



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D  
फा.सं./F.No. STC/15-34/OA/2021

DIN-20240164WT000000EC7B  
आदेश की तारीख/Date of Order: - 16.01.2024  
जारी करने की तारीख/Date of Issue :- 16.01.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 68/ADC/ 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 रू. 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 रू .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/15-34/OA/2021 dated 23.04.2021 issued to M/s. Ashutosh Interiors, A-305 & A-306, Supath-II, Juna Wadaj Bus Stand, Usmanpura, Ahmedabad, Gujarat-380013.



**BRIEF FACTS OF THE CASE**

M/s. Ashutosh Interiors, A 305 & A 306, Supath II, Juna Wadaj Bus stand, Usman pura Ahmedabad, Gujarat 380013 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. ABBFA4602NSD001 and was engaged in Taxable Services.

2. Whereas, ongoing through the third party CBDT data for the Financial Year 2015-16 and 2016-17, it has been observed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 and 2016-17 as compared to the Service-related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

Sr. No.	F.Y.	Taxable Value as per ST-3 returns (In Rs.)	Gross Receipts From Services (Value from ITR/26AS) (In Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax short paid (in Rs.)
1	2015-16	0/-	48604285	48604285	7047621
2	2016-17	0/-	84766264	84766264	12714940
TOTAL					19762561

3. Whereas Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said notice had not paid service tax as worked out as above in Table for Financial Year 2015-16 and 2016-17.

4. Whereas, no data was forwarded by CBDT, for the period 2017-18 (upto June-2017) and the assessee has also failed to provide any information regarding rendering of taxable service for this period. Therefore, at this stage, at the time of issue of SCN, it is not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

5. Whereas, with respect to issuance of unquantified 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."*

6. Whereas, as per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3returns). The form, manner and frequency of

return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appears that the said service provider has not assessed the tax dues properly, on the services received by him, as discussed above, and failed to file correct ST-3 Returns thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

7. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the noticee along with interest under Section 75 of the Finance Act, 1994.

8. Whereas, now in view of above, it appeared that the Assessee has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of Rs. 1,97,62,561/-, by declaring less value in their ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

9. Whereas, it has been noticed that at no point of time, the Assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2015-16 and 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it appeared that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs. 19762561/-. It appeared that the above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appeared to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appeared that the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

10. The said assessee was given opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 22.04.2021 but the said assessee did not appear for the same.

11. Therefore, M/s.Ashutosh Interiors, A 305 & A 306, Supath II, Juna Wadaj Bus stand, Usman pura Ahmedabad, Gujarat 380013 had been issued notice to show cause to the Additional/Joint Commissioner, CGST &CX, Ahmedabad North having office at 1<sup>st</sup> Floor, Custom House, Navrangpura, Ahmedabad as to why:

- (i) The demand for Service tax to the extent of Rs. 19762561/- short paid /not paid by them in F.Y. 2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

**Defence Submission:-**

12. The said assessee have filed their reply to the subject notice vide letter dated nil and received in this office on 16.07.2022. they have submitted that the noticee firm was a partnership firms which was incorporated on 01-01-2015. Their main business was work contract services to Government and municipal corporation and the same was exempted from payment of service tax in terms of mega exemption Notification No. 25/2012-ST dated 20.06.2012 (Sr. No. 12A). Further, it was also submitted that on part of taxable service of work contract, they have availed abatement under Notification No. 24/2012-ST dated 20.06.2012 (Sr. No. 2) and payment of applicable service tax was also paid by their customs under RCM in terms of Notification No. 30/2012-ST dated 20.06.2012 (Sr. No. 9). They have submitted (i) detailed work sheet of service tax payment for F.Y. 2015-16 & 2016-17 (ii) Copy of challans of Service tax payment (iii) copy of audited Profit & Loss account and Balance Sheet for F.Y. 2015-16 & 2016-17 alongwith copies of contract orders & corresponding invoices/bills in response to work of contract services.

**Personal Hearing:-**

13. The letters dated 12.04.2022, 10.06.2022, 21.07.2022, 11.11.2022, 05.01.2023, 01.08.2023, 08.09.2023, 05.10.2023, has been issued for fixing personal hearing on 26.04.2022, 15.06.2022, 03.08.2022, 22.11.2022, 12.01.2023, 09.08.2023, 20.09.2023, 17.10.2023, respectively. All letters issued for hearing has been delivered as the same never been received undelivered from the postal authority. all these letters are well communicated to the said assesses in advance but they have neither bothered to attend the personal hearing nor made any request for adjournment of hearing. In light of the situation elaborated as above, I am left with no other option but to take up the case for adjudication based on fact of case and reply/submissions/documents submitted of the said assessee and records available in file.

**Discussion and findings:-**

14. 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.

15. I have carefully gone through the Show Cause Notice, reply to SCN, reconciliation statement, ledger accounts, copies or work orders, agreement, profit and loss account, invoices and Form 26AS for the F.Y. 2015-16 & 2016-

16. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.1,97,62,561/- 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. 1,97,62,561/- for the F.Y. 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

17. 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, 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 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.

18. 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.

19. I find that the said assessee had submitted that they were engaged in providing work contract services to government entities and municipal corporations which were exempted from payment of service tax under mega exemption Notification No. 25/2012-ST dated 20.06.2012 Sr. No. 12A and works contract services provided by them out of government entities were taxable and covered under RCM as per Notification No. 30/2012-ST dated 20.06.2012 Sr. No. 9 and they had paid applicable service tax on part of said services.

In view of the above, I would like to examine the applicability of relevant Notification No.25/2012-ST dated 20.06.2012, as amended, vide Notification No. 6/2015-ST dated 01.03.2015 which reads as follows:-

*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:-

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

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act.

Thereafter notification No.25/2012-Service Tax dated 20.06.2012 was amended vide Notification No.06/2015 dated 01.03.2015 wherein entry 12, items (a), (c) and (f) were omitted with effect from 01.04.2015. Then again notification No.25/2012-Service Tax dated 20.06.2012 was further amended vide Notification No.9/2016-Service Tax dated 01.03.2016 wherein after entry 12, with effect from 1<sup>st</sup> March, 2016, the following was inserted, namely –

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

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

provided that nothing contained in this entry shall apply on or after the 1st April, 2020;”

In view of the above, I find that the Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of civil structure or any original works meant

*predominantly for use other than for commerce, industry, or any other business or profession is exempted from payment of service tax.*

**20.** I find that the said assessee was engaged in providing of work contract services related to interior design and furniture work to various government entities such as Ahmedabad Municipal Corporation, BSNL, Deesa Nagarpalika, Kalol Municipality Road & Building Division (Mehsana, Rajkot, Surat, Tapi, Navsari etc.), as well as various semi-government/private entities such as Gujarat GAS Ltd., Gujarat Earth Mineral P. Ltd., Gujarat State Petroleum Corp. Ltd., UTI Infrastructure Tech. & Services Ltd.

**21.** I, have carefully considered the copy of different bills issued to the government department (Executive Engineers and other similar authorities of the Government of Gujarat) as well as copies of corresponding contract orders submitted by the said assessee with regards to service provided by them. I find that these bills pertains to supplying of items such as Sofas, Chairs, Computer Tables, Steel Cupboard and various type of furniture & Interior work. The supply of these furniture's items and interior works cannot be said to be services as specified at Sr. No. 12A of the above-mentioned notification as construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of civil structure or any original works. Therefore, I do not agree with the argument put forwarded by the said assessee that the activity carried out by them is exempted from service tax payment in terms Notification No. 25/2012-ST dated 20.06.2012 Sr. No. 12A, However, On scrutiny of different bills as well as corresponding contract orders submitted by the said assessee, it is observed that the said assessee have carried out work related to interior design and also supplied different types of furniture to different government department/authorities as well as private persons in response to respective tenders floated by the recipient to the said assessee.

**22.** Here, it is pertinent to mention to note that in terms of Section 65B(54) of the Finance Act, 1994, "work contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property. On going through the documents/details submitted by the said assessee, the services related to interior design and furniture work provided by them with materials involving, appears to be classified as work contract service which were not exempted from payment of Service Tax in terms of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 Sr. 12 as claimed by the said assessee.

**The Rule 2A of the Service Tax (Determination of Value) Rules, 2006 provided for determination of value of service portion in the execution of a works contract:-**

*Subject to the provisions of section 67, the value of service portion in the execution of a works contract , referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-*

*(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in*

goods in goods and land or undivided share of land, as the case may be, transferred in the execution of the said works contract.

*Explanation.- For the purposes of this clause,-*

*(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;*

*(b) value of works contract service shall include, -*

*(i) labour charges for execution of the works;*

*(ii) amount paid to a sub-contractor for labour and services;*

*(iii) charges for planning, designing and architect's fees;*

*(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;*

*(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;*

*(vi) cost of establishment of the contractor relatable to supply of labour and services;*

*(vii) other similar expenses relatable to supply of labour and services; and*

*(viii) profit earned by the service provider relatable to supply of labour and services;*

*(c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.*

*(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-*

*(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent. of the total amount charged for the works contract;*

*Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract.*

***(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for,-***

***(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or***

***(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,***

***service tax shall be payable on seventy per cent. of the total amount charged for the works contract;***

*Explanation 1.- For the purposes of this rule,-*

*(a) "original works" means-*

*(i) all new constructions;*

*(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;*

*(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;*

(d) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2.--For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

23. Considering the documents submitted by the said assessee, relating to interior design works such as POP, Painting, Concerting, waterproofing, Rolling, internal wiring, Light fixtures, Glazing partition, laminate finishing etc. and furniture's work with materials such as sofas, chairs, computer tables, steel cupboard etc., I find that they were engaged in providing works contract service other than original works. I, further, find that as per provisions of clause (B)(ii) of Rule 2A of of the Service Tax (Determination of Value) Rules, 2006, regarding valuation of the services in relation to work contract service other than original works in as much as interior designing service or completion and finishing services such as floor and wall tiling or installation of electrical fittings of immovable property and **service tax shall be required to pay @ 70% of total amount of value of work contract services. Therefore, the service tax liability in respect of works contract service provided by the said assessee is required to be calculated as under :-**

Description	2015-16	2016-17
Gross receipt from Service (Value (26AS/ITR) as per SCN)	4,86,04,285/-	8,47,66,264/-
Net Taxable value after abatement (70% of total amount charged as above)	3,40,23,000/-	5,93,36,385/-
Service Tax	14.5%	15%
Service tax as payable	49,33,335/-	89,00,456/-

24. I, further, find that the said assessee has submitted that the work contract service provided by them are covered under RCM and they are liable to pay 50% of Service tax in terms of provisions of Notification No. 30/2012-ST dated 20.06.2012. The contention of the said assessee is not accepted as the liability of payment of service under RCM towards works contract service is not applicable to government entities and regards works contract service provided to other private persons, the details of payment under RCM cannot be ascertained from the documents submitted by them. Hence, the service tax of Rs. 1,38,33,791/-, detailed as above, is required be to recovered from the said assessee in terms of provisions of Section 73 of the Finance Act, 1994. However, the said assessee have submitted challan bearing No. 00049 dated 14.05.2019 for Rs. 13,00,000/- in respect of payment of service tax for F.Y. 2015-16 & Challan No. 72012 dated 19.10.2017 for Rs. 2,14,478/-, Challan No. 72013 dated 19.10.2017 for Rs. 3,11,425/-, Challan No. 72014 dated 19.10.2017 for Rs. 2,08,284/-, Challan No. 72015 dated 19.10.2017 for Rs. 7,245/- in respect of payment of service tax for F.Y. 2016-17. The said

payment of service tax amounting to Rs. 20,41,432/- is liable to be adjusted and appropriated against their total Service Tax liability amounting to Rs. 1,38,33,791/- as detailed above.

**25.** It is provided under section 68 of the Finance Act, 1994 that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B *ibid* in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said assessee had not paid service tax as discussed in para supra.

**26.** As per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appeared that the said service provider has not assessed the tax dues properly, on the services provided by him, as discussed above, and thereby violated the provisions of Section 70(1) of the Act read with Rule 7 of the Service Tax Rules, 1994.

**27.** The government has from the very beginning placed full trust on the service tax assessee so far as service tax is concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of the service tax assessee; therefore, the governing statutory provisions create an absolute liability, when any provision is contravened or there is a breach of trust, on the part of service tax assessee, no matter how innocently. From the information/data received from CBDT, it appeared that the assessee has not discharged service tax liability in spite of declaring before Income Tax Department. Non-payment of service tax is utter disregard to the requirements of law and the breach of trust deposed on them which is outright act of defiance of law by way of suppression, concealment & non-furnishing value of taxable service with intent to evade payment of service tax. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts. Therefore, service tax amounting to Rs. 1,38,33,791/- for financial Year F.Y. 2015-16 & 2016-17 is required to be recovered from them under Section 73 (1) of Finance Act, 1994 by invoking extended period of five years under the proviso to Section 73(1) of the Finance Act, 1994.

**28.** Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the said assessee has failed to pay their Service Tax liabilities in the prescribed time limit, I find that the assessee is liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

29. I further find that on account of all the above narrated acts of commission and omissions on the part of the service provider, they have rendered themselves liable to penalty under the provisions of the Section 78 Finance Act, 1994, as amended in as much as they have mis-stated the taxable value of the services provided/received by them and they have, knowingly and willfully not paid the correct amount of Service Tax leviable on such amount.

30. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part of the assessee has 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 the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years along with applicable interest. All these acts of contravention of the provisions of Section 67, 70 and 77 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 on part of assessee have rendered them for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time.

31. On perusal of SCN, I find that the levy of service tax for the period 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. I, however, do not find any charges levelled for demand for the period 2017-18 (upto June 2017) in charging part of the SCN. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income from sale of services. I therefore refrain from discussing the taxability on other income other than the sale of service.

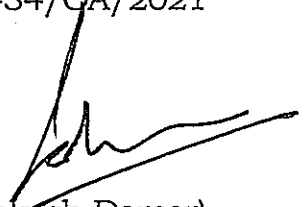
32. In view of the above facts and findings, I pass the following order.

#### ORDER

- (i) Out of total demand of S. Tax of Rs. 1,97,62,561/- for F.Y. 2015-16 and 2016-17, I confirm the demand of Service tax amounting to Rs. 1,38,33,791/- (One Crore Thirty-Eight Lakhs Thirty-Three Thousand Seven Hundred and Ninety One Only) under the provisions of Section 73 of the Finance Act, 1994 and order to recover the same from the said assessee; Further, Since amount of Rs. 20,41,432/- had already been paid by the said assessee, the same is adjusted and appropriated against the confirmed demand; Further, I drop the demand of Rs. 59,28,770/-.
- (ii) I hold the charge of Interest at the appropriate rate towards the confirmed demand mentioned at (i) above under Section 75 of the Finance Act, 1994 and order to recover from the same from the assessee;

- (iii) I impose Penalty of Rs. 1,38,33,791/- (One Crore Thirty-Eight Lakhs Thirty-Three Thousand Seven Hundred Ninety-One Only), under Section 78 of the Finance Act, 1994, as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if the said assessee pays the amount of Service Tax as determined at Sl. No. (i) above and interest payable thereon at (ii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by the said assessee shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.
- (iv) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on the said assessee under Section 77(2) of the Finance Act, 1994;

33. Accordingly the Show Cause Notices bearing F.No. STC/15-34/OA/2021 dated 23.04.2021 is disposed off.

  
(Lokesh Damor)

Additional Commissioner  
Central GST & Central Excise  
Ahmedabad North

BY HAND DELIVERY /SPEED POST  
F.No. STC/15-34/OA/2021

Dt. 16.01.2024

To  
M/s.Ashutosh Interiors,  
A 305 & A 306, Supath II,  
Juna Wadaj Bus stand, Usman pura,  
Ahmedabad, Guajrat 380013.

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, CGST & Central Excise, Division-VII Ahmedabad North.
3. The Supdt. Range-I, Division-VII, CGST & C E, Ahmedabad North
4. The Supdt (System), CGST & CE, Ahmedabad North for uploading the order on website.
5. Guard File.

