


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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं./ F.NO.STC/15-115/OA/2020

DIN : 20220164WT0000832378

आदेश की तारीख /

Date of Order : 11.01.2022

जारी करने की तारीख /

Date of Issue : 18.01.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव /

UPENDRA SINGH YADAV

आयुक्त /

COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-51/2021-22

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

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

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

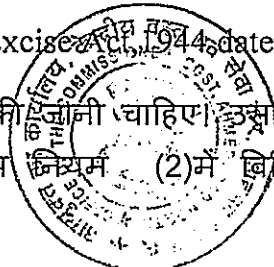
Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उक्त केंद्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा



हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए।(1 अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अंग्रेषित किए जाने चाहिए।

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

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

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

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

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

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

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

न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना

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

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

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

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice no. STC/15-115/OA/2020 dated 21.10.2020 issued to M/s. Sarjan Infracon Pvt. Ltd., 21, Sadhna Colony, Opp. Somlalit School, S.P. Stadium, Ahmedabad -380009

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 51 /2021-22

M/s. Sarjan Infracon Pvt. Ltd., 21, Sadhna Colony, Opp. Somlalit School, S.P. Stadium, Ahmedabad -380009, were issued SCN No. STC/15-115/OA/2020 dated 21.10.2020 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad..

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S SARJAN INFRACON PVT. LTD. ARE AS FOLLOWS:

M/s. Sarjan Infracon Pvt. Ltd., 21, Sadhna Colony, Opp. Somlalit School, S.P. Stadium, Ahmedabad -380009 (hereinafter referred to as the 'Assessee' for the sake of brevity) are engaged in providing taxable services, and are holding Service Tax Registration No. AAKCS1354EST001.

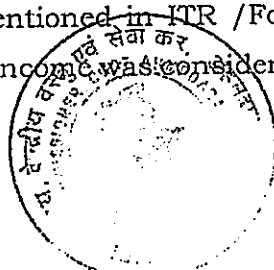
2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" in respect of M/s. Sarjan Infracon Pvt. Ltd. was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, and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

3. As per the records available with the Divisional office of Division-VII and on going through the Third Party Data provided by CBDT of the said assessee for the F.Y.2015-16, the total sales of service (Value from ITR/ Form 26) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16. Therefore, it appeared that the said assessee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for the F.Y. 2015-16 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16. The difference in value as observed for FY 2015-16 was as under:

Sr. No.	F.Y.	Total Gross Value provided (STR)	Sale of services (ITR)	Total Value for TDS (including 194C, 194Ia, 194J, 194H)	Higher Value (Value difference in ITR & STR) OR (Value Difference in TDS & STR)	Resultant Service Tax short paid (including cess)
1	2015-16	12,27,07,536	65,36,97,077	68,90,40,457	56,63,32,921	8,21,18,274

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. 8,21,18,274/- (including Cess) on the differential value of Rs. 56,63,32,921/-.

4. A letter dated 06.10.2020 was issued to the assessee to explain the difference and to submit documents in support thereof viz. Balance Sheet, Profit and Loss Account, Income Tax Return, Form 26AS, etc. However, the assessee neither submitted the details nor submitted explanation. Therefore, the service tax liability of the assessee was worked out on the basis of income mentioned in ITR /Form 26AS, which were shared by Income tax Department. The said income was considered as the Total Taxable



value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.

5. As per Section 68 of the Finance Act, 1994 every person liable to pay service tax shall pay service tax at the rate specified in Section 66B in such manner and within such period which is prescribed under Rule 6 of the Service tax Rules 1994. Therefore, it appeared that the assessee had short paid the service tax as tabulated above.

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

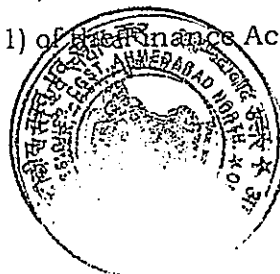
“(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.

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

7. As per the provisions of Section 73(1) of the Finance Act, 1994 where any Service Tax has not been levied or paid or has been short levied or short paid by reasons of willful mis-statement or suppression of facts with intent to evade payment of Service Tax, the Central Excise Officer may within five years from the relevant date, serve a notice on the person chargeable with Service Tax which has not been levied or paid or which has been short levied or short paid requiring him to show cause why he should not pay the amount specified in the notice.

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

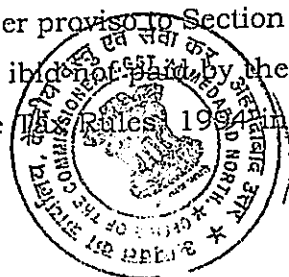
9. From the documentary evidence available at the relevant time, it appeared that the said assessee had failed to pay/short paid/deposit Service Tax to the extent of Rs. 8,21,18,274/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year FY 2015-16 vis-à-vis their ITR/Form 26AS. The said short payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 8,21,18,274/- (including Cess) worked out on value of Rs. 56,63,32,921/- and therefore, Service Tax was required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.



10. Therefore, it appeared that the said assessee had (i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994; (ii) Failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994; (iii) Failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have not paid service tax as worked out in the Table for Financial Year 2015-16 to 2017-18 (upto June 2017); (iv) contravened the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 which appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (v) made themselves liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994; (vii) also contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

11. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value, that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 8,21,18,274/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the assessee which were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

12. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (as such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appeared that the said assessee had short paid/not-paid Service Tax of Rs. 8,21,18,274/- on the actual value received towards taxable services provided which appeared to be recoverable under provision Section 73(1) of the Finance Act, 1994 along with interest under Section 75 ibid of Rs. 53,10,53,10/- by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said



assessee had suppressed the facts from the department and had contravened the provisions with an intent to evade payment of Service Tax. The said assessee had not discharged their Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.

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

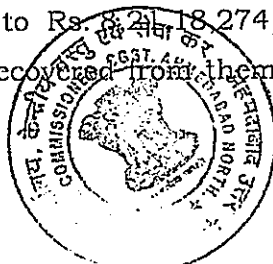
Unquantified demand at the time of issuance of SCN.

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issue by the CBEC, New Delhi clarified that:

'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wug.) 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.'

14. The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the FY 2016-17 and 2017-18 (upto June-2017) had not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. The assessee had also failed to provide the required information even after the issuance of letters and summons from the Department and the assessable value for the FY 2016-17 and 2017-18 (upto June-2017) was not ascertainable at the time of issuance of this Show Cause Notice. If any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action was to be initiated against the said 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, in as much as the Service Tax liability arising in future, for the FY 2016-17 and 2017-18 (upto June-2017) covered under subject Show Cause Notice, was to be recovered from the assessee.

15. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax and they appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of Service Tax as discussed in the foregoing paras and therefore, the Service Tax amounting to Rs. 8,21,18,274/- (inclusive of Cess) not paid was required to be demanded and recovered from them under the proviso to Section



73(1) of the Finance Act, 1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

16 All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it appeared that the said assessee had contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee appeared to have rendered the assessee liable to penalty under Section 76 & Section 77 of the Finance Act.

17. In addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appeared that the said assessee had willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of Service Tax thus rendering them liable for penalty under Section 78 of the Finance Act, 1994.

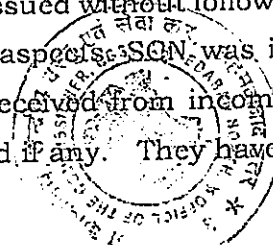
18. Therefore, Show Cause Notice dated 21.10.2020 was issued to the assessee asking them as to why:

- (i) Service Tax of Rs. 8,21,18,274/- short/ not paid, should not be confirmed and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (ii) Service tax liability for the FY 2016-17 and 2017-18 (upto June 2017) to be ascertained, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them under Section 75 of the Finance Act, 1994;
- (iv) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994.
- (v) Penalty under the provisions of Section 77(1)(c) and 77(2) of the Finance Act, 1994, should not be imposed on them.

19. **DEFENCE REPLY:**

The assessee vide letter dated 03.01.2022 (received on 06.01.2022) have submitted their written submission, wherein they interalia have stated that:

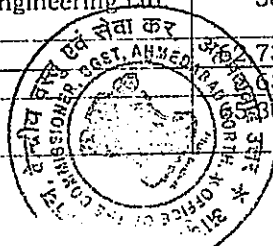
- They have stated that the demand raised merely on the fact that there is difference between ST-3 Returns and 26AS / Income Tax Returns is unsustainable and is patently illegal. The same was issued without following any process of investigation and was devoid of any factual aspects. SCN was issued plainly on basis of pure arithmetic based on the data received from income tax and comparing the same with the Service tax returns filed, if any. They have stated that the Tribunal in the



case of Commr. Of Service Tax Vs. M/s. Purni Ads Pvt Ltd. [2010(19)STR 242 (Tr.-Ahd)], has held that "before raising the demand on the difference between the amounts of ST-3 return and Balance Sheet, the adjudicating authority should reconcile these figures by adopting proper methods.". They have stated that the department should have come up with proper evidence to this effect that the amount shown in the balance sheet is that amount on which service tax has to be paid by the assessee and they have not paid service tax on the same.

- They have also relied on the decisions of the Tribunal in the case of M/s. Sharma Fabricators & Erectors Pvt Ltd. [2017(5) GSTL 96(Tri. ALL)]. The case was affirmed by the Hon'ble High Court of Allahabad as reported at [2019(22)GSTL J166(ALL)].
- They have stated that the demand has been raised mechanically without proving the allegations with cogent and corroborative evidences. They have placed reliance on the following case laws:
 - M/s. Mahadev Trading Co. vs. UOI [2020(10)TMI431-GUJ-HC]
 - Sahibabad Printers Vs. Additional Commissioner CGST (Appeals) [2020(12)TMI582-Allahabad HC]
 - Sahitya Mudranalaya Pvt Ltd Vs. Additional Director General {2020(3)TMI 154-GUJ-HC}
 - CC Chennai vs/ M/s. Flemingo (DFS) Pvt Ltd. {2010-TIOL-60-HC-MAD-CUS}
 - K. Harinath Gupta Vs. Collector of Central Excise Hyderabad {1944(71)ELT 980 (Tribunal)}
 - M/s. Aviat Health Care Pvt Ltd Vs. CC & CE, Belapur {2008-TIOL-1924-CESTAT-MUM}
- They have stated that the department in the SCN itself has accepted the it has not done any investigation and the notice is exclusively based on the data of the income tax department.
- They have submitted that they are in business of providing infrastructure construction services. They have comprehensive experience in carrying out complex projects such as highways, bridges, high rises, airports, railways, irrigation projects and industrial infrastructure. That they have paid service tax wherever, it was applicable.
- During the FY 2015-16 they have rendered services to various Governmental Authorities and Private companies. The details of service provided and and exemption available to them have been given as under:

Work Type	Services Provided to	Amount	Exemption Entry from 25/2012-ST
Public Road Construction	Surat Municipal Corporation	24,29,52,381	13(a)
Public Road Construction	Sadbhav Engineering Ltd.	19,50,56,537	13(a)
Irrigation Canal Construction	SSNNL	18,35,07,451	12(d)
Irrigation Canal Construction	Sadbhav Engineering Ltd.	58,05,000	25(h) read with 12(d)
Exempt Income Total (A)		73,21,369	
Income on which tax is paid (B)		3,75,708	Matched with ST-3
Total Income (A+B)		6,97,077	Income as per Bal. Sheet



- They have provided services of Construction of Cement Concrete Pavement roads and allied works to Surat Municipal Corporation, which was exempt under Sr. No. 13(a) of Notification 25/2012-ST. They have provided service of Road Construction to Sadbhav Engineering service under sub contract agreement, which was exempt under Sr. No. 13(a) of Notification 25/2012-ST. They have also provided service to Sardar Sarovar Narmada Nigam Limited for construction of Canal and its related work, which was exempt under Sr.No. 12(d) of Notification No. 25/2012-ST dated 20.06.2012. They have also provided service of construction of irrigation canal for M/s. Sadbhav Engineering , under subcontract agreement, which was exempt under Sr.No. 12(d) read with 29(h) of Notification No. 25/2012-ST dated 20.06.2012.
- They have contended that prior to issuance of SCN, their submission was not taken into account. They had submitted the reply on 21.10.2020 to the Office of the Superintendent, Range -IV, Division -VII, wherein they had stated that the audit of their company was conducted covering the period April 2014 to June 2017, in May 2019. The SCN does not mention the same facts. They have stated that as alleged in the SCN, it is not correct that the assessee has not provided the required details of service provided during FY 2015-16.
- They have stated that the audit by the department was conducted and due verification of their records were carried out. They i.e. the audit had raised demands in view of the reconciliation of incomes. They had paid the differential amount of service tax. They have submitted the copy of the Final Audit Report No. 2112/2018-19 as an evidence in their support.
- They have stated that they have not contravened the provisions of Section 66B, Section 67 or 68 of the Finance Act, 1994.
- The SCN has failed to substantiate the intention to evade payment of tax at their end, therefore the extended period can not be invoked. Therefore, demand is time barred.
- They have stated that the allegation of suppression is not supported by proper evidences in SCN. No positive action has been shown by the department relating to intention to evade payment of taxes at their end. They have placed reliance on the apex court's decision in the case of M/s. Anand Nishikawa Co. Ltd. {2005(188) ELT 149(SC) } and in the case of M/. Uniworth Textiles Ltd. {2013}288) ELT 161(SC)}. They have also relied upon the decision of the Apex Court in the case of Continental Foundation Jt. Venture {2007(216)ELT 177(SC)} wherein it was held that "mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty". In the case of M/s. 2007(216)ELT 3(SC), the Apex Court had held that "in order to invoke the proviso to Section 11A(1) a mere misstatement could not be enough".
- They have stated that no interest and penalty is not payable when service tax is not payable. They have assessee their service tax liability properly hence not penalty is



imposable under section 77 of Finance Act, 1994. Similarly, there is no suppression of facts or willful mis-statement with an intention to evade payment of service tax, and therefore the penalty under section 78 can not be imposed upon them.

- Lastly, they have requested to drop the proceedings in view of their submissions.

PERSONAL HEARING:

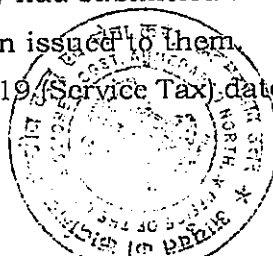
20. Personal Hearing was granted to the assessee on 06.01.2022. Shri Nitesh Jain, Chartered Accountant appeared on behalf of the noticee. He submitted written submission dated 06.01.2022 during the hearing. He put forth the arguments that they were providing services of road construction, canal construction etc., which were covered under the Mega Exemption. Hence, the service tax liability does not exist against them. He requested to drop the proceedings in the interest of justice.

DISCUSSION AND FINDINGS:

21. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply submitted on 06.01.2022, documents and oral submission made by the assessee during the personal hearing.

22. On going through the SCN, I find that basically the essence of the case is that data of Sales /Gross receipt from services/ Total Amount Paid/Credited under 194C, 194H, 194I, 194J" were shared by the CBDT for FY 2015-16. The difference in taxable value was worked out after comparing the income declared in ITR /Form 26AS vis-à-vis taxable value disclosed in ST-3 Returns. The difference of Rs. 56,63,32,921/- in value was observed for FY 2015-16, therefore, it appeared that the assessee had short paid the service tax of Rs. 8,21,18,274/- on such differential value, for providing the taxable service. Therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 8,21,18,274/- on the taxable value of value of Rs. Rs. 56,63,32,921/- for the Financial Year 2015-16 under proviso to section 73(1) of Finance Act, 1994 or not.

23. I find that the assessee in their aforementioned reply dated 06.01.2022, has stated that their major income is from Construction of Roads and Canal. The services provided by them in relation to construction of Road for general public and Canal were exempt from payment of service tax under Sr. No. 13(a), 12(d) read with Sr. 25(h) of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. Further, they have stated that they had paid service tax wherever, it was applicable. I also find that the assessee has contended that though they had informed the Concerned Range Superintendent vide their letter dated 21.10.2020 that their records had already been audited by the department and they had submitted the copy of the Final Audit report to the Range Office, the SCN has been issued to them. The Assessee has submitted the Final Audit Report No. 2112/2018-19 (Service Tax) dated 18.07.2019 in support of the arguments put forth by them.



24. In view of the submission made by the assessee, I find that the Final Audit Report issued by the department must be looked at. On perusing the Final Audit Report No. 2110/2018-19 (Service Tax) dated 18.07.2019, I find that the audit was conducted in May 2019 by the audit party of Circle VII, CGST, Audit, Ahmedabad, which had covered the period from April 2014 to June 2017. The Audit Report was issued by the Deputy Commissioner, Circle-VII, CGST Audit, Ahmedabad from F.No. CTA/04-209/Circle VII/AP-48/2018-19. I find the Revenue Para -2 is more relevant in the subject SCN, the said Revenue Para is reproduced hereinunder for ease of reference:

"Revenue Para-02: Service Tax paid on differential amount due to reconciliation of Income (VSR030):2014-15

During the course 2015-16 of audit, on reconciliation of Income as shown in their books of accounts vis-à-vis ST-3 returns for the audit period, the following differences has been noticed in the income for the audit period:

Period	Taxable Value as per books of accounts	Taxable value as per Returns	Difference in taxable value	Service tax to be paid
2014-15	22244639	22226065	18754	2296
2015-16	26402593	26375708	26885	3898
2016-17	515749656	515477074	272582	40887
Apr.17 to Jun.17	194328315	194334975	-6660	0
Total service Tax to be paid				47081

Therefore, service tax liability of Rs. 47081/- alongwith interest and penalty is liable to be recovered from them under Rule 6(1) of the Service Tax Rules 1994 read with Sections 68 and 73 of the Finance Act, 1994 alongwith interest and penalty under Section 75 & 78 of the Finance Act 1994. Therefore, the assessee was requested to pay the service tax alongwith interest and penalty immediately.

On being pointed out, the assessee agreed with the audit objection and paid the Service Tax Rs. 47081/- alongwith Interest Rs. 28325/- and Penalty Rs. 8475/- and also filed the DRC-03 vide debit entry no. DC2405190389195 date d29.05.2019.

..... (Para Settled)"

25. Therefore, it is apparent from the Final Audit Report that the reconciliation of Income booked/ shown in the books of accounts of the assessee, for the period April 2014 to June 2017 was carried out with Taxable value disclosed in their ST-3 Returns filed by the assessee. It is also seen that the assessee had already paid the service tax on the differential value of service as observed by the audit. It is also evident that the audit of records of assessee by the department had already been conducted before the issuance of the subject SCN. Despite of the above fact the SCN seeks demand of the service tax on differential value worked out by comparing the Income as per ITR/ Form 26AS vis-à-vis Taxable value disclosed in ST-3 Returns. I find that apart from the differences noticed in the figures reported in ST-3 returns and in ITR/Form 26AS, the department had not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment, non-payment of service tax. Having

considered these factual and documentary evidences available on records, and relying on the Final Audit Report, I find that there is no short payment on the part of the assessee. The SCN issued to the assessee after audit of the assessee is bad in law and is absolutely incorrect and is not justified. Thus, the subject SCN is liable to be dropped on merits being incorrect and legally not sustainable.

26. In view of the facts and circumstances pertaining to the case, the demand is not tenable in law. Accordingly, I do not consider it necessary to delve on the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise for imposing penalty.

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

ORDER

I drop the proceedings initiated against M/s. Sarjan Infracon Pvt. Ltd., 21, Sadhna Colony, Opp. Somlalit School, S.P. Stadium, Ahmedabad -380009, vide Show Cause Notice F.No. STC/15-115/OA/2020 dated 21.10.2020.

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

Date: .01.2022.

By Regd. Post AD./Hand Delivery
F. No. STC/15-115/OA/2020

To
M/s. Sarjan Infracon Pvt. Ltd.,
21, Sadhna Colony, Opp. Somlalit School,
S.P. Stadium, Ahmedabad -380009

Copy for information to:

- 1 The Principal Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
- 2 The Deputy/Assistant Commissioner, CGST & C.Ex., Division-VII, Ahmedabad North.
- 3 The Superintendent, Range-IV, Division-VII, Ahmedabad North.
- 4 The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- 5 Guard File.

