
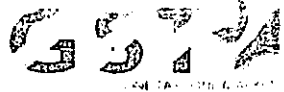


| | | |
|---|---|--|
| <p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p> |  |  <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009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

निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. STC/15-223/OA/2021

DIN-20230964WT000000F74C

आदेश की तारीख/Date of Order: - 29.09.2023
जारी करने की तारीख/Date of Issue :- 29.09.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 34-36/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, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

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

(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.



वताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-223/OA/2021 dated 23.04.2021, V(30)Adj/TPI/SCN/ADC/D-1/CGST/Noida/224/2021 dated 23.04.2021 & GEXCOM/ADJN/ST/JC/312/2021 dated 18.10.2021 issued to M/s Alpeshkumar Sokabhat Patel, 407-408, Vrundavan Enclave, AEC Cross Road, Naranpura, Ahmedabad-

1981-1982
1982-1983
1983-1984
1984-1985
1985-1986

BRIEF FACTS OF THE CASE

M/s. Alpeshkumar Gokalbhai Patel, 407-408, Vrundavan Enclave, AEC Cross Road, Naranpura, Ahmedabad - 380013 having PAN No.APCPP6568B (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 | 30847896 | 14.5% | 4472945 |
| 2 | 2016-17 | 27831852 | 15% | 4174778 |
| | TOTAL | | | 8647723 |

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 quantification of the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wug.) Co. Vs .UOI, 1982 (010) ELT the Madhya Pradesh High Court at Jabalpur affirms the same on the ground 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."

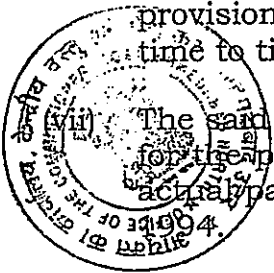
8. From the facts, it appeared that the "total amount paid /credited under Section 194C, 194H, 194I, 194J for the FY 2017-18 (upto June 2017) has not been disclosed thereof by the income tax department or any other sources/agencies, against the said assessee, action will be initiated against the said 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. Alpeshkumar Gokalbhai Patel 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.

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,

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.86,47,723/- 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/15-223/OA/2021 dated 23.04.2021 was issued by the Joint Commissioner, CGST & CE, Ahmedabad North to the assessee called upon to show cause as to why:

- (i) Service Tax of Rs.86,47,723/- 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.



Meanwhile another Show Cause Notice bearing No. STC/15-223/OA/2021 dated 23.04.2021 was issued on 23.04.2021 by the Additional Commissioner, CGST & CE, Noida for the period 2016-17 based on the CBDT third party data to the assessee called upon to show cause as to why:

- (i) the Service Tax of Rs.86,47,723/- should not be demand should not be demanded and recovered from them under proviso to sub section (1) of Section 73 of the Finance Act, 1994.
- (ii) the due Interest on the amount of service tax mentioned at (i) above should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for failure to pay service tax & suppressing the facts and value of taxable service with intent to evade payment of service tax.
- (iv) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for not maintaining the proper records and for not obtaining service tax registration.

13. Moreover, another SCN No.GEXCOM/ADJN/ST/JC/312/2021 for the period 2016-17 & 2017-18 (upto June 2017) was issued on 18.10.2021 by the Joint Commissioner, CGST & CEX, Ujjain on the following grounds. In follow up of verification of third party data provided by the DGARM for the year 2016-17, it was observed that Noticee are engaged in the rendering of taxable services "other than negative list" and as such documents viz.P & L Account/balance sheet / 26AS agreement etc. were called for necessary verification. The assessee vide email date 27.09.2021 copies of P & L A/c statement, 26AS for the and other documents for the FY 2016-17 and 2017-18. The assessee vide their reply dated 22.04.2021 has requested from service tax payment, which the assessee itself being a sub contractor and the contract being awarded to the assessee by a private firm, who was given contract by NHAI, and cited Sl.No.13 of the Noti.No.25/2012 dated 20.06.2012 to claim service tax exemption.

14. However as per contract copies furnished by the assessee of the works executed with M/s. Sadbhav Engineering Limited as is reflected in 26AS for the period 2016-17 & 2017-18 (upto June 17), the same is pertaining to Highway lightning works at Toll Plazas including high mast poles, Truck lay Bays, Bus Bays, RE Wall etc which does not comprise as Road Construction works but the same comes under contract pertaining to any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; as specified under Sl.No.12(A) of Notification No.25/2012 dated 20.06.2012. Since the said contracts with M/s.Sadbhav Engineering Limited, irrespective of work done for government or not, if entered into after 1 st March 2015(inserted vide Notification No.9/2016-Service Tax) the same is liable to service tax payment. Under the Act.

15. Also with respect to the work executed with Rohtak Panipat Tollway P.Ltd as shown in 26AS no sufficient documentary evidence is provided to ascertain whether the same under exemption. Accordingly due to absence of records, the same is again liable to service tax payment. Further, it appeared from the P & L account for FY 2016-17 & 2017-18 (upto June) that the



assessee had not discharged the service tax liability and deliberately not provided information/documents/records so as to escape/evade service tax liability during the said period as detailed below:

| Period | Gross receipts as per P & L (in Rs.) | Service Tax @ 15% | Service Tax paid | Service tax payable |
|---------|--------------------------------------|-------------------|------------------|---------------------|
| 2016-17 | 4,19,18,145 | 62,87,722 | 0 | 62,87,722 |
| 2017-18 | 3,30,37,387 | 49,55,608 | 0 | 49,55,608 |
| Total | 7,49,55,532 | 1,12,43,330 | 0 | 1,12,43,330 |

Thus for the FY 2016-17 to 2017-18, Rs.7,49,55,532/- due to non production of trial balance for the period April 17 – June 17, value for the whole financial year 2017-18 is taken) has been considered to be the taxable value for calculation of service tax liability, on which for the FY 2016-17 total service tax @15% comes out to be Rs.62,87,722/- and for the FY 2017-18 comes out Rs.49,55,608/- which was payable. Therefore, total service tax amounting to Rs.1,12,43,330/- alongwith interest is to be demanded and recovered from the assessee under proviso to section 73 (1) of the Finance Act, 1994.

16. Further, during the scrutiny of assessee's accounts for the period 2016-17 to 2017-18 (Upto June 2017), it was also noticed that they have received rental income to the tune of Rs.4,80,000/- in FY 2016-17 therefore liability to pay service tax arises on the tax payer.

| Period | Gross receipts as per P & L (in Rs.) | Service Tax @ 15% | Service Tax paid | Service tax payable |
|---------|--------------------------------------|-------------------|------------------|---------------------|
| 2016-17 | 4,80,000 | 72,000 | 0 | 72000 |
| Total | 4,80,000 | 72,000 | 0 | 72000 |

Therefore total service tax amounting to Rs.72,000/- along with interest is to be demanded and recovered under Section 73 of the Finance Act, 1994 from them.

17. Further during the scrutiny of assessee's accounts for the period 2016-17 to 2017-18 (Upto June 2017) as per P & L A/C statement, it was noticed that they had not paid service tax under RCM on freight expenses. Details are as under:

| Period | Gross receipts as per P & L (in Rs.) | Service Tax @ 15% | Service Tax paid | Service tax payable |
|---------|--------------------------------------|-------------------|------------------|---------------------|
| 2016-17 | 5,800, | 4060 | 1740 | 261 |

As per Section 68(2) of Finance Act, 1994 read with Rule 2(d) (i) of the service Tax Rules, 1994 & Notification No.30/2012 dated 20.06.2012 as amended assessee is liable to pay the service tax on amount paid for GTA services under RCM. Therefore total service tax amounting to Rs.261/- along with interest is to be demanded and recovered under section 73 of the Finance act, 1994 from them.



During the scrutiny of the assessee's account for the FY 2016-17 as per expenses ledger provided by the assessee, it was noticed that they had shown various expenses like Misc. expenses, audit fees, Crane, Hire expenses,

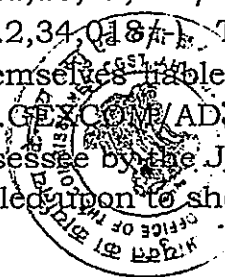
insurance expenses, machinery rent, professional fees, rent for labour, transportation expenses, travelling expenses in the expenditure head therefore not knowing the true nature of services received by the assessee the same is liable to pay service tax under RCM.

| Expense Head | Expense as per expense ledger (in Rs.) | Service tax @15% | Service tax paid | Service tax payable |
|-------------------------|--|------------------|------------------|---------------------|
| Misc.expense | 41643 | 6247 | 0 | 6247 |
| Audit fees | 2500 | 375 | 0 | 375 |
| Crane Expenses | 180255 | 27038 | 0 | 27038 |
| Insurance Expenses | 40500 | 6075 | 0 | 6075 |
| Machinery rent | 163307 | 24496 | 0 | 24496 |
| Professional fees | 53000 | 7950 | 0 | 7950 |
| Rent for labour | 15750 | 2363 | 0 | 2363 |
| Transportation expenses | 194720 | 29208 | 0 | 29208 |
| Travelling expenses | 88382 | 13257 | 0 | 13257 |
| Total | 780057 | 117009 | 0 | 117009 |

Therefore total service tax amounting to Rs.1,17,009/- alongwith interest is to be demanded and recovered under Section 73 of the Finance Act, 1994 from them for the FY 2016-17.

19. Further with respect to FY 2017-18 (upto June 17) pertaining to expenses made by the assessee, he failed to provide the data sought and the same being not shown in the P & L A/c for the said period, so best judgement under section 72 of the Act has been applied for the said period, wherein the total taxable value of Rs.7,80,057/- as shown in 2016-17 has been taken as expenses for the period 2017-18 and further in the absence of trial balance for the quarter April 17 to June 17, whole value is taken as taxable value, the same being on the higher side to avoid any leakage of the government revenue. Thus, the assessee is liable for tax liability of Rs.1,17,009/- for the period 2017-18 (upto June ,17) as well in respect of the expenses made, under RCM as per Section 68(2) of Finance Act, 1994 read with Rule 2 (d)(i) of the service Tax Rules, 1994 & Notification No.30/2012-ST dated 20.06.2012. In view of the above the assessee is liable to pay total amount of Rs.2,34,018/- alongwith interest to be demanded and recovered under Section 73 of the Finance Act, 1994 from them.

20. Accordingly, it was noticed that the assessee had not paid any service tax since they have not filed any ST 3 return for the period 2016-17 to 2017-18 (Upto June 17) as the assessee was not registered under service tax regime. Accordingly they have not paid the service tax liability of Rs.1,15,49,609/- (Rs.1,12,43,330/- + Rs.72000/- + Rs.261/- + Rs.2,34,018/-). Thus the assessee has not paid service tax and have rendered themselves liable for tax along with interest and penalty. Accordingly SCN No.CEX/COMP/ADJN/ST/JC/312/2021 was issued on 18.10.2021 to the assessee by the Joint Commissioner, CGST & CEX, Ujjain called upon to show cause as to why:



- (a) Service tax amounting to Rs.1,15,49,609/- should not be demand should not be demanded and recovered from them under proviso to sub section (1) of Section 73 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017.
- (b) Interest at the appropriate rate should not be demanded and recovered from him under Section 75 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 with penalty under Rule 7C of Service Tax Rules, 1994 should not be imposed upon the noticee.
- (c) Penalty under the provisions of Section 77(1)(c) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 should not be imposed upon the noticee.
- (d) Penalty under the provisions of Section 77(1)(d) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 should not be imposed upon the noticee for not paying the service tax electronically.
- (e) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 for will fully suppressing the taxable value with intent evade payment of service tax.
- (f) Late fee of Rs.60,000/- should not be recovered them under Rule 7C of Service Tax Rules, 1994 read with Section 70(1) of Finance Act, 1994 for deemed late filing of ST 3 returns for the period.

DEFENCE REPLY

21. The assessee vide letter dated 20.05.2021, 17.11.2021 submitted their replies to SCN along with copies of contract /agreement, copy of ITR, Form 26AS, copy of Balance sheet alongwith schedules and Annexures, Profit & Loss account for FY 2015-16, 2016-17 & 2017-18, copy of bank statement. In their replies to SCN, they stated that they are providing works pertaining to four laning of Rajsamand (NH8) –Gangapur_Bhilwara (NH79) in section NH 758 (from 0.000 to km 86.400) in the state of Rajasthan under on design, build, finance, operate and transfer basis, widening and strengthening of Jodhpur Barmar Section of NH -112 in the state of Rajasthan, Highway lightning works Four laning of Rajsamand – Bhilwara Section NH 758 under NHDP phase –IV, dated 10.12.2016 of Widening and strengthening of Jodhpur – Barmer Section of NH 112 with two lane with paved shoulder/four lane from Km 140 to Km225 under NHDP – IV at toll plazas including high mast poles, truck lay byes, bus bays, RE wall etc as a sub contractor for the main contractor M/s.Sadhbhav Engineering Limited. They further stated that the services provided by them are covered only under S.No.13(a) of Notification No.25/2012 dated 20.06.2012 and not under 12A as alleged in the SCN. As they have availed the exemption Notification, they have not paid any service tax or filed any ST return.

22. The assessee in their replies differ with the allegation in the SCN that as per the contract copies furnished by them of the works executed with M/s. Sadhbhav Engineering Ltd as is reflected in 26AS for the period 2016-17 & 2017-18 (upto June 2017), the same pertains to Highway lightning works at toll plazas including high mast poles, truck laybyes, bus bays, RE walls etc which does not comprise as road construction works but the same comes



under works contract pertaining to any other original works meant predominantly for use other than for commerce, industry etc.

23. They further stated that in the SCN, it was alleged that they have not provided any service to Government and therefore the interpretation of the facts are hopelessly misconceived. They have provided the works of road construction which are covered under the clause 13(a) of Notification No.25/2012 dated 20.06.2012. It may be noted that as per definition under section 2(e) in the Control of National Highways (Land and Traffic) Act, 2002

(e) high way means a National Highway declared as such under section 2 of the National Highway Act, 1965 (48 of 1956) and includes any expressway or express highway vested in the Central Government whether surfaced and also includes

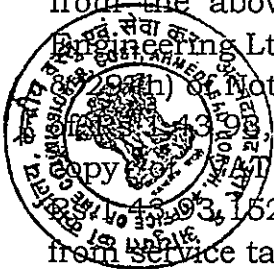
(i) all lands appurtenant to the Highway, whether demarcated or not, acquired for the purpose of Highway or transferred for such purpose by the State Government to the Central Government

(ii) all bridges, culverts, tunnels, causeways, carrying ways and other structures constructed on or across such highway and

(iii) all trees, railings, fences, posts, paths, signs, signals, kilometer stones and other highway accessories and materials on such highways.

24. Further they stated that an Education Guide issued by the Board has also clarified that National Highways or state highways are also roads. It is undisputed fact that the construction of road also includes construction National Highway or state highways and therefore the service provided by them is also covered under sl.No.13 of the Notification No.25/2012 dated 20.06.2012. Further they also stated that sub contractor providing service by way of way of works contract to the main contractor, providing exempt works contract services, has been exempted from service tax under the mega exemption if the main contractor is providing exempt services of works contract.. In the instant case they are providing works contract service as a sub contractor by way of works contract to the main contractor M/s.Sadbhav Engineering Limited who is awarded contract by National Highway Authority of India for National Highways construction on Design, Build, Finance, Operate and Transfer (DBFOT) basis.. Accordingly they are exempted from the ambit of service tax in view of clause 29(h) of Noti.No.25/2012 dated 20.06.2012.

25. They further stated that they have credit of Rs.3,08,47,896/- for the FY 2015-16 from the above referred construction of highway services to M/s. Sadbhav Engineering Ltd and therefore the entire amount is not taxable in view of 13 (a) & 29 (h) of Notification No.25/2012 dated 20.06.2012. They further stated that service tax of Rs.62,87,722/- on gross receipts of Rs.4,19,18,145/-. However the said amount consists of receipts from contract for construction of Highway amounting to Rs.2,75,24,993/- for the FY 2016-17 from the above referred construction of highway services to M/s. Sadbhav Engineering Ltd and therefore the entire amount is not taxable in view of 13 (a) & 29 (h) of Notification No.25/2012 dated 20.06.2012. The remaining amount of Rs.1,43,93,152/- is from material supply for which they have produced Form 205 for the FY 2016-17 declaring total sales of Rs.1,43,93,152/-. As the said income is from sale the same is also exempted from service tax in as trading is in the negative list of services.

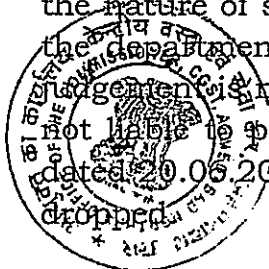


26. As far as the service tax demand for the period FY 2017-18 is concerned Rs.49,55,608/- on the gross receipts of Rs.3,30,37,387/- is concerned they stated that service tax was demanded on gross receipts for the FY 2017-18 even though GST was introduced w.e.f 01.07.2017. They have bifurcated the figures and according to which their receipt for the period April 2017 to June is Rs.1,36,04,844/- only and the remaining amount of Rs.1,94,32,542.99 belongs to the period July 2017 to March 2018 of GST period hence the same is not taxable under service tax. However the said amount consists of receipts from contract for construction of Highway amounting to Rs.1,04,71,809/- for the FY 2017-18 ((upto June 2017) from the above referred construction of highway services to M/s. Sadbhav Engineering Ltd and therefore the entire amount is not taxable in view of 13 (a) & 29 (h) of Notification No.25/2012 dated 20.06.2012. The remaining amount of Rs.31,33,035/- is from material supply for which they have produced copy of VAT Form 11 (Quarterly Return) for the period April 2017 to June 2017 declaring total sales of Rs.31,33,035/-. As the said income is from sale of goods the same is also exempted from service tax in as trading is in the negative list of services.

27. As far as service tax demand on rental income of Rs.4,80,000/- is concerned the assessee stated that the rental income was earned by renting residential house for residence purpose by renting his tenement situated at A-32, Ajanta Co-operative Housing Society, Behind India colony, Saijpur Bogha, Ahmedabad which is covered under Negative list of services vide clause (m) of Section 66D of the Finance Act, 1994 and therefore not taxable and requested to drop the demand of Rs.72,000/-.

28. As far as demand of Rs.261/- on account of GTA services is concerned the assessee stated that, the amount on which service tax demand is Rs.5,800/- is freight expenses which are not GTA expenses. They further state that they are being a proprietor ship concerned they are not covered under RCM in as stipulated in Noti.No.30/2012 dated 20.06.2012.

29. They further stated that the service tax demand of Rs.2,34,018/- is concerned it was demanded on expenses of Rs.7,80,057/- for the FY 2015-16 & Rs.7,80,057/- for the FY 2017-18 as per expense ledger such as mess expenses, audit fees, crane hire expenses, insurance expenses, machinery rent expenses, professional fee, rent for labour, transportation expenses & travelling expenses. They stated that the total expenses for the FY 2017-18 is Rs.2,54,121/- and not Rs.7,80,057/- as stated in the SCN under section 72 of The Finance Act, 1994. In this connection, they stated that these are actual expenses made by them but none of the expenses are covered under either Paragraph I or Paragraph II of the relevant Notification No.30/2012 dated 20.06.2012. They are being proprietor ship firm, they are not liable to pay any service tax under RCM on GTA expenses also. Accordingly without considering the nature of service expenses the service tax was demanded under RCM. As the Government has never called for any trial balance the section 72 i.e.best judgement is not also applicable in this case. In these circumstances they are not liable to pay any service tax under RCM in view of the Noti. No.30/2012 dated 20.06.2012. and therefore the demand of Rs.2,34,018/- is required to be dropped.



30. The assessee further stated that the SCN is issued without any evidence that they have provided taxable service. The demand has been raised by classifying the activity under clause 12A of Notification, but the SCN is not discussed how the services comes under the said clause. The demand has been raised mechanically without any cogent and corroborative evidence which is not justifiable. They have relied upon a number of case laws in this regard. Further they stated that for imposition of penalty mens rea is necessary however in this case no mens rea is found in the SCN, therefore penalty on suppression is also not applicable. Further they stated that they have not contravened any of the provisions of the Act and Rule made thereunder, therefore they are not liable to pay any penalty as proposed in the SCN and requested to drop the proceedings.

31. They further stated that the allegations made in the SCN is baseless and without evidence. The SCN is based on assumption and presumptions. The SCN is not discussing how the assessee falls under the works contract service for Govt and not related to construction of road. No cogent and corroborative evidence has been put for the to substantiate the allegations. Therefore they are not covered under service tax. They also stated there is no fraud or evasion from their part as well as no mens rea is established for imposing penalty also. They relied upon the following case laws in their favour.

- CC Chennai Vs.M/s.Flemingo (DFS) P.Ltd 2010 TIOL-60-HC-MAD-CUS
- K.Harinath Gupta Vs Colector of CE, Hyderabad 1994 (71)ELT 980 (Tribunal)
- M/s.Aviat Health care P.Ltd Vs CCE, Balapur (2008-TIOL-1924-CESTAT-MUMBAI
- Hindustan Steels Ltd Vs State of Orissa 1978 (2) ELT J -159
- CCE Vs HMM Ltd 1995 (76) ELT 497 SC
- CCE Vs Chemphar Drugs and Liniments 1989 (40) ELT 276 SC

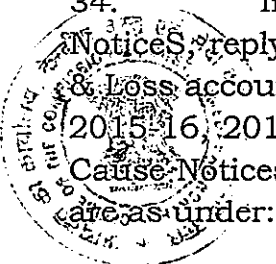
PERSONAL HEARING

32. In the instant case, personal hearing was granted to the assessee on 18.09.2023. Shri Bindesh I Shah, Advocate and duly authorised representative appeared on behalf of the assessee and reiterated their written submission dated 20.05.2021, 17.11.2021 & 09.02.2022 and requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

33. 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.

34. In the instant case, I have carefully gone through the Show Cause Notices, reply to SCN, ledger accounts, invoices, audited Balance Sheet, Profit & Loss account, copies of work orders, agreement, and Form 26AS for the F.Y. 2015-16, 2016-17 & 2017-18 (upto June 2017). In the instant case, 3 Show Cause Notices were issued to the assessee demanding Service Tax. The details are as under:



| Sl. No. | SCN No. & Date | Commissionerate | Period | Amount (in Rs.) |
|---------|---|-----------------|--|-----------------|
| 01 | STC/15-223/OA/2021 DT.23.04.2021 | Ahmedabad North | 2015-16 & 2016-17 | 8647723 |
| 02 | No.V(30)Adj/TPI/SCN/ADC/D-1/CGST/Noida/224/2021 DT 28.04.2021 | Noida | 2015-16 & 2016-17 | 8647723 |
| 03. | GEXCOM/ADJN/ST/JC/312/2021 DT. 18.10.2021 | Ujjain | 2016-17 & 2017-18 (UPTO June 2017) | 11549609 |

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 as demanded vide above mentioned SCNs for the F.Y 2015-16, 2016-17 & 2017-18 (upto June 2017) under proviso to section 73(1) of Finance Act, 1944 or not.

35. As all the three SCNs are issued to the same person covering the same period and issued from 3 different commissionerates, CBIC, vide F.No.CBIC-24/2/2023-Service Tax Section - CBEC dated 27.04.2023 appointed Additional/Joint Commissioner, CGST & CX, Ahmedabad North Commissionerate as the Central Excise Officer for the purpose of adjudication of all the 3 Show Cause Notices, hence I proceed with the adjudication of all the 3 SCNs together.

36. On perusal of the reply to SCN and above referred related documents, I find that the assessee engaged in providing works pertaining to Highway lightning works at toll plazas including high mast poles, truck lay byes, bus bays, RE wall etc as a sub contractor for the main contractor M/s.Sadbhav Engineering Limited. 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:

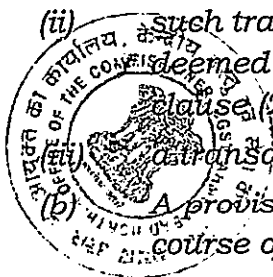
(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(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 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, 194 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 r 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 9
- (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

(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;

(viii) trading of goods;

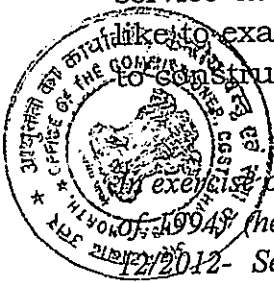


- (f) [****];
- (g) selling of space for advertisements in print media;
- (h) service by way of access to a road or a bridge on payment of toll charges;
- (i) betting, gambling or lottery; Explanation. - For the purposes of this clause, the expression "betting, gambling or lottery" shall not include 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.

37. 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.

38. In the instant case, I have gone through Show Cause Notices, replies to SCN, ledger accounts, invoices, copies of agreement and other above referred documents for the F.Y. 2015-16, 2016-17 & 2017-18 (upto June 2017). In their reply to SCN, they stated that they have provided services of works pertaining to Highway lightning works at toll plazas including high mast poles, truck lay byes, bus bays, RE wall etc as a sub contractor for the main contractor M/s.Sadbhav Engineering Limited. They further claimed that the service provided are exempted under entry No. 13 (a) of Notification No.25/2012 dated 20.06.2012 and therefore they are not liable to pay any service tax and have not filed any ST Return. 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,-

(a) a road, bridge, tunnel or terminal for road transportation for use by general public.

39. 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 road for use by general public is exempted from the purview of service tax under Entry No.13(a) of Notification No.25/2012 dated 20.06.2012.

40. Further, the assessee being a sub contractor is exempted from payment of service tax under Sl.No.29(h) of the said Notification. The relevant portion of the Notification is also referred as under:

29. Services by the following persons in respective capacities -...

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

According to which the services provided by a sub contractor to a main contractor who are providing works contract service, exempted by way of Notification is also exempted from service tax. In view of the above, I would like to discuss the taxability Financial Year wise.

41. In this connection, I have gone through the reply to SCN filed by the said assessee wherein they stated that they are engaged in construction work of Highway lightning works at toll plazas including high mast poles, truck lay byes, bus bays, RE wall etc as a sub contractor for the main contractor M/s.Sadbhav Engineering Limited. They have also submitted copies of work order issued by National Highways authority of India to Sadbhav Engineering Ltd and to the assessee as a subcontractor. On perusal of the work orders, I find that the assessee has got work orders from main contractor M/s.Sadbhav Engineers P. Ltd. I have also gone through the copies of work orders issued by NHAI and find that the work of construction of four laning of Rajsamand (NH8) -Gangapur_Bhilwara (NH79) in section NH 758 (from 0.000 to km 86.400) in the state of Rajasthan under on design, build, finance, operate and transfer basis, widening and strengthening of Jodhpur Barmar Section of NH -112 in the state of Rajasthan have been allotted to M/s.Sadbhav Engineering Ltd and subsequently these works were allotted to the assessee as a sub contractor. The entire works contract service done by the assessee is of construction various works related to National Highway construction for general public and for the NHAI. On perusal of the same, I find that the road construction work was provided to the NHAI via main contractor M/s.Sadbhav Engineering Limited which is covered under the entry No.13(a) of Notification No.25/2012 dated 20.06.2012 as the said road is constructed for use of general public and accordingly the said services are not attracting any service tax. Being a sub contractor, the services provided by the assessee is also exempted under 29(h) of Notification. As the SCNs are involved FY 2015-16, 2016-17, 2017-18, I would like to discuss the matter Financial Year wise.

FINANCIAL YEAR 2015-16

42. On perusal of the SCN No.V(30)Adj/TPI/SCN/ADC/D-1/CGST/Noida/224/2021 dated 28.04.2021 and SCN No.STC/15-223/OA/2021 dated 23.04.2021, reply to SCN, ledger accounts, copy of 26AS, copy of invoices, and agreement, reconciliation statement and other records for the FY 2015-16, I find that the service tax of Rs.44,72,945/- is demanded on the differential value of Rs.3,08,47,896/- in both the SCNs. As the value and service tax demand in both the SCNs are same, I proceed to adjudicate both the SCNs together for the FY 2015-16.

43. In this connection, I have gone through the SCN, reply to SCN and other documents submitted by the assessee wherein the assessee stated that the amount of gross receipt (Value from 26AS) is mentioned in the SCN is taken as the income for FY 2015-16 as Rs.3,08,47,896/-. In this connection, I have gone through Form 26 AS and find that the total amount paid/credited is shown as Rs.3,08,47,896/-. In view of the above, I take the amount of Rs. 3,08,47,896/- credited/paid as per the Form 26AS as their receipt/income for the FY 2015-16 for the purpose of adjudication.

44. On perusal of the 26AS, I find that the assessee received the entire amount of Rs. 3,08,47,896/- from M/s.Sadbhav Engineering Ltd. The assessee in their reply stated that they have received the said amount from the main contractor M/s.Sadbhav Engineering Ltd from providing construction of Highway Lightning and tunnel lightning works on road of Four Laning of Gomati Chauraha-Udaipur Secetion of NH 8 (from Km 177/000 to Km 260/100) in the state of Rajastan under NHDP Phase -IV as a sub contractor. The work was allotted by the National Highways Authority of India, Ministry of Shipping, Road Transport and Highways) to the main contractor M/s.Sadbhav Engineering Limited. The said work was allotted to the assessee vide allotment letter dated 30.04.2015, 15.05.2015 and 27.08.2015 and accordingly the assessee was engaged in the construction of the said road and accrued Rs.3,08,47,896/- during the FY 2015-16. In this connection, I have gone through the work order issued by NHAI to M/s.Sadbhav Engineers Ltd and subsequent allotment letters dated 30.04.2015, 15.05.2015, 27.08.2015 etc. to the assessee and find that the said work completed by them are part of construction of road.

45. In this connection, I have gone through clause 13(a) of the exemption Notification and find that the services provided by way of construction of road for general public is exempted from payment of service tax by virtue of clause 13(a) of exemption Notification No.25/2012 dated 20.06.2012. Herein the instant case, the assessee was engaged in construction of road for general public and therefore the said service and the income of Rs. 3,08,47,896/- derived from the said service is also exempted from the purview of service tax. Further, the said service itself is exempted, the work contract service performed by the assessee being a sub contractor is also exempted from service tax under clause 29(h) of the above referred Notification.

I further find that the Hon'ble CESTAT, Regional Bench, Allahabad in the case of Quest Engineers & Consultant P.Ltd Vs Commissioner, CGST & Excise, Allahabad 2022 (58) GSTL 345 (Tri-All) held that :



13. We further hold that the extended period of limitation is not available to the revenue under the facts and circumstances. We further hold that the appellant is entitled to exemption under the Notification No.25/2012 dated 20.06.2012 under Sl.No.13(a) of the said Notification for providing consulting engineer services in the matter of road construction. When road construction is exempt, every activity is exempt relating to the road construction including consulting engineer services. The appellant also relied on ruling in Lord Krishna Real Infra P.Ltd Vs. Commissioner of Custom, CE & ST, Noida Final Order Npo.70126/2019 dated 27.12.2018. This Tribunal has held in other disputed case, that even the barricade providing in the side of highway, maintaining greenery in the side or middle of highway construction of any facility, refreshment centre for road users, is also part of the road construction and such activity is also exempt. Even the administrative building constructed by the concessionaire, for construction of road or highway for administration and collection of toll etc is part of road”

According to which every construction activity related to a road is exempted from the purview of service tax and therefore no service tax is payable on the receipts from the construction of these activities.

47. In view of the above, the income of Rs. 3,08,47,896/- for the FY 2015-16 accrued from providing construction of above referred road/highway by the assessee is exempted from payment of service tax. Accordingly, the service tax demand of Rs.44,72,945/- on differential value of Rs. 3,08,47,896/- for the FY 2015-16 demanded vide above referred Show Cause Notices dated 23.04.2021 & 28.04.2021 is not sustainable and therefore required to be dropped.

FINANCIAL YEAR 2016-17

48. On perusal of the SCN No.V(30)Adj/TPI/SCN/ADC/D-1/CGST/Noida/224/2021 dated 28.04.2021, and SCN No.STC/15-223/OA/2021 dated 23.04.2021, reply to SCN, ledger accounts, copy of 26AS, copy of invoices, work order, agreement, reconciliation statement and other records for the FY 2016-17, I find that the service tax of Rs.41,74,778/- is demanded on the differential value of Rs.2,78,31,852/- in both the SCNs. However in the SCN No. GEXCOM/ADJN/ST/JC/312/2021 DT. 18.10.2021, I find that the figures of gross receipts of Rs.4,19,18,145/- as per P & L is taken as value for demanding service tax and accordingly demanded Rs.62,87,722/-. As the value taken on the basis P & L is on the higher side, I take the amount of Rs.4,19,18,145/- and value for the purpose of adjudication and proceed to adjudicate all the SCNs together for the FY 2016-17. In this connection, the assessee stated that the gross receipts of Rs.4,19,18,145/- consists of income of Rs. 2,75,24,993/- and from works contracts and Rs. 1,43,93,152/- sale of materials.

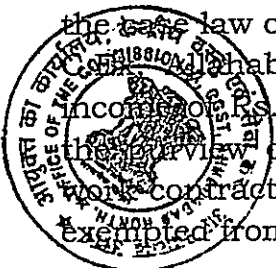
49. In this connection, I have gone through the SCN, ledger accounts, copy of 26AS, copy of invoices, work order, agreement, reconciliation statement and other records for the FY 2016-17. One perusal of the documents, I find that in the SCN it was alleged that the highway lightning work at Toll Plazas including high mast poles, Truck lay Bays, Bus Bays RE wall etc on various Highways projects which is not road construction works but came under works contract service as specified under Section 12A of Noti.No.25/2012 dated. In response to this allegation the assessee claimed that they are providing works

pertaining to Highway lightning works at toll plazas including high mast poles, truck lay byes, bus bays, RE wall etc as a sub contractor for the main contractor M/s.Sadbhav Engineering Limited. They further stated that the services provided by them are covered only under S.No.13(a) of Notification No.25/2012 dated 20.06.2012. They have provided copies of work orders originally allotted by the National Highway Authority of India to M/s.Sadbhav Engineering Ltd and subsequently allotted to the assessee.

50. In this connection, I have gone through the replies and other documents submitted by the assessee and on perusal of the work orders received by the assessee from the main contractor M/s.Sadbhav Engineering Ltd, I find that all the works orders are pertaining to construction of various High way project works such as contract dated 11.11.2015 for Four Laning of Gomati Chauraha- Udaipur Section of NH 8 (from Km 177/000 to Km 260/100) in the state of Rajasthan under NHDP Phase IV, contract dated 05.04.2016 for Four laning of Rajsamand – Bhilwara Section NH 758 under NHDP phase –IV, dated 10.12.2016 of Widening and strengthening of Jodhpur – Barmer Section of NH 112 with two lane with paved shoulder/four lane from Km 140 to Km225 under NHDP – IV. These works are originally allotted by the National High Authority of India which is part of Ministry of Road Transport and Highways to the main contractor M/s.Sadbhav Construction Ltd. Subsequently these works were allotted to the assessee.

51. On perusal of the copies of work orders, invoices and other details, I find that during the FY 2016-17 they have received income from the following works orders for Highway Lightning works such as contract dated 11.11.2015 for Four Laning of Gomati Chauraha- Udaipur Section of NH 8 (from Km 177/000 to Km 260/100) in the state of Rajasthan under NHDP Phase IV, contract dated 05.04.2016 for Four laning of Rajsamand – Bhilwara Section NH 758 under NHDP phase –IV, dated 10.12.2016 of Widening and strengthening of Jodhpur – Barmer Section of NH 112 with two lane with paved shoulder/four lane from Km 140 to Km225 under NHDP – IV. These works were originally allotted by NHA to M/s.Sadbhav Engineers Ltd which were sub contracted to the assessee. I have gone through these work orders, invoices and other documents submitted by the assessee and find that the assessee had an income of Rs.2,75,24,993/- received from works contracts of construction above mentioned works. The same amount is reflected in their Form No.26 also.

52. In this connection, I have gone through clause 13(a) of the exemption Notification and find that the services provided by way of construction of road for general public is exempted from payment of service tax by virtue of clause 13(a) of exemption Notification No.25/2012 dated 20.06.2012. Herein the instant case, the assessee was engaged in various Highway Lightning works in relation to construction of Highways as detailed above for general public and accordingly falls under clause 13 (a) of Notification No.25/2012 dated 20.06.2012. Further as these are road related works and therefore the same is also exempted from service tax in view of the findings in the case law of Quest Engineers & Consultant P.Ltd Vs Commissioner, CGST & Excise, Jaipur (2022) 143 GSTL 345 (Tri-All) and therefore the said the income of Rs. 2,75,24,993/- derived from the said service is exempted from the levy of service tax. Further, the said service itself is exempted, the contract service performed by the assessee being a sub contractor is also exempted from service tax under clause 29(h) of the above referred Notification.



53. The assessee further submitted that the remaining amount of Rs.1,43,93,152/- is from material supply for which they have produced copy of VAT Form 205 for the FY 2016-17 declaring total sales of Rs.1,43,93,152/-. They claimed that as the said income is from sale the same is also exempted from service tax in as trading is in the negative list of services. In this connection, I have gone through the audited balance sheet and VAT Return in Form 205 for the YEAR 2016-17 and find that they have declared Rs.1,43,93,152/- as their total sales in their Annual Return as well as audited Balance Sheet.

54. In view of the above, now I would like to discuss the relevant provision with regard to trading of goods; As per the extant provisions of Chapter V of the Finance Act, 1994 activity of trading in Goods is not taxable. Levy of Service as per Section 66B is on Services only, said section reads as under:

66B. *There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. on the value of all services, other than those services specified in the 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.*

Term 'Service' as defined in section 2 (44) excludes the activity of transfer title in goods by of sale, which is nothing for Trading.

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

(a) an activity which constitutes merely,—

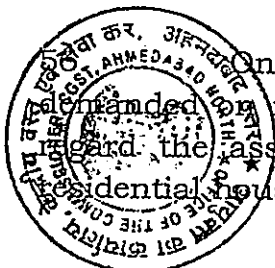
(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

Further, as seen in section 66B, all activities listed as Negative List in section 66D are also out of the ambit of Service tax. Activity of Trading in Goods is mentioned in section 66D (e), said section reads as under:

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

(e) trading of goods;

55. On perusal of the Section and definitions, I find that trading of goods is falls under the negative list of services specified in Section 66D of Finance Act,1994 and therefore the said activity is out of purview of taxable service. Accordingly the amount of Rs.1,43,93,152/- received from sale of materials is also not covered under the ambit of service and therefore no service tax is leviable on the said amount.



On perusal of SCN, I find that the service tax of Rs.72,000/- is demanded on rental income of Rs.4,80,000/- for the F.Y.2016-17. In this regard the assessee stated that the rental income was earned by renting residential house for residence purpose by renting his tenement situated at A-

32, Ajanta Co-operative Housing Society, Behind India colony, Saijpur Bogha, Ahmedabad which is covered under Negative list of services vide clause (m) of Section 66D of the Finance Act, 1994 and therefore not taxable. In this connection, I have gone through rent receipt and electricity bill and find that the property rented is for residential purpose and therefore the same is not service taxable. In this regard, the relevant portion o Negative List is as under Further, as seen in section 66B, all activities listed as Negative List in section 66D are also out of the ambit of Service tax. Activity of Trading in Goods is mentioned in section 66D (e), said section reads as under:

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

(m) services by way of renting of residential dwelling for use as residence;

According to which service by way of renting of residential dwelling for use as residence is exempted from service tax. As the above property rented out is for the residence purpose the and therefore rental income of Rs.72,000/- is not covered under service tax as the same is falls under Negative List vide clause (m) of Section 66D of the Finance Act, 1994 of services and therefore no service tax is recoverable in this regard.

57. Further, on perusal of Show Cause Notice, I find that service tax of Rs.1,17,009/- on expenses of Rs.7,80,057/- under RCM for the period FY 2016-17 as detailed under:

| Expense Head | Expense as per expense ledger (in Rs.) | Service tax @15% | Service tax paid | Service tax payable |
|-------------------------|--|------------------|------------------|---------------------|
| Misc.expense | 41643 | 6247 | 0 | 6247 |
| Audit fees | 2500 | 375 | 0 | 375 |
| Crane Expenses | 180255 | 27038 | 0 | 27038 |
| Insurance Expenses | 40500 | 6075 | 0 | 6075 |
| Machinery rent | 163307 | 24496 | 0 | 24496 |
| Professional fees | 53000 | 7950 | 0 | 7950 |
| Rent for labour | 15750 | 2363 | 0 | 2363 |
| Transportation expenses | 194720 | 29208 | 0 | 29208 |
| Travelling expenses | 88382 | 13257 | 0 | 13257 |
| Total | 780057 | 117009 | 0 | 117009 |

For the sake of clarity, I would like to discuss the tax liability of each item separately. Herein this issue, I would like to go through the relevant portions of Notifications. The issue of service tax payment under RCM has specified as per Notification No.30/2012 dated 20.06.2012 which is reproduced as under:

GSR.....(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-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 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section,



I. The taxable services,-

(A) (i) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;

(ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,-

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not under any law including association of persons;

(iii) provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory;

(iv) provided or agreed to be provided by,-

(A) an arbitral tribunal, or

(B) an individual advocate or a firm of advocates by way of support services, or

(C) Government or local authority by way of support services excluding,-

(1) renting of immovable property, and

(2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994,

to any business entity located in the taxable territory;

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;

(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

Table

| Sl.No. | Description of a service | Percentage of service tax payable by the person providing service | Percentage of service tax payable by the person receiving the service |
|--------|--|---|---|
| 1 | in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business | Nil | 100% |
| 2 | in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road | Nil | 100% |
| 3 | in respect of services provided or agreed to be provided by way of sponsorship | Nil | 100% |
| 4 | in respect of services provided or agreed to be provided by an arbitral tribunal | Nil | 100% |
| | in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services | Nil | 100% |



| | | | |
|----|--|----------------|------------------|
| 6. | in respect of services provided or agreed to be provided by Government or local authority by way of support services excluding - (1) renting of immovable property, and (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994 | Nil | 100% |
| 7 | (a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business (b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business | Nil 60% | 100 % 40% |
| 8. | in respect of services provided or agreed to be provided by way of supply of manpower for any purpose | 25% | 75% |
| 9. | in respect of services provided or agreed to be provided in service portion in execution of works contract | 50% | 50% |
| 10 | in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory | Nil | 100% |

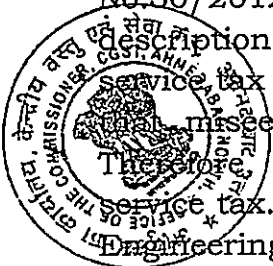
Explanation-I - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Explanation-II - In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

2. This notification shall come into force on the 1st day of July, 2012.

58. Now, I would like to discuss the taxability of each item separately for the sake of clarity. On perusal of SCN, I find that service tax of Rs.6,247/- is demanded on Misc. expenses of Rs.41,643/- under RCM. In this connection, the assessee stated that in Notification No.30/2012 dated 20.06.2012, a list of specified taxable services specified in paragraph 1 and the extent of service tax payable thereon by the person who provides the service and any other person liable for paying service tax specified in Paragraph II. They further stated that mess expenses of Rs.41,643/- is wrongly considered as miscellaneous expenses. These expenses are towards the services rendered by M/s.Sadbha Enginners Ltd as provide of food and catering. Such expenses are not covered under RCM.

59. In this connection, I have gone through the Notification No.30/2012 dated 20.06.2012 and find that the table I of the Notification, the description of service have been given wherein the list of services on which service tax is payable under RCM is explained. On perusal of the same, I find miscellaneous expenses are not covered under the said description. Therefore, the miscellaneous expenses of Rs.41,643/- is not attracting any service tax. The assessee has also furnished ledger statement of M/s.Sadbhav Engineering Ltd wherein the expenses are reflected under the head² mess



expenses. In view of the above, I consider Rs.41,643/- as mess expenses and are not covered under Noti.No.30/20.06.2012 under RCM, therefor the service tax demand of Rs.6,247/- required to be dropped.

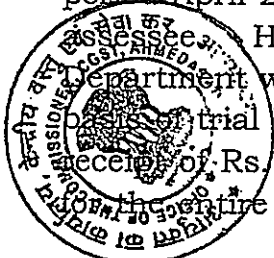
60. Further, on perusal of SCN, I find that service tax is demanded on various expenses such as audit fee (Rs.2500/-), crane hire expenses(Rs.180255/-), insurance expenses(Rs.40500/-), machinery rent expenses(Rs.163307/-), professional fee(Rs.53000/-), rent expenses for labour (Rs.15750/-) and travelling expenses (Rs.88382/-) totaling to Rs.5,43,694/- and demanded service tax of Rs.55,040/-. In this connection, the assessee contended that these expenses are covered under forward charge and not fall under specified services mentioned in Noti.No.30/2012 dated 20.06.2012. In this regard, I have gone through the related invoices and ledger accounts submitted by the assessee and find that these are various expenses made by the assessee and not fall under the specified services mentioned in the Noti.No.30/2012 dated 20.06.2012 for RCM purpose. As none of these expenses are covered under the specified categories mentioned in the RCM Noti.No.30/2012 dated 20.06.2012, I find that this amount of Rs.5,43,694/- is not attracting any service tax under RCM and accordingly the service tax demand of Rs.55,040/- is required to be dropped.

61. Further, on perusal of SCN, I find that service tax of Rs.29,208/- is demanded on the total transportation expenses of Rs.1,94,720/-. In this regard, the assessee contended that these expense are for individual vehicle owners and not GTA. However being proprietorship firm no service tax can be demanded from them under RCM in view of Notification No.30/2012 dt.30.06.2012. In this connection, I have gone through the Notification No.30/2012 dated 20.06.2012 and find that proprietorship firms are not covered under the term person liable for pay service tax under RCM for GTA services and therefore I accept the contention of the assessee that they are not liable to pay any service tax on GTA expenses of Rs.1,94,720/- and accordingly the service tax demand of Rs.29,208/- is not sustainable and therefore required to be dropped.

62. In view of the above, the income of Rs. 4,31,84,002/- on which service tax of Rs.64,76,992/-(Rs.62,87,722/- + Rs.72,000/-, + Rs.261/- + Rs.1,17,009/-) demanded for the FY 2016-17 is not taxable as discussed above accordingly the service tax demand of Rs. 64,76,992/- is not sustainable and therefore required to be dropped.

FINANCIAL YEAR 2017-18

63. On perusal of SCN No. GEXCOM/ADJN/ST/JC/312/2021 DT. 18.10.2021, I find that the figures of gross receipts of Rs.3,30,37,387/- as per P & L is taken as value for demanding service tax and accordingly demanded Rs.49,55,608/- for the entire F.Y. In the SCN it was stated that the figure for the full FY 2017-18 is Rs.3,30,37,387/- is taken as taxable value instead of period April 2017 to June 2017 due to non submission of trial balance by the assessee. However, the assessee in their reply to SCN stated that the Department was never called for any trial balance for the FY 2017-18. On the basis of trial balance for the period April 2017 to June 2017, they have gross receipts of Rs.1,36,04,844/- only out of the total receipts of Rs.3,30,37,386.99 for the entire F.Y. In this connection, I have gone thorough the Trial balance



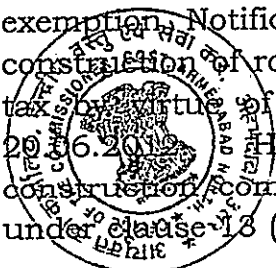
for the period April 2017 to June 2017 and find that they have shown total receipt as Rs.1,36,04,844/- only and their total income for the entire FY is shown as Rs.3,30,37,386.99 in their audited balance sheet. Therefore, I take Rs.1,36,04,844/- as value for adjudication purpose for the period April 2017 to June 2017. As GST was in operation from July 2017 I do not consider the amount of Rs.1,94,32,542.99 for the purpose of adjudication.

64. In this connection, I have gone through the SCN, ledger accounts, copy of 26AS, copy of invoices, work order, agreement, reconciliation statement and other records for the FY 2017-18 (upto June 2017). On perusal of the documents, I find that in the SCN it was alleged that the highway lightning work at Toll Plazas including high mast poles, Truck lay Bays, Bus Bays RE wall etc which is not road construction works but came under works contract service as specified under Section 12A of Noti.No.25/2012 dated. In response to this allegation the assessee claimed that they are providing works pertaining to Highway lightning works at toll plazas including high mast poles, truck lay bays, bus bays, RE wall etc as a sub contractor for the main contractor M/s.Sadbhav Engineering Limited. They further stated that the services provided by them are covered only under S.No.13(a) of Notification No.25/2012 dated 20.06.2012. They have provided copies of work orders originally allotted by the National Highway Authority of India to M/s.Sadbhav Engineering Ltd and subsequently allotted to the assessee.

65. In this connection, I have gone through the replies and other documents submitted by the assessee and find that they have provided the work contract services for completion of various High Ways during the period 2017-18. On perusal of the work orders received by the assessee from the main contractor M/s.Sadbhav Engineering Ltd, I find that all the works orders are pertaining to construction of various High way project. These works are originally allotted by the National High Authority of India which is part of Ministry of Road Transport and Highways to the main contractor M/s.Sadbhav Construction Ltd. Subsequently these works were allotted to the assessee.

66. On perusal of the copies of work orders, invoices and other details, I find that during the FY 2017-18 they have received income from the following works orders for Highway Lightning works such as contract dated 10.12.2016 for Widening and strengthening of Jodhpur - Barmer Section of NH 112 (Jodhpur to Panchpadra Package-1) with two lane with paved shoulder/ four lane from 140.000 to Km 225 under NHDP-IV in the state of Rajasthan for highway Lighting works for the above project. These works were originally allotted by NHA to M/s.Sadbhav Engineers Ltd which were sub contracted to the assessee. I have gone through these work orders, invoices and other documents submitted by the assessee and find that the assessee had an income of Rs. 1,04,71,809/- received from works contracts of construction above mentioned works. The same amount is reflected in their Form No.26 also.

67. In this connection, I have gone through clause 13(a) of the exemption Notification and find that the services provided by way of construction of road for general public is exempted from payment of service tax by virtue of clause 13(a) of exemption Notification No.25/2012 dated 20.06.2012. Herein the instant case, the assessee was engaged in construction/ completion of Highway for general public and accordingly falls under clause 13 (a) of Notification No.25/2012 dated 20.06.2012 and therefore



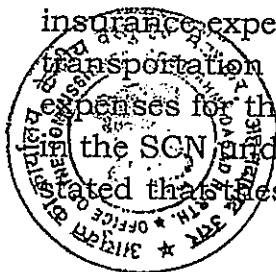
the said service and the income of Rs. 1,04,71,809/- derived from the said service is also exempted from the purview of service tax. Further as these are road related works and therefore the same is also exempted from service tax in view of the findings in the case law of Quest Engineers & Consultant P.Ltd Vs Commissioner, CGST & C.Ex, Allahabad 2022 (58) GSTL 345 (Tri-All) and therefore the said the income of Rs. 2,75,24,993/- derived from the said service is exempted from the purview of service tax. Further, the said service itself is exempted, the work contract service performed by the assessee being a sub contractor is also exempted from service tax under clause 29(h) of the above referred Notification.

68. The assessee further submitted that the remaining amount of Rs.31,33,035/- is from material supply for which they have produced copy of VAT Form 205 B for the FY 2017-18 (from 01.04.2017 to 30.06.2017) declaring total turnover of Rs.31,33,035/-. They claimed that as the said income is from sale the same is also exempted from service tax in as trading is in the negative list of services. In this connection, I have gone through the audited balance sheet and VAT Return in Form 205 B for the FY 2017-18 (from 01.04.2017 to 30.06.2017) and find that they have declared Rs.31,33,035/- as their total sales in their VAT Return in Form 205 B as well as audited Balance Sheet.

69. On perusal of the Section and definitions, I find that trading of goods is falls under the negative list of services specified in Section 66D of Finance Act,1994 and therefore the said activity is out of purview of taxable service. Accordingly the amount of Rs.31,33,035/- received from sale of materials is also not covered under the ambit of service and therefore no service tax is leviable on the said amount.

70. On perusal of the SCN, reply to SCN and related documents, I find that the with respect to FY 2017-18 (upto June 17) pertaining to expenses made by the assessee, he failed to provide the data sought and the same being not shown in the P & L A/c for the said period, so best judgement under section 72 of the Act has been applied for the said period, wherein the total taxable value of Rs.7,80,057/- as shown in 2016-17 has been taken as expenses for the period 2017-18 and further in the absence of trial balance for the quarter April 17 to June 17, whole value is taken as taxable value, the same being on the higher side to avoid any leakage of the government revenue. Thus, the assessee is liable for tax liability of Rs.1,17,009/- for the period 2017-18 (upto June ,17) as well in respect of the expenses made, under RCM as per Section 68(2) of Finance Act, 1994 read with Rule 2 (d)(i) of the service Tax Rules, 1994 & Notification No.30/2012-ST dated 20.06.2012. In view of the above the assessee is liable to pay total amount of Rs.1,17,009/- alongwith interest to be demanded and recovered under Section 73 of the Finance Act, 1994 from them.

71. They further stated that the service tax demand of Rs.1,17,009/- is concerned it was demanded on expenses of Rs.7,80,057/- for the FY 2017-18 as per expense ledger such as mess expenses, audit fees, crane hire expenses, insurance expenses, machinery rent expenses, professional fee, rent for labour, transportation expenses & travelling expenses. They stated that the total expenses for the FY 2017-18 is Rs.2,54,121/- and not Rs.7,80,057/- as stated in the SCN under section 72 of The Finance Act, 1994. In this connection, they stated that these are actual expenses made by them but none of the expenses



are covered under either Paragraph I or Paragraph II of the relevant Notification No.30/2012 dated 20.06.2012. They are being proprietor ship firm, they are not liable to pay any service tax under RCM on GTA expenses also. Accordingly without considering the nature of service expenses the service tax was demanded under RCM. As the department has never called for any trial balance the section 72 i.e.best judgement is not also applicable in this case. In these circumstances they are not liable to pay any service tax under RCM in view of the Noti. No.30/2012 dated 20.06.2012. and therefore the demand of Rs.1,17,009/- is required to be dropped.

72. In this connection, I have gone through the charges and reply to SCN of the assessee regarding taxability of the expense made by the assessee during the period under reference and find that all these expenses are covered under forward charges and not covered under RCM as envisaged in the Noti.No.30/2012 dated 20.06.2012. I also find that the assessee being a proprietary firm, they are also not liable to pay any service tax on expenses made on GTA and proprietor have not liable to pay service tax RCM for GTA expenses as per Noti.No.30/2012 dated 20.06.2012. In view of the above facts, I find that the assessee is not liable to pay any service tax under RCM on the expenses of Rs.2,54,121/- and therefore the service tax demand of Rs.1,17,009/- for the period 2017-18 is also required to be dropped.

73. In view of the above, the income of Rs. 3,38,17,444/- (Rs.3,30,37,387/- + Rs.7,80,057/-) on which service tax of Rs.50,72,617/- (49,55,608/- + Rs.1,17,009/-) demanded for the FY 2017-18- (upto June 2017) is not taxable as discussed above accordingly the service demand of Rs. 50,72,617/- is not sustainable and therefore required to be dropped.

74. In view of the above, service tax of Rs.1,15,49,609/- (Rs.64,76,992/- for FY 2016-17 & Rs.50,72,617/- for FY 2017-18 (upto June 2017) demanded is not sustainable as discussed above accordingly the service Rs. 50,72,617/- is not sustainable and therefore required to be dropped.

75. 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.

76. In view of the above reconciliation and other facts of the case as discussed above, I find that the total value as per SCN/Form 26AS/Balance



Sheet accrued by the assessee during the FY 2015-16, 2016-17 & 2017-18 (upto June 2017) are exempted from the purview of service tax as discussed hereinabove. Therefore, I find that the service tax demand of Rs. 1,15,49,609/- demanded vide instant SCN However in the SCN No. GEXCOM/ADJN/ST/JC/312/2021 DT. 18.10.2021 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 and Rule 7 C of Service Tax Rules read with Section 70(1) of Finance Act, 1994 of Finance Act, 1994 upon the said assessee on this count. In view of the above I pass the following order;

ORDER

77. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 1,15,49,609/- vide SCN No. GEXCOM/ADJN/ST/JC/312/2021 DT. 18.10.2021, Rs.86,47,723/- vide SCN No.V(30)Adj/TPI/SCN/ADC/D-1/CGST/Noida/224/2021 dated 28.04.2021 and Rs.86,47,723/- vide SCN No. STC/15-223/OA/2021 dated 23.04.2021 along with interest and penalties against M/s. Alpeshkumar Gokalbhai Patel.

78. Accordingly the SCN No. GEXCOM/ADJN/ST/JC/312/2021 DT. 18.10.2021, SCN No.V(30)Adj/TPI/SCN/ADC/D-1/CGST/Noida/224/2021 dated 28.04.2021 and SCN No. STC/15-223/OA/2021 dated 23.04.2021 are disposed off.



(Lokesh Damor)

Joint Commissioner
Central GST & Central Excise
Ahmedabad North

BY SPEED POST/HAND DELIVERY
F.No. STC/15-223/OA/2021

Date:

To,
M/s. Alpeshkumar Gokalbhai Patel,
407-408, Vrundavan Enclave,
AEC Cross Road, Naranpura,
Ahmedabad - 380013.

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-I, Division-VII, Ahmedabad North
- ✓ 4) The Supdt. Systems, CGST & CX, Ahmedabad North for uploading the order
- 5) Guard File.