


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- aaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-70/OA/2021

DIN-20220264WT000000E196

आदेश की तारीख / Date of Order : 01.02.2022
जारी करने की तारीख / Date of Issue : 03.02. 2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 59 /2021-22

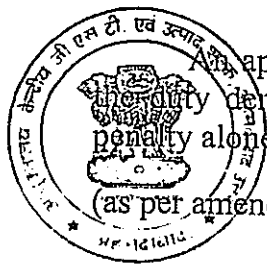
जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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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 ।



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

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

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

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

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

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

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

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

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

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

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

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

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

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

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice No. STC/15-70/OA/2020 dated 23.04.2021 issued to M/s. Jalaram Construction, 401,Vitthal Villa, Satadhar Char Rasta, Sola Road, Ahmedabad-380 060.

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

M/s. Jalaram Construction, 401, Vitthal Villa, Sola Road, Ghatlodia, Ahmedabad, Gujarat-380 061 , were issued SCN dated 23.04.2021 by the department for demand of Service Tax.

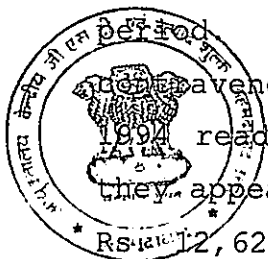
BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/s. JALARAM CONSTRUCTION,401, VITTHAL VILLA, SOLA ROAD, GHATLODIA, AHMEDABAD, GUJARAT 380 061 ARE AS FOLLOWS:

M/s. Jalaram Construction, 401, Vitthal Villa, Sola Road, Ghatlodia, Ahmedabad, Gujarat-380 061, (hereinafter referred to as 'Assessee') engaged in providing taxable services are holding Service Tax Registration No.ACRPP8529LSD001.

2. As per the records available with the Divisional Office of Division-VII, Ahmedabad North and on going through the Third Party Data received from CBDT, the Sales/Gross Receipt from Services (Value from ITR) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return for the F.Y. 2015-16 & 2016-17. It was observed that there was difference in Value of Services in ITR/TDS and Gross Value of Services provided in ST-3 returns to the tune of Rs. 87,06,01,572/-. It therefore appeared that the service provider had less/not discharged their service tax liability of Rs.12,62,47,470/- on the aforesaid differential amount of Rs.87,06,01,572/- for the F.Y. 2015-16 & 2016-17. The details are herein as under:

Sr. No.	F.Y.	Taxable Value as per ST3 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	868553117	868553117	125940202
2	2016-17	0	2048455	2048455	307268
	TOTAL	0	870601572	870601572	126247470

3. The assessee appeared to have not discharged their service tax liability on the actual value received towards taxable services provided by them, hence, there appeared to be short payment of Service Tax of Rs. 12,62,47,470/- during the material



Further, the service provider appeared to have availed the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994, inasmuch as they appeared to have failed to pay Service Tax to the extent of Rs.12,62,47,470/- as per their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services

provided/received by them; they also appeared to have contravened Section 70 of Finance Act 1994 inasmuch as they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

4. The assessee appeared to have short paid/not paid Service Tax of Rs. 12,62,47,470/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the said Act along with interest under Section 75 *ibid* not paid by them under Section 68 of the said Act read with Rule 6 of Service Tax Rules, 1994, inasmuch as the said service provider appeared to have suppressed the facts from the department and had contravened the provisions with intent to evade payment of service tax.

5. In terms of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, every person providing taxable service to any person is required to pay Service Tax at the rate specified in Section 66 in such manner and within such period as may be prescribed. In the present case, on the basis of Third party Data/information made available to the department by the CBDT for the F.Y. 2015-16 & 2016-17, the assessee appeared to have less discharged their service tax liability on the actual value received towards taxable services provided at the rate prescribed under Section 66 of the said Act. All these acts of contravention on the part of the service provider appeared to have been committed by way of suppression of the facts by not declaring/not considering the correct value of taxable services provided by them for payment of Service Tax to the Central Government for the period in question, with an intent to evade payment of Service Tax and therefore the service tax which was not paid at the material time was required to be demanded and recoverable under the proviso to Section 73(1) along with interest as per provision of Section 75 of the said Act.

6. All the above acts of contravention on the part of the assessee appeared to be punishable; and they appeared to be liable for penalty under Section 76 of the said Act. As per Section 76 of the said Act, the person liable to pay Service Tax shall himself assess the tax due on the services provided by him and shall furnish a prescribed return as per Rule 7 of the Service Tax Rules, 1994 and since they had failed to do so, they



appeared to be liable for penalty in terms of Section 77 of the said Act.

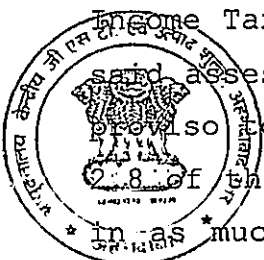
7. In addition to the contravention, omission and commission on part of the said assessee as stated in the foregoing paras, it appeared that the said assessee had willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of Service Tax rendering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

8. The provisions of omitted Chapter V of the Finance, Act, 1994 had been saved vide Section 174 (2) of the CGST Act, 2017, and therefore the provisions of the said repealed/amended Acts and Rules made thereunder were sought to be enforced for the purpose of demand of duty, interest, etc., and imposition of penalty under the Show Cause Notice.

9. Further, Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified as under :

'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 would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the notice are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI, 1982 (OIO) 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.'

10. From the facts and circumstances as narrated above, it appeared that no data for the F.Y. 2017-18 (up to June'2017) had been disclosed thereof by the Income Tax Department, nor the reason for the non-disclosure was made known to the department (CBIC). The said assessee had also failed to provide the required information to the Department. Therefore, the assessable value for the year F.Y. 2017-18 (up to June'2017) was not ascertainable at the time of issuance of Show Cause Notice. Consequently, 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 them under the provisions also 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 period F.Y. 2017-18 (up to June'2017) covered under this



Show Cause Notice, was to be recoverable from the said assessee accordingly.

11. Pre-SCN consultation opportunity was granted to the assessee on 22.04.2021, however neither the assessee nor anybody on behalf of the assessee appeared for the pre-SCN consultation.

12. Therefore, Show Cause Notice No.STC/15-70/OA/2021 dated 23.04.2021 was issued by the Commissioner, Central Excise & CGST, Ahmedabad North to M/s. Jalaram Construction, 401, Vitthal Villa, Sola Road, Ghatlodia, Ahmedabad-380 061, asking them as to why:

(i) The demand of Service Tax to the extent of Rs.12,62,47,470/- 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;

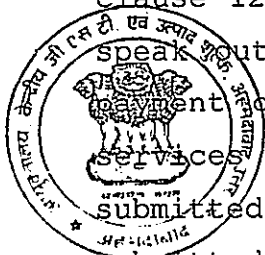
(iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

(iv) Penalty should not be imposed upon them under the provisions of Section 77(2) of the Finance Act, 1994.

13. DEFENCE REPLY:

The assessee vide letter dated 23.04.2021 submitted that they were providing services to government which were exempted by Mega Exemption Notification No.25/2012. The assessee also submitted that the proprietor of M/s. Jalaram Construction had been hospitalized due to COVID-19, so they would provide the required documents on a later date. Further, assessee vide letter 28.05.2021 submitted that though the assessee was granted pre-SCN consultation on 23.04.2021, however at that time he (proprietor) was suffering from COVID-19 and was hospitalized and he had requested for 10 days time to appear for pre-SCN consultation, however, the same was not considered and the subject SCN issued. The assessee has submitted that they were in field of construction work awarded by Government and clause 12,13 & 14 of Notification NO.25/2012 Service Tax clearly

stated that services provided qualified for exemption from payment of service tax. That they had paid service tax on all services rendered except on exempted services. They have also submitted the sample copy of work order. They have further submitted that their proprietorship firm had been converted into



partnership firm; that they had paid service tax for F.Y.2015-16 (up to 04.11.2015) and that there were no liability for payment of service tax in proprietorship firm. They have submitted that in ST3 returns for F.Y.2015-16, they have mentioned only taxable value of services on which service tax was payable by them and they have not mentioned value of exempted services in ST3 returns. It was on account of which the difference between the value of income tax return and service tax return had arisen. They have submitted that it was a mistake on the part of their accountant who had not mentioned value of exempted services in service tax return. They have submitted that F.Y.2016-17 pertains to their partnership firm or their private limited company (Jalaram Projects Private Limited). Some Government department had not changed PAN in their database, the same had not been mentioned in their Income Tax Returns and they had also received Income Tax Order which proved that they had shown correct income in income tax returns. They have submitted the copy of ITR and assessment order of income tax which shown that income reflecting in 26AS for F.Y.2016-17 did not pertain to their proprietorship firm. They have submitted that there was no difference in turnover in income tax return vis-à-vis the service tax return.

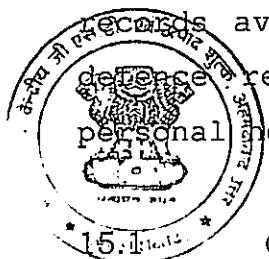
14. PERSONAL HEARING:

Personal hearing on the subject SCN was granted to the assessee on 16.12.2021. Shri Dhiraj Patel, C.A., appeared for personal hearing on behalf of the assessee. He reiterated the contention/arguments made in the written submission dated 28.05.2021. He also tendered a detailed written reply dated 16.12.2021 enclosing therein work orders, invoices etc. He requested to drop the proceeding, in view of the earlier decided case pertaining to the same noticee on the same issue.

DISCUSSION & FINDINGS:

15. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 28.05.2021 & 16.12.2021 submitted during personal hearing and documents submitted by the assessee.

On going through the SCN, I find that data of Sales/Gross receipt from services as per ITR was shared by the



CBDT with CBIC for FY 2015-16 & 2016-17, which was then compared with the gross value declared in ST-3 Returns filed by the assessee for FY 2015-16 & 2016-17. The difference in value of service to the extent of Rs.87,06,01,572/- was noticed and therefore, the subject SCN for recovery of Service Tax of Rs. 12,62,47,470/- was issued. Apart from the aforementioned difference noticed, no other concrete documentary tangible evidence was adduced by the department to substantiate the allegations. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the differential value of Rs. 87,06,01,572/- under proviso to section 73(1) of Finance Act, 1944 or not.

15.2 Thus, first and foremost it is important to understand the liability or otherwise of the noticee for paying Service Tax. I feel it necessary to understand the activities being carried out by the assessee. I observe that after introduction of new system of taxation of services in negative list regime, any services for a consideration is taxable except those services specified in the negative or exempt list by virtue of mega exemption notification.

15.3 I discern that the assessee in his defence reply dated 28.05.2021 has stated that they have rendered service of works contract services awarded by the Government and the same are Exempted vide Notification No.25/2012-ST dated 20.06.2012 vide Clause 12,13 & 14 and they were not liable to pay service tax on the said services. That they had also provided the taxable services under works contracts and service tax had been paid on that taxable service of works contract. In their defence they have submitted the copies of works order awarded to them.

15.4 I find that Jalaram Construction was proprietorship firm for the period 01.04.2015 to 04.11.2015, from 05.11.2015 to 31.12.2015 partnership firm and from 01.01.2016 the same had been converted into Private Limited Company. The assessee have submitted certificate of incorporation issued by the Government of India, Ministry of Corporate Affairs pertaining to M/s.

Jalaram Projects Private Limited (CIN:U45200GJ2016PTC085577)



15.5 The assessee has also submitted the Audit Report for the F.Y.2015-16 issued by Dhiraj Patel, Chartered Accountants, Membership No.137178 of MSDP & Co, F-2, Stadium House, Nr. Das Khaman, Stadium Circle, Navrangpura, Ahmedabad-380 009 under Section 44AB of the Income Tax Act,1961 for the period 01.04.2015 to 04.11.2015 & Manan Shah, Chartered Accountants, Membership No.138070 of MSDP & Co, F-2, Stadium House, Nr. Das Khaman, Stadium Circle, Navrangpura, Ahmedabad-380 009 under Section 44AB of the Income Tax Act,1961 for the period 05.11.2015 to 31.12.2015 Section 44AB of Income Tax, Act,1961 is reproduced below;

Section - 44AB, Income-tax Act, 1961-2021

Audit of accounts of certain persons carrying on business or profession.

44AB. ⁶Every person,—

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year ⁷[***]:

⁸[Provided that in the case of a person whose—

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment:

⁹[Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash,]

this clause shall have effect as if for the words "one crore rupees", the words "¹⁰[ten] crore rupees" had been substituted; or]

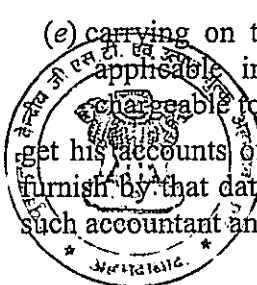
(b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or

(e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :



I find that in Form No.3CD in para 4 issued by the auditors, it has been established that the assessee are liable to pay Service Tax and they are holding Service Tax registration No.ACRPP8529LSD001. Para 10(a) of the said audit report states the nature of business or profession i.e. Contractors (Civil Contractors). Para 11 of the said audit report states that Cash Book, Sales Register, Purchase Register, Bank book Journal Register for the period 01.04.2015 to 04.11.2015 have been examined, to the best of their information and knowledge, that the said accounts, read with notes thereon financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed. I find that the assessee has submitted the copy of Audit Report under Section 44AB of the Income Tax Act,1961 for F.Y.2015-16 alongwith Profit & Loss Accounts including all Annexure.

I find that the aforementioned records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by assessee 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. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

15.6 I find that the Notification No. 25/2012-ST dated 20.06.2012 issued under Section 93(1) of the Act, grants exemption to the taxable services enlisted therein from whole of Service Tax leviable under section 66B of the Act. I find that the assessee has contested the demand of Service Tax on services rendered by them being service provided under the Works Contract. The noticee has claimed the exemption from levy of service tax under Sr. No.12, 13 & 14 of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. I therefore would like to reproduce the said Sr. No. 12,13 & 14 of Notification No.25/2012-St dated 20.06.2012 ibid hereinunder:

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

(a) ***

(b) 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) ***

(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) ***

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;

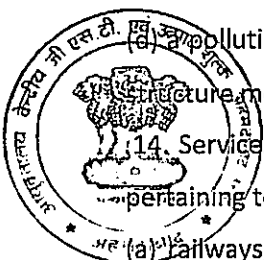
(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

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

(d) pollution control or effluent treatment plant, except located as a part of a factory; or (e) a structure meant for funeral, burial or cremation of deceased;

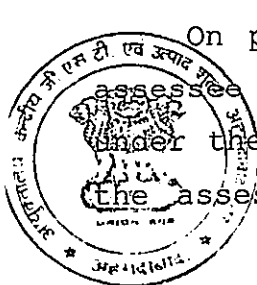
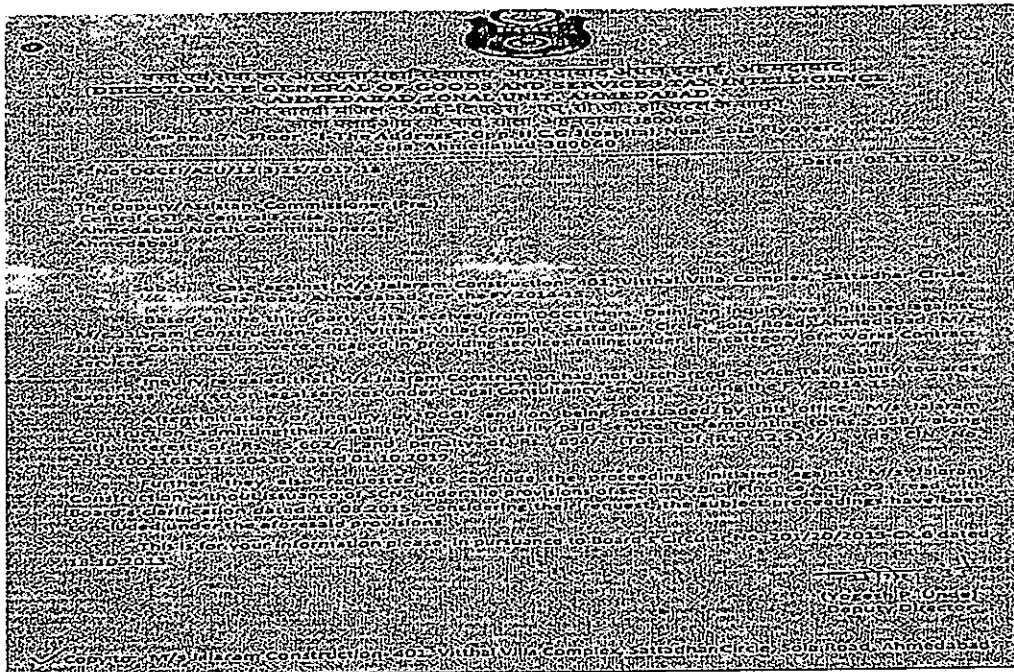
14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(a) railways, excluding monorail and metro; Explanation.-The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro;



- (b) a single residential unit otherwise than as a part of a residential complex;
- (c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
- (d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
- (e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

15.7 I also find that during personal hearing assessee has submitted the copy of closure report issued by the DGGI, Ahmedabad, in connection with inquiry initiated against the assessee by the Directorate General of Goods and Service Tax Intelligence, AZU, Ahmedabad for the F.Y. 2014-15 on the basis of the same set of third party data received by them from the DGCEI, Hqrs. Delhi. The subject proceedings have been concluded by the Directorate General of Goods and Service Tax Intelligence, AZU, Ahmedabad and the closure report has been issued by them vide F.No.DGCEI/AZU//12(3)25/2017-18 dated 08.11.2019 for F.Y.2014-15.



On perusal of the above letter it is established that the assessee were engaged in providing taxable services falling under the category of Works Contract Service and inquiry against the assessee had been concluded by the Directorate General of

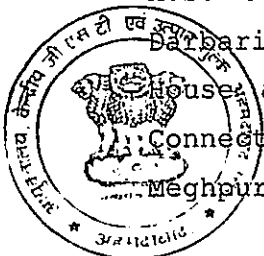
Goods and Services Tax Intelligence, Ahmedabad for the F.Y. 2014-15.

16. I find that the SCN shows the difference in value to the tune of Rs. 87,06,01,572/- for FY 2015-16 & 2016-17 when value of sales/gross receipt as per ITR are compared with gross value declared in ST-3 as mentioned in forgoing paras. Further para 4 of the SCN states that the levy of service tax for FY 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.

16.1 The assessee vide letter dated 16.12.2021 have submitted the relevant documents for the F.Y.2015-16, i.e. Copy of sales register, copy of work orders, copy of Running Account Bill in respect of Government Contracts.

16.2 I find that the assessee had been awarded work by the

- (i) Ahmedabad Municipal Corporation for Construction of single Duct from Aavkar Hall to Cozy hotel in AMC Area.
- (ii) Bharat Heavy Electricals Ltd., for Development of Open storage yard, Roads, Hard Surfacing by Murum, Fencing, Drainage, Construction of Concrete Platform, Approach Road of Office/Shed Complex, Including External Electrification of open storage yard areas at 1X800 mw Wanakbori, Dist.-Kheda Gujarat.
- (iii) Thara Nagar Palika for Design and Build Contract of Rising Main, Gravity Main, Distribution System, U/G Sump, Pump House, Compound Wall and electro mechanical works including twelve month O&M for Tharad.
- (iv) Gujarat Water Supply & Sewerage Board to Engineering Professional Co.Pvt.Ltd., for designing & constructing U/G Sump, Pump House & Providing, Supplying, Lowering, Laying & Jointing M.S. Connecting main Pipeline, Pumping Machinery At: Arantwa & Darbari Detal Head Works; designing & constructing U/G Sump, Pump House & Providing, Supplying, Lowering, Laying & Jointing M.S. Connecting main Pipeline, Pumping Machinery At: Kesargam & Meghpura Head Works.



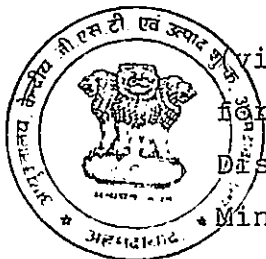
(v) Sardar Sarovar Narmada Nigam Ltd for Emergency restoration work of flood damage-2015 for vejpur Branch Canal; constructing Earthwork, Lining and Structures including Operation, Maintenance & Security of Bhoral Distributory and its Minors as well as Direct Minors of Takhatpura, Dhima, Pratappura & Mahadevpura off taking between ch. 4627 mt. to 11716 mt. from Dhima Branch Canal Ex. Ch. 440.06 km of Narmada Main Canal; Strengthening of Constructing Additional Escape structure including Manufacturing Supplying, Erection and Commissioning of Radial Gate with its hoist & stop log gates; constructing earthwork, C.C. Lining, Structures and Service Road of the distributory only including Operation, Maintenance and Security for Five years; constructing earthwork, lining, structures, service roads, gates, control cabins and laboratory including operation, maintenance and security for five year of dhima branch canal; flood damage to lining and silting work on Kharaghoda Branch ch.22830 to 26290 mtr.; flood damage to lining and silting work on Kharaghoda Branch ch.26280 to 29400 mtr.; flood damage to lining and silting work on Kharaghoda Branch ch.32550 to 34900 mtr.; flood damage to lining and silting work on Kharaghoda Branch ch.34950 to 38040 mtr.; constructing canal earth work, lining, structure & service roads for the distributaries and minors of Limbadi Branch canal including operation and maintenance for Five years for LD-4, LD-5 & MO-1; Strengthening of vulnerable high banking of NMC between ch. 220.907 to 458.318 KM; Strengthening of Strengthening vulnerable high banking of NMC between ch.0.00 to 144.500 KM; constructing additional H.R. (feeder) for Kothi Distry @ Ch. 3900 mt. on Narmada Mian Canal; Flood Damage repairs work of Padla Distry chainage 5.00 to 9.453 km off taking from Bolera Branch Canal; restoration of Flood Damage repairs work of Padla Distry chainage 0.00 to 5.00 km off taking from Bolera Branch Canal; Restoration of Flood Damage repairs work for Constructing of Earthwork, lining, structure of Kuvarad Minor - III (ch. 0.00 to 3.725 km) of Padla Distry Package; Emergency Restoration of Flood Damage repairs work for Constructing of Earth work, lining, structure of Ratanpur Minor - II; Emergency Restoration of Flood Damage repairs WORK for Constructing of Earthwork, lining, structure of



Padla Minor - IV; Emergency Restoration of Flood Damage repairs work for Constructing of Earthwork, lining, structure of Padla Minor - III; Emergency Restoration of Flood Damage repairs work for Constructing of Earthwork, lining, structure of Kuvarad Minor - II ; Emergency Restoration of Flood Damage repairs work of Kuvarad Minor - I; Emergency Restoration of Flood Damage repairs work for constructing of Padla Minor of Dhanora distry Package; restoration work of the damage occurred due to the heavy rain fall in last week of July -2015 at different location of NMC reach from Ch. 348.000 to 375.881 KM; Restoration work of the damage occurred due to the heavy rain fall in last week of July -2015 at different location of NMC reach from Ch. 406.162 to 458.318 KM; Constructing UGPL Sub Minor in the command area of Sardar Sarovar Project; flood damage to lining and silting work on Kharaghoda Branch ch.0 to 11700 mtr.; flood damage to lining and silting work on Kharaghoda Branch ch.11700 to 15150 mtr.; flood damage to lining and Earthwork work on Kharaghoda Branch ch.14327 to 14900 mtr and 15070 mtr.; flood damage to lining and Earthwork work on Kharaghoda Branch ch.15130; flood damage to lining and Earthwork work on Kharaghoda Branch ch.15150 to 17500 mtr.; flood damage to lining and Earthwork work on Kharaghoda Branch ch.17500 to 21000 mtr.; flood damage to lining and Earthwork work on Kharaghoda Branch ch.21000 to 22830 mtr.; Strengthening of vulnerable high banking of NMC between ch.220.907 to 458.318 KM; Restoration of Flood Damage repairs work for constructing Earthwork, Lining, Structures of Amarapura Branch Canal ch. 0.00 to 17.500 KM.

(vi) WESTERN RAILWAY for Earthwork in bank/cutting & blanketing for formation, Yards, trolley refugees & Bridge, RUBs, Side drains, Toe Walls, Retaining Walls, protection works etc. between Ambari to Alirajpur station from km 35/0 to 50/0 in connection with Construction of New Broad Gauge line between Chhotaudepur-Dhar.

(vii) Executive Engineer, Dharoi Head Works Divison No.1 for ERM works of Abasana Disributory, Ex Abasana Disributory, Jantral Disributory, Ex. Jantral Disributory & Minor of Abasana Disributory



(viii) Executive Engineer, Nadiad Irrigation Division, Nadiad for Modernisation to boriyavi dist. Part-1 and Part-2 and its system, uttarsanda Dist. and its system, Nadiad Dist. and its system and system of Nadiad branch Canal under A.I.B.P. Project.

(ix) Gujarat Industrial Development Corporation for the work of construction of RCC SWD at Dahej-III

(x) Original work awarded by NWRWS (Narmada Water Resources & Water Supply) & Kalpasar Department, Gujarat to Megha Engineering Infrastructure Ltd for construction of head regulator, Karannagar Dhadhusan pipeline project - of Narmada and Water Resources, Water Supply and Kalpasar Department, Gujarat. The same has been sub-contracted to the assessee.

(xi) Gujarat Water Infrastructure Limited for Constructing H.R (Left) at ch. 66120m including radial gate and stop log work on Saurashtra Branch Canal & Control cabin works with approach road for NC-26 Project.

(xii) Original work had been awarded to Krishna Construction Company by Sardar Sarovar Narmada Nigam Ltd., constructing for Earthwork, C.C. Lining, Structures and Service Road for Raphu sub branch and Raphu distry of Amarapur Branch Canal and their Operation, Maintenance for Five years; constructing Earthwork, C.C. Lining, Structures including Operation, Maintenance and Security for Five years to Rachhena distributory and its minors off taking from ch 14124m of Dhima Branch Canal. The same has been sub-contracted to the assessee by Krishna Construction Co.

(xiii) Original work had been awarded to Krishna Construction JV Jalaram Construction by Sardar Sarovar Narmada Nigam Limited for constructing Earthwork, Lining, Structures and Service Road, Gates, control cabins and laboratory including Operation, Maintenance for Five years of Dhima Branch Canal. The same has been sub-contracted to the assessee by Krishna Construction Co JV Jalaram Construction Co.



I find that work awarded at Sr. No. i, iii, iv, vii, ix, x & xi were for pipeline, conduit or plant for (i) water supply, (ii) water treatment or (iii) sewerage treatment or disposal and exempted vide sr.No.12 of mega exemption notification no.25/2012.

I find that work awarded at Sr.No.v,viii,xii & xiii were for canal, dam or other irrigation work and exempted vide sr.no.12 of mega exemption notification no.25/2012.

I find that work awarded at Sr.No.vi were for railways and exempted vide sr.no.14 of mega exemption notification no.25/2012.

I find that Ahmedabad Municipal Corporation and Thara Nagar Palika are "local authority" as defined in Section 65B(31) of the Finance Act,1994. I find that Sardar Sarovar Narmada Nigam Limited is undertaking wholly owned by the Government of Gujarat and covered under "Government Authority". GIDC is a corporation set up by an Act State Legislature of Government of Gujarat (i.e. Gujarat Industrial Development Act,1962), as per various provisions of the Gujarat Industrial Development Act,1962, the Government of Gujarat has full control over it. Therefore, I find that it is covered under "Government Authority",. I find that Gujarat Water Infrastructure Limited is registered company of Government of Gujarat, the same is covered under "Government Authority". The Gujarat Water Supply & Sewerage Board has been established by the Government of Gujarat through Gujarat Water Supply & Sewerage Board Act,1978, the same is covered under "Government Authority". Therefore, I find that assessee are eligible for Mega Exemption Notification No. 25/2012-ST as discussed herein above.

I find that assessee had worked as sub-contractor in respect of Sr. No. x, xii & xiii. I find that service provided by the sub-contractor by way of works contract is exempted from service tax under serial no.29 (h) of Mega Exemption Notification NO.25/2012-ST dated 20.06.2012, the same is

reproduce herein 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."



In the instant case principal contractor is providing exempt works contract service, the sub-contractor exempted from payment of service tax.

Keeping in view the aforementioned detailed discussions, I find that the works contract service provided by the assessee 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 canal, dam, irrigation works, pipe line, conduit or plant for (i) water supply (ii) water treatment or (iii) sewerage treatment or disposal; service provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road, bridge, tunnel or terminal of road transportation for use by general public; service provided by way of construction, erection, commissioning, or installation or original works pertaining to railways rendered by the assessee were squarely covered under the Sr. No. 12, 13 & 14 of the Notification No. 25/2012-ST dated 20.06.2012 and I find that the exemption is quite clearly available to the assessee as claimed by them. Since I am convinced with the arguments put forth by the assessee, I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN for F.Y.2015-16.

16.3 I find that work carried out by the assessee for the Bharat Heavy Electricals does not fall under exemption category of Notification NO.25/2012-ST dated 20.06.2012. The assessee however has paid the service tax of Rs.690779/- on taxable income which does not fall under the exemption category.

16.4 I find that assessee have provided the copies of ST3 return filed by them for the period 2015-16 & 2016-17. However, I find that in SCN total taxable value provided by the assessee in service tax return (ST3) had been shown as zero(0). The details shown in the SCN are as under.

(Amount in Rs.)

	Taxable value as per ST3 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.)
2015-16	0/-	86,85,53,117/-	86,85,53,117/-	12,59,40,202/-
2016-17	0/-	20,48,455/-	20,48,455/-	3,07,268/-

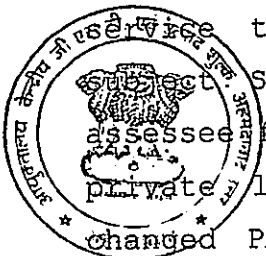


17. I find that, assessee had filed the ST3 returns for the period 2015-16 with taxable value of Rs. 51,53,939/- and 2016-17 with taxable value of Rs.NIL. While in Show Cause Notice, STR value had been shown as zero(0) for the F.Y.2015-16. It appears that the total gross value of Rs.51,53,939/- in the STR filed by the assessee was not considered in the data shared by the CBDT. It is apparent that the assessee had filed the ST3 returns for taxable value of Rs. 51,53,939/-, and had paid the due Service Tax other than on exempted service.

Since, the assessee had not provided any details/information/ documents for the F.Y.2017-18 (upto June,2017), I refrain myself from entering in to the said period to determine liability of assessee for service tax.

18. I find that the assessee has filed the ST3 returns for the F.Y.2015-16 & 2016-17 under the category of Works Contract Service and had availed the benefit of abatement Exemption Notification No.030/2012-ST, Sr.No.9. The assessee has paid the service tax on the taxable service provided to M/s. Bharat Heavy Electricals Ltd., which were not exempted vide Exemption Notification NO.25/2012-ST dated 20.06.2012 as discussed in aforesaid paras.

19 Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. Accordingly, it is my considered view that the assessee has established their case quite unambiguously that the difference in value of service as discerned by the department by comparing the value of services in ITR/TDS and gross value of services provided in ST-3 Returns is basically exempted was not shown in ST-3 Returns. I therefore hold that no tax is payable by the assessee as demanded in the SCN. I find that amount shown in Form 26AS of the assessee for F.Y.2016-17 pertaining to their partnership firm or private limited company, some Government Department had not changed PAN in their database regarding change of firms, the

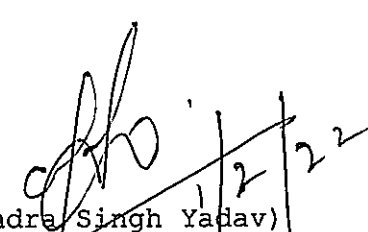


same had not been shown in the Income Tax return filed by the assessee for F.Y.2016-17, the Income Tax department had also accepted assessee's income tax return for F.Y.2016-17 and issued assessment order dated 11.07.2019 for F.Y.2016-17. I find that on going through the ITR and Assessment order of Income Tax, income reflected in 26AS for F.Y.2016-17 not pertaining to proprietorship firm.

20. 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 in 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 of imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

I drop the proceedings initiated against M/s. Jalaram Construction, 401, Vitthal Villa, Sola Road, Ghatlodia, Ahmedabad - 380061, vide Show Cause Notice F. No. STC/15-70/OA/2021 dated 23.04.2021.


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

By Regd. Post AD./Hand Delivery

F.No. STC/15-70/OA/2021

Date:

To,
M/s. Jalaram Construction,
401, Vitthal Villa,
Sola Road,
Ghatlodia,
Ahmedabad-380061.



The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
The Assistant Commissioner, CGST & C.Ex., Division-VII, Ahmedabad North.
The Superintendent, Range-III, Division-VII, Ahmedabad North.

4. The Superintendent (System), CGST, Ahmedabad North for uploading on website.
5. Guard File.