He stated that they are engaged in temple construction work exclusively. He further re-iterated their written submission dated 29.06.2023 & 24.07.2023 and requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

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

18. In the instant case, I have carefully gone through the Show Cause Notice, reply to SCN, ledger accounts, invoices, audited Balance Sheet, copies of work orders, agreement, certificate issued by IT authorities, and Form 26AS for the F.Y. 2015-16 & 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.86,86,761/- for the F.Y. 2015-16 & 2016-17 on the basis of data received from Income Tax authorities. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 86,86,761/- for the F.Y 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

19. On perusal of the reply to SCN and other related documents, I find that the assessee have receipt from providing services related to construction of temple, Shree Swami Narayan Temple. Here I would like to go the definition of service on which service tax is payable. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified according to the different

category of services. Further after introduction of negative list with effect from 01.07.2012, service has been defined as:

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

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

From the definition it is evident that any activity carried out by any person to another person for any consideration is covered under the above definition of service. Further the term "taxable service" is defined under Section 66B(51) of the Finance act, 1994 as under:

(51) taxable service means any service on which service tax is leviable under Section 66B.

It is clear that the service tax is levied under Section 66B of the Finance Act, 1994 which reads as under:

Section 66B : Charge of service tax on and after Finance Act, 2012- There shall be levied a tax (hereinafter referred to as the service tax) at the rate fourteen percent on the value of all services other than those services specified in negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed"

According to which service tax is levied on all services other than those specified in negative list (Section 66 D of Finance act, 1994) in the taxable territory by one person to another. In this context the services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,

SECTION 66D. Negative list of services.— The negative list shall comprise of the following services, namely :—

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;*
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;*
- (iii) transport of goods or passengers; or*
- (iv) Any service, other than services covered under clauses (i) to (iii) above, provided to business entities;*

- (b) services by the Reserve Bank of India;
- (c) services by a foreign diplomatic mission located in India;
- (d) services relating to agriculture or agricultural produce by way of—
 - (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or [* * *] testing;
 - (ii) supply of farm labour;
 - (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
 - (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
 - (v) loading, unloading, packing, storage or warehousing of agricultural produce;
 - (vi) agricultural extension services;
 - (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;
- (e) trading of goods;
- (f) [****].;
- (g) selling of space for advertisements in print media;
- (h) service by way of access to a road or a bridge on payment of toll charges;
- (i) betting, gambling or lottery; Explanation. - For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in Explanation2 to clause (44) of section 65B;
- (j) [* * * *]
- (k) transmission or distribution of electricity by an electricity transmission or distribution utility; 10
- (l) [* * * *]
- (m) services by way of renting of residential dwelling for use as residence;
- (n) services by way of—
 - (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
 - (ii) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;
- (o) service of transportation of passengers, with or without accompanied belongings, by—
 - (i) [* * * *]
 - (ii) railways in a class other than— (A) first class; or (B) an air-conditioned coach;
 - (iii) metro, monorail or tramway ,
 - (iv) inland waterways;
 - (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
 - (vi) metered cabs or auto rickshaws
- (p) services by way of transportation of goods—
 - (i) by road except the services of— (A) a goods transportation agency; or (B) a courier agency;
 - (ii) [* * *]
 - (iii) by inland waterways;
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

20. Thus with effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the negative list are exempted. It is not disputed that the assessee has provided taxable service and the service provided by them are not mentioned in the negative list given under Section 66D of the Finance Act, 1994. In view of the above the services provided by the assessee are covered under service tax and they are also liable to pay service tax on the said services.

21. In the instant case, I have gone through Show Cause Notice, reply to SCN, ledger accounts, invoices, copies of agreement with Swami Narayan Trust and assessee, certificate issued by IT authorities, audited balance sheet and Form 26AS for the F.Y. 2015-16 & 2016-17. In their reply to SCN, they stated that they have provided services of construction of temple only during the FY 2015-16 & 2016-17. They further claimed that the service provided are exempted under entry No. 13 (c) of Notification No.25/2012 dated 20.06.2012 and therefore they are not liable to pay any service tax. In view of the above, I would like to examine the relevant Notification No.25/2012 dated 20.06.2012 related to construction of temple.

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 number 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,-

(c) a building owned by an entity registered under section 12 AA of the IT Act, 1961 (43 of 1961) and meant predominantly for religious use by general public,

22. In view of above, I find that Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a building owned by an entity registered under section 12 AA of the IT Act, 1961 (43 of 1961) and meant predominantly for religious use by general public is exempted from the purview of service tax under Entry No.13(c) of Notification No.25/2012 dated 20.06.2012.

23. In the instant case, the assessee claimed that they have provided services for construction of Shree Swaminarayan Temple which is owned by Shri Narnarayan Mandir Trust and also produced copy of registration certificate. In this regard, I have gone through the certificate issued by IT authorities and find that the Shri Narnarayan Mandir Trust, the entity, is registered vide F.No.66/N-15/74-75/CIT.V with Commissioner of Income Tax, Aaykar Bhavan, Ahmedabad, Gujarat. A copy of registration certificate is also produced by the assessee in this regard. Further, I have also gone through the agreement between the Shri Narnarayan Mandir Trust and the assessee wherein the various construction works related to swaminarayan mandir is allotted to them. As the construction activity undertaken by the assessee is for temple and which is constructed for religious use by general public and therefore I find that the services provided by the assessee for construction of temple is covered under the entry No 13 (c) of Noti.No.25/2012 dated 20.06.2012. Accordingly they are not liable for any service tax in this regard.

24. In this connection, the assessee contended that the total value of Rs.3,14,35,454/- for the FY 2015-16 and Rs.2,75,24,130/- for the FY 2016-17 is not correct. They stated that the actual income for the FY 2015-16 is Rs.1,57,17,728/- and for the FY 2016-17 the actual figure is Rs.1,82,19,185/-. They have also produced copies of audited balance sheet, profit and loss

account and Form 26AS in this regards. To ascertain the correctness of the figures, I have gone through the Form 26AS of the assessee for the FY 2015-16 wherein I find that total amount paid/credited is Rs.1,57,17,728/- from the deductor , Swaminarayan Mandir. Similarly on perusal of Profit & Loss account of the assessee for the FY 2015-16, I find that total sales is shown as Rs.1,57,17,728/-. In view of the above, I consider Rs.1,57,17,728/- as their income for the FY 2015-16 and find that the said income is exempted from service tax in view of clause 13(c) of Notification No.25/2012 dated 20.06.2012 as discussed above.

25. Similarly, to ascertain the correctness of the figures, I have gone through the Form 26AS of the assessee for the FY 2016-17 wherein I find that total amount paid/credited is Rs.1,82,19,184/- from the deductor, Swaminarayan Mandir. On perusal of Profit & Loss account of the assessee for the FY 2016-17, I find that total sales is shown as Rs.1,82,19,184/-. In view of the above, I consider Rs.1,82,19,184/- as their income for the FY 2016-17 and find that the said income is exempted from service tax in view of clause 13(c) of Notification No.25/2012 dated 20.06.2012 as discussed above. For the sake of clarity, the taxability is reconciled as under:

(Amt. in Rupees)

S.No	Particulars	2015-16	2016-17
01	Total Value as per 26AS/P & L as discussed	1,57,17,728	1,82,19,184
02	Less: Exempted vide Sl.No.13(c) of Noti.No.25/2012 as discussed	1,57,17,728	1,82,19,184
06	Difference	0	0

26. I find that the financial and other records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company/ individual during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs of the company/ individual. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

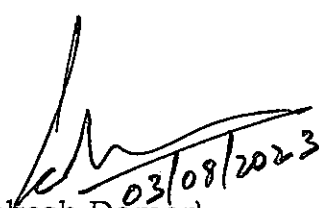
27. Further, on perusal of the SCN, I find that the levy of service tax for 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was 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 FY 2017-18 (upto June 2017) and the department has not also adduced any information/evidence and the reason for the non disclosure has also not been made known to the department, I refrain myself from entering into the said period to determine the liability as otherwise of assessee for service tax. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the total value for TDS shown in Form 26AS. I, therefore, refrain from discussing the taxability on other income other than the total value for TDS/26AS for the FY 2015-16 & 2016-17.

28. In view of the above reconciliation and other facts of the case, I find that the total value as per SCN/Form 26AS accrued by the assessee during the FY 2015-16 & 2016-17 are exempted from the purview of service tax in view of Clause No.13(c) of Mega Exemption Notification No.20/2012 dated 20.06.2012. Therefore, I find that the service tax demand of Rs. 86,86,761/- demanded vide instant SCN is not sustainable and accordingly the Show Cause Notice dt. 23.04.2021 is required to be dropped. Further, as the SCN itself are not sustainable, there is no reason to charge interest u/s.75 of Finance Act, 1994 or to impose penalty u/s. 77 & 78 of Finance Act, 1994 upon the said assessee on this count. In view of the above I pass the following order;

ORDER

29. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 86,86,761/- along with interest and penalties against M/s. Dharmendrabhai Bhanushankar Sompura, vide SCN No.STC/15-236/OA/2021 dated 23.04.2021.


(Lokesh Damor)

Joint Commissioner
Central GST & Central Excise
Ahmedabad North

BY SPEED POST/HAND DELIVERY
F.No. STC/15-236/OA/2021

Date:

To,
M/s. Dharmendrabhai Bhanushankar Sompura,
F - 104, Kalasagar Heights, Opp. Anmol Bungalows,
80 Ft.Road, Ahmedabad-24.

Copy to:

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

