आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009

फ़ोन नंबर./ PHONE No.: 079-2754 4599 फैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-117/OA/2020

DIN-20220264WT00004984DF

आदेश की तारीख़ / Date of Order :16.02.2022

जारी करने की तारीख़ / Date of Issue : 17.02.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR– 66 /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 ।

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। 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 हैंचार प्रतियों में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से क) प्रतियाँ संलगन 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.

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/15-117/OA/2020 dated 21.10.2020 to M/s. N J DEVANI BUILDERS PVT LTD, B/H. ISHWAR BHUVAN, NAVRANGPURA, GUJARAT.

ORDER IN ORIGINAL NO. AHM-EXCUS-002-COMMR- 66 /2021-22.

M/s. N J DEVANI BUILDERS PVT LTD, B/H. ISHWAR BHUVAN, NAVRANGPURA, GUJARAT, were issued SCN No.STC/15-117/OA/2020 dated 21.10.2020 by the Principal Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S. N. J. DEVANI BUILDERS PVT. LTD., ARE AS FOLLOWS:

M/s. N. J. DEVANI BUILDERS PVT LTD, B/H. ISHWAR BHUVAN, NAVRANGPURA, GUJARAT (hereinafter referred to as the "Assessee" for the sake of brevity) are engaged in providing taxable serivces, and are holidng Servcie Tax Registration No. AAACN4952DST001.

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. N. J. Devani Builders 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 & Customs (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 vis-à-vis as declared in ST-3 Return for the F.Y.2015-16. Therefore, it appeared that the said assessee had declared less 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 F.Y. 2015-16 was found to be as under:

(Amount in Rs.)

Sr No	F. Y.	Total Sale of Service as per ITR	TOTAL GROSS VALUE PROVIDED (STR)	TOTAL VALUE for TDS (including 194C, 194Ia, 194Ib, 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	358629252/-	158378293/-	323023541.94/-	200250959/-	29036389/-

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs.2,90,36,389/- (including Cess) on the differential value of Rs.20,02,50,959/-.

4. The assessee were requested to provide explanation to department vide letter dated 07.10.2020 for difference in value shown in ST-3 Returns vis-à-vis that shown in Income Tax return filed for FY 2015-16. It was also requested to furnish the documents viz. Balance Sheet, Profit & Loss account, Income Tax Retruns, Form 26AS, Service Income and Service Tax Ledger and Service Tax (ST3) Returns for FY 2015-16. But, the assessee neither produced any documentary evidences nor submitted any reply in the matter.

5. As the assessee had not submitted the required details of services provided during the Financial Year 2015-16, the service tax liability of the service tax assessee had been ascertained on the basis of income mentioned in the Income Tax returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department was considered as the total taxable value in order to ascertain the Service tax liability under Section 67 of the Finance Act, 1994.

6. 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 as to why he should not pay the amount specified in the notice.

7. 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 assessee shall submit their Service Tax returns in the form ST-3 within the prescribed time.

8. 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. 2,90,36,389/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 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. 2,90,36,389/- (including Cess) worked out on value of Rs. 20,02,50,959/- 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.

9. 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 had not paid service tax as worked out in the Table for Financial Year 2015-16; (iv) by these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 made themselves punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (vi) 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) contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

10. 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. 2,90,36,389/-. 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.

11. 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 (at 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.2,90,36,389/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the Finance Act,1994 along with interest under Section 75 ibid not paid 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.

12. No data was shared by the CBDT with CBIC, for the period 2016-17 & 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 2016-17 & 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. (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.'

13. The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2016-17& 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 from the Department and the assessable value for the year 2016-17 & 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 period 2016-17 & 2017-18 (upto June-2017) covered under subject Show Cause Notice, was to be recovered from the assessee.

14. 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 said amount of Service Tax amounting to Rs. 2,90,36,389/- (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.

15. 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.

16. 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 rendering them liable for penalty under Section 78 of the Finance Act,1994.

17. The proceedings proposed and action that may be taken against the said noticee, under the aforementioned provisions of the Central Excise Act, 1994 and the Central Excise Rules, 2002 or the Finance Act 1994 read with the Service Tax Rules, 1994 framed there under, were saved by the Section 174(2) of the CGST Act, 2017 and therefore the provisions of the Chapter V of the Finance Act, 1994 and the Rules made thereunder were applicable for the purpose of demand of Tax, Interest etc. and imposition of penalty under the subject SCN.

18. Therefore, Show Cause Notice F. No. STC/15-117/OA/2020 dated 21.10.2020 was issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North to M/s. N.J. Devani Builders Pvt. Ltd., asking them as to why:

(i) The Service Tax to the extent of Rs. 2,90,36,389/- (Rupees Two Crore Ninety lakh Thirty Six Thousand Three Hundred Eighty Nine Only) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;

(ii) Service Tax liability not paid during the financial year 2016-17 and 2017-18 (upto June-2017), ascertained in future, as per paras no. 7 and 8 of the SCN, 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 the provisions of Section 75 of the Finance Act, 1994;

(iv) Penalty under the provisions of Section 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.

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

19. DEFENCE REPLY:

The assessee vide letter dated 27.10.2020 tendered their written submission. They have submitted that they had not received Annexure-A of the subject SCN. They have submitted that value of total sale of service was Rs.35,86,29,252/- and TDS on value of 32,30,23,541.94 were correct. They have submitted thay they were providing Works Contract Service, and taxable value of Works Contract Servcie was arrived at as per Rule2A of Service Tax (Determinatio of value) Rules, 2006 (Notification NO.12/2006-Serivce Tax, dated 14.04.2006), that they had carried out original works and Rule 2A(ii)A was applicable to them, that the taxable value as per Rule was 40% of the Gross amount of works contract service provided by them. They have submitted that taxable value for the gross sale of sevice was Rs.35,86,29,252/- and @ 40% it comes to Rs.14,34,51,700/-. They have submitted that taxable value adopted by them was Rs.15,83,78,293/-, which was more than 40% of taxable value as mentioned above due to some additions or minor accounts. They have submitted that the service tax paid by them was correct, and they requested to withdraw the instant SCN.

They have further submitted that their accounts for F.Y.2015-16 had been audited by the Service Tax Audit party, which was deputed by the Assistant Commissioner (Audit), Service Tax, Cir-IV, Audit-II, Ahmedabad. They have also received intimation from the Superintendent, AP-38, Circle-VI, CGST Audit, Ahmedabad for auditing accounts for the year 2016-17 and 2017-18 (up to June, 2017).

The assessee, further, vide letter dated 01.12.2021 submitted that they were engaged in the business of providing Works Contract Service, that the Works Contract Service are

composite service consisting of (1) Materials used and (2) Labour and Services Provided. That the material portion of the Works Contract was taxed by Sales Tax or VAT, and the service portion was taxed under Service Tax. They have submitted that the difficult part in the taxation of service portion of the works contract service was the valuation of service part of the works contract and therefore special Rule 2A of Determination of value rules 2006 Notification No.12/2006, Service Tax dated 19-04-2006 was applicable, which reads as under;

> Rule 2A (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 transferred in the execution of the said works contract.
>
> Rule 2A(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:
>
> 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.

They have submitted that they had carried out original works only, therefore, the tax was payable on 40% of the total amount charged for the works contract. That the total sale of service as per ITR was Rs.35,86,29,252/-, and Service tax payable on 40% on this amount comes to Rs.35,86,29,252 X 0.40 = Rs.14,34,51,700/-, as against which they had paid service tax of Rs.14,30,45,622/-. They have submitted that the minor difference between this two was due to some additions and deductions as per Rules. They have submitted that taxable value of Rs.15,83,78,293/- shown in table of para 3 of the show cause notice had wrongly included an amount of Rs.1,53,32,672/- (the works contract value of Bungalows and SEZ), that by deducting amount of Rs.1,53,32,672/- from Rs.15,83,78,293/- it comes to Rs.14,30,45,621/-.

They have further submitted that their accounts for the year 2015-16 were audited by the audit party deputed by the Assistant Commissioner (Audit), Service Tax, Cir-IV, Audit II, Ahmedabad and the audit could not have missed this huge difference of 20,02,50,959/-. They have submitted that the show cause notice was based on premise that works contract receipt which includes payment for goods was the taxable value, that this premise was wrong as the taxable value was to be arrived at as per Determination of valuation rules i.e. 40% of works contract service. They have submitted detailed explanation as to how amount shown in their Service Tax returns was arrived at, they have submitted two bills/invoices issued in the months of April; (i) contract receipt receipt of Rs.1,28,15,209/- to which Rule 2A(i) was to be applied and therefore taxable value was Rs.1,28,15,209 - cost of materials (Rs.12,84,308/-) =Rs.1, 15,30,901/-. (ii) for Rs.1,79,87,692/- to which Rule 2A(ii)A was to be applied and therefore taxable amount was 1,79,87,692 X 0.4 = Rs.71,95,077/-, thus net taxable value for the month= (i)+(ii) =71,95,077+1,15,30,901 = 1,87,25,978/-. These calculations were also shown on invoices issued by them. They have submitted the copies of Invoices for the months of April, May and June-2015. They have submitted the statement showing details of Bill Amount, Adhoc amount of advance if any on which ST was paid earlier, Net Bill amount, Abatement of 60% as per Rule 2A (ii)A, Abatement for materials used as per Rule 2A (i), Less Exempt bills for Bungalows, Less Exempt bills for SEZ, Net Taxable Amount, Rate of Service Tax payable, Service tax payable, Education Cess, SHEC Cess and Total Service Tax payable for the year 2015-16 and according to statement Total Taxable Value for the 1st half was Rs.8,87,89,066/-, for the 2nd half was Rs.5,42,56,556/-, totalling to Rs.14,30,45,622/-. They have submitted that the show cause notice shows Rs.15,83,78,293/-, as

the sum of Rs.1,53,32,672/- the works contract values of Bungalows and SEZ had been added. They have submitted that the reconciliation statement are explanining the difference between the total sales of Rs.35,86,29,252/- and Rs.34,77,92,532/-.

They have submitted that it was not correct to say that the department had not got all the documents to ascertain the service tax liability of the assessee. That the department did not have the knowledge and understanding required for valuation of works contract service in which the service consists of two parts (1) supply of material (2) provision of service and the values of the two were required to be segregated. On the value of materials sales tax/VAT was payable by them while on the value of service portion service tax was payable.

They have submitted that for the sake of simplicity the Determination of value Rules 2006 provides for valuation of service portion of the works contract, which is 40% of the Gross Value of Works contract, and Income tax was payable on the gross value of works contract while service tax was payable on 40% of the gross value of works contract. They have submitted that their service tax audit was completed for the year 2016-17 upto June 2017, by audit party deputed by the Assistant Commissioner (Audit) Service Tax, Circle-VI, Audit-II, Ahmedabad, 8th floor, GNFC Tower, SG Road, Pakvan Char Rasta, Ahmedabad-380054. They have submitted that in order to arrive at the taxable value provided in ST-3 returns, required data was bills/invoices, that the same were never asked for, that there was no evidence on record that the assessee had not taken into account all the income received by them for rendering taxable service for the purpose of payment of service tax and no tax liability was evaded.

They have submitted that Value of taxable service was correctly provided in returns and there was no suppression of

value of taxable service from the department. That they had paid the service tax correctly. They have submitted that thier accounts were audited by service tax audit and the same were found to be correct, and there was no basis for allegations in para 9 of SCN. The assessee have submitted that they had correctly assessed and paid the service tax due on the taxable service i.e. Works Contract Service provided by them, that they had maintained records and furnished returns in such forms i.e. ST-3 returns and in such manner and frequency as required under section 70 of Finance Act 1994, read with Rule 6 & 7 of Service Tax Rules,1994, that they had determined the correct value of taxable service provided under Determination of valuation Rules 2006, Notification No.12/2006, Service Tax Dated 19-4-2006 and Determination of value of service portion in execution of works contract Rule 2A. They had paid the service tax correctly at the appropriate rate within the prescribed time in the manner and at the rate provided under the provision of section 66B and section 68 of the Finance Act 1994 and Rules 2&6 of the Service Tax Rules 1994, table provided in para 3 of SCN does not take account of Determination of valuation Rules 2006 and therefore the same is liable to be quashed.

They have submitted that there was no Contravention committed by them and there was no question of suppression of any fact, there was no evasion of service tax. That the service tax demanded in para 3 of SCN was due to non-application of Determination of value Rules 2006 as applicable to the works contract service provided by them; and was wrongly arrived at and liable to be quashed. They have submitted that there was no question of demand and recovery under section 73(1) of Finance Act 1994, that there was no ground for invoking extended period of five years when their accounts are already audited by service tax audit and the same were found to be correct. They have

submitted that no contravention of the provisions of section 68 and 70 of the Finance Act 1994 read with rule 6 and 7 of Service Tax Rules 1994 had been done by them and there was no ground to invoke provisions of section 78 of the Finance Act 1994 as amended from time to time and there was no liability for service tax and question of payment of interest does not arise. That there was no short payment of service tax, that payment of service tax made was correct and as per rules and their records were auited by service tax audit and the same were found to be correct and no para pertaining to subject dispute was raised by audit team.

20. PERSONAL HEARING:

Personal Hearing on the subject matter was granted to the assessee on 27.01.2022. Shri N.J. Devani and Shri Kishor Patel appeared for the personal hearing. They submitted that they were provding works contract service and were also reicipient of GTA services. They requested to drop the proceeding in view of the written submission and the submission made at the time of personal hearing.

DUSCUSSION & 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 replies submitted by the noticees, and the additional documents submitted by the assessee.

21.1 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, which was then compared with the gross value declared in ST-3 Returns filed by the assessee for FY 2015-16 . The difference in value of service to the extent of Rs.20,02,50,959/- was noticed and therefore, the subject SCN for

recovery of Service Tax of Rs. 2,90,36,389/- 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. 20,02,50,959/- under proviso to section 73(1) of Finance Act, 1944 or not.

21.2 Thus, first and foremost it is important to understand the liability or otherwise of the noticee for paying Service Tax. I feel for understanding the same it is 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.

21.3. I discern that the assessee in his defence reply dated 01.12.2021 has stated that they have rendered service of works contract services and they have paid the due service tax, except services provided to SEZ and Bunglows. 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 sample copies of invoices for the month of April,2015, May-2015 & June2015 issued by them.

21.4. I find that the assessee are holding Service Tax Registarion No.AAACN4952DSD001, and they had filed ST3 returns for the year 2015-16 & 2016-17, under the category of works contract service and paid the Service Tax thereon. Further, they had also paid the service tax under RCM for the service received

by them for Transport of goods by road/goods transport agency service, security/detective agency service and Legal Consultancy service.

21.5 I find that Works Contract Service is a declared service as per Section 66E(h) of the Finance Act,1994, which reads as under:

> SECTION 66E: Declared services. —
>
> The following shall constitute declared services, namely:—
>
> (a).....
>
> (b).....
>
> .....
>
> (h) service portion in the execution of a works contract;

21.6. I find that the assessee had also claimed the exemption from service tax for the works contract service provided to SEZ. I find that the Service provided to SEZ unit/SEZ developers are exempted vide Notification No.12/2013-Service Tax dated 1st July, 2013, which is reproduce as under;

> **Notification No. 12 / 2013-Service Tax**
>
> New Delhi, the 1st July, 2013
>
> G.S.R.....(E).-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) read with sub-section 3 of section 95 of Finance (No.2), Act, 2004 (23 of 2004) and sub-section 3 of section 140 of the Finance Act, 2007 (22 of 2007) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 40/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 482 (E), dated the 20th June, 2012, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ Unit) or Developer of SEZ (hereinafter referred to as the Developer) and used for the authorised operation from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon.
>
> 2. The exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations:
>
> *Provided* that where the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax *ab initio,* subject to the conditions and procedure as stated below.

3. This exemption shall be given effect to in the following manner:

(I) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.

(II) The *ab-initio* exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely:-

(a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I);

(b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;

(c) the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;

(d) the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax;

(e) the SEZ Unit or the Developer shall furnish an undertaking, in Form A-1, that in case the specified services on which exemption has been claimed are not exclusively used for authorised operation or were found not to have been used exclusively for authorised operation, it shall pay to the government an amount that is claimed by way of exemption from service tax and cesses along with interest as applicable on delayed payment of service tax under the provisions of the said Act read with the rules made thereunder.

(III) The refund of service tax on (i) the specified services that are not exclusively used for authorised operation, or (ii) the specified services on which *ab-initio* exemption is admissible but not claimed, shall be allowed subject to the following procedure and conditions, namely:-

(a) the service tax paid on the specified services that are common to the authorised operation in an SEZ and the operation in domestic tariff area [DTA unit(s)] shall be distributed amongst the SEZ Unit or the Developer and the DTA unit (s) in the manner as prescribed in rule 7 of the Cenvat Credit Rules. For the purpose of distribution, the turnover of the SEZ Unit or the Developer shall be taken as the turnover of authorised operation during the relevant period.

(b) the SEZ Unit or the Developer shall be entitled to refund of the service tax paid on (i) the specified services on which *ab-initio* exemption is admissible but not claimed, and (ii) the amount distributed to it in terms of clause (a).

(c) the SEZ Unit or Developer who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Act or the rules made thereunder, shall file the claim for refund to the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, the as the case may be, in Form A-4;

(d) the amount indicated in the invoice, bill or, as the case may be, challan, on the basis of which this refund is being claimed, including the service tax payable thereon shall have been paid to the person liable to pay the service tax thereon, or as the case may be, the amount of service tax payable under reverse charge shall have been paid under the provisions of the said Act;

(e) the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;

(f) the SEZ Unit or the Developer shall submit only one claim of refund under this notification for every quarter:

Explanation.- For the purposes of this notification "quarter" means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.

(g) the SEZ Unit or the Developer who is not so registered under the provisions referred to in clause (c), shall, before filing a claim for refund under this notification, make an application for registration under rule 4 of the Service Tax Rules, 1994.

(h) if there are more than one SEZ Unit registered under a common service tax registration, a common refund may be filed at the option of the assessee.

(IV) The SEZ Unit or Developer, who intends to avail exemption or refund under this notification, shall maintain proper account of receipt and use of the specified services, on which exemption or refund is claimed, for authorised operations in the SEZ.

4. Where any sum of service tax paid on specified services is erroneously refunded for any reason whatsoever, such service tax refunded shall be recoverable under the provisions of the said Act and the rules made there under, as if it is recovery of service tax erroneously refunded;

5. Notwithstanding anything contained in this notification, SEZ Unit or the Developer shall have the option not to avail of this exemption and instead take CENVAT credit on the specified services in accordance with the CENVAT Credit Rules, 2004.

6. Words and expressions used in this notification and defined in the Special Economic Zones Act, 2005 (28 of 2005) or the rules made thereunder, or the said Act, or the rules made there under shall apply, so far as may be, in relation to refund of service tax under this notification as they apply in relation to a SEZ.

7. This notification shall come into force on the date of its publication in the Gazette of India.

I find that the assessee had provided the copy of Form A-2 i.e. Authorisation for procurement of sevices by a SEZ Unit for authorized operations under Notification No.12/2013-ST dated 1st July,2013 as amended for availing the benefit of exemption notification No.12/2013 dated 1st July,2013, issued by the Jurisdicational Duputy Commissioner of Central Excise, hence, the assessee are eleigible for not paying the Service Tax on service provided by them. The copy of said certificate is here by placed below for ease of reference;

FORM A-2
[Refer condition at S. No. 3(II) (b)]

AUTHORISATION FOR PROCUREMENT OF SERVICES BY A SEZ UNIT / DEVELOPER FOR AUTHORISED OPERATIONS UNDER NOTIFICATION No. 12/2013-Service Tax DATED 1st July 2013 AND AS AMENDED BY NOTIFICATION No. 07/2014 -Service Tax DATED 11.07.2014

A: Details of SEZ Unit / Developer

1	Name of the SEZ Unit/Developer	:	Reliance Industries Limited
2	Address of the SEZ Unit/ Developer with Telephone and Email	:	Unit of Reliance Jamnagar SEZ Village: Meghpar / Padana, Taluka: Lalpur, Dist.: Jamnagar Ph.: 0288 4010000
3	Permanent Account Number (PAN) of the SEZ Unit/ Developer	:	AAACR5055K
4	Import and Export Code Number	:	3880066415
5	Jurisdictional Central Excise/ Service Tax Division	:	Dy. Commissioner of Central Excise, GLT-3, Large Tax Payers Unit, 28th Floor, World Trade Centre-1, Cuffe Parade, Mumbai - 400 005
6	Service Tax Registration Number/ Service Tax Code	:	AAACR5055KSD062

B. The details of specified services that the SEZ Unit / Developer is authorised to procure in terms of declaration furnished by the SEZ Unit / Developer

Sl. No.	Specified Service(s) to be received for the authorised operations	Details of Service provider who provides the specified services for SEZ authorised Operations	
		Name and address	Service Tax Registration No. (Not applicable if specified service is covered under full reverse charge)
(1)	(2)	(3)	(4)
1	Works Contract Service	N.J.DEVANI BUILDERS PRIVATE LIMITED BEHIND ISHWAR BHUVAN NAVRANGPURA AHMEDABAD AHMEDABAD - 380 009 GUJARAT	AAACN4852DST001
2	Construction Services Other than Residential complex, including Commercial/Industrial Building or Civil Structure		

This authorisation is issued on the basis of the declaration made by SEZ Unit in the Form A-1 and duly verified by the specified officer of the SEZ Unit

No 1075 /2014

C: The Authorisation is valid with effect from

F.No.LT/MUM/CX/GLT-3/RIL/Notf.12/2013/128/2013

Phone No.:- 022-22167206
Fax No. :- 022-22175438

(Signature, date and Stamp of the Jurisdictional Deputy Commissioner of Central Excise)

21.7. I find that the assessee has also claimed that they had provided the services of works contract service for construction of bunglows. Bunglow being "a single residential unit otherwise than as a part of a residential complex", was exempt by virtue of Notification NO.25/2012-ST vide Sr.No. 14(b). I find that service provided for construction of bunglows are exempted vide Notification No.25/2012-ST dated 20.06.2012, Sr.No.14(b), the same is reproduced below;

> 14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-
>
> "(a) .....
>
> (b) a single residential unit otherwise than as a part of a residential complex;"

I find that the assessee had provided Annexure-C i.e. details of Service Tax (Works Contract Service) for the period 01.04.2015 to 31.03.2016, shows that the assessee had provided works contract service for individual bunglow and assessee are eligible for availing the benefit of exemption notification no.25/2012-ST, Sr.No.14(b).

21.8 I find that works contract service is a composite service consisting of material used and labour/service provided to the client. The valuation to determine the liability of service tax due on works contract service for value of service portion in the execution of a works contract to be carried out as per Rule 2A(ii) of the Service Tax (Determination of Value) Rules,2006.The said rules herein are as under;

> "2A. **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) .....
>
> (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;

21.9 I find that and assessee had filed ST3 returns for the F.Y.2015-16, and paid the due service tax thereon for providing Works Contract Service for F.Y.2015-16(except exempted service). The details of the same herein are as under:

2015-16					
	Works Contract Service				
	Gross Amount	Exempted service	Net Taxable value	S.Tax. Payable for works contract service	Total S. Tax paid by the assessee (including RCM/partial RCM)
April to September	96412670	7623604	88789066	11655162	12055944
October to march	61965623	7709068	54256555	7611950	8037400
TOTAL	158378293	15332672	143045621	19267112	20093344

I find that the figure of sale of service of Rs.35,86,29,252/- shown in the subject SCN is found to be tallying with P&L Account for F.Y.2015-16. I find from the Thirty Fourth Annual Report of Finanical Year 2015-16, in Notes 2.07 (Revenue recognition), notes forming part of the financial statements, it had been stated that Contract receipts are

accounted on the basis of work completed, certified and paid including retention money and service tax. Therefore, Sevice Tax of Rs.1,92,67,112/- paid for F.Y.2015-15 by the assessee needs to be deducted from the value of sale of service reported in ITR/P&L accounts. Accordinlgy, calculation for service tax are as under:

F.Y.	Value declared in ITR/P&L	Less- service tax paid by the assessee	Gross Taxable value	Abatement 60%	Net Taxable value on service tax to be paid by assessee	Net taxable value as per ST3
A	b	C	d(b-c)	e	f(d-e)	
15-16	358629252	19267112	339362140	203617284	135744856	143045621

From the above table, I find that the assessee had paid Service Tax on taxable value of Rs.143045621/-. Which is more than the taxable value calculated Rs.135744856/- as above. Therefore, there was no short payment of Service Tax for F.Y.2015-16.

The assessee submitted that taxable value of Rs.15,83,78,293/- shown in table of para 3 of the show cause notice was including an amount of Rs.1,53,32,672/- , the works contrace service provided to SEZ and Bugnlows, that by deducting amount of Rs.1,53,32,672/- from Rs.15,83,78,293/-, taxable value comes to Rs.14,30,45,621/- on which they were required to pay service tax.

21.10 Further, I find that the assessee had also filed the ST3 returns for the period 2016-17 and paid the service tax due thereon. The details of the said ST3 returns are as under:

2016-17					
	Gross Amount	Exempted service	Net Taxable value	S.Tax. Payable for works contract service	S. Tax paid by the assessee (including RCM/partial RCM)
April to September	39964269	1000000	38964269	5721664	5922225
October to march	92572067	0	92572067	13885811	14379228
TOTAL	132536336	1000000	131536336	19607475	20301453

21.11 Keeping in view the aforementioned detailed discussions, I find that the assessee had provided works contract service and paid the Service Tax thereon, except service provided to SEZ and individual Bunglow. 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 was payable by the assessee as demanded in the subject SCN for F.Y.2015-16 and 2016-2017.

22. I also find that the assessee has contended that though they had informed the Concerned Range Superintendent vide their letter dated 13.10.2020 that their records for the period 2015-16 had already been audited by the Serivce Tax Audit, Cir-VI, Audit-II, Ahmedabad, the SCN had been issued to them. They also submitted that for the period 2016-17 and 2017-18 (upto June,2017), they have received intimation letter from the Superintendent, AP-38, Circle-VI, CGST, Audit, Ahmedabad for conducting audit. The assessee has submitted the copy of APRN No.696/2016-17, under which the period of 2015-16 was covered and audit was undertaken on 15.12.2016, 02.01.2017 and 08.01.2017, they also submitted the copy of Final Audit Report No. CE/ST-209/2021-22 dated 02.11.2021 issued from F.No.VI/1(b)-416/IA/AP-38/C-VI/20-21 by the Assistant Commissioner, Circle-VI,CGST, Audit, Ahmedabad for the period April,2016 to June,2017, audit was undertaken on 20.09.2021 and 29.09.2021. The assessee has submitted the copy of Final Audit Report No. CE/ST-209/2021-22 dated 02.11.2021 in suppprt of the augeumets put forth by them.

23. 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. CE/ST-209/2021-22 dated 02.11.2021, I find that the audit was conducted in September,2021 by the audit party of Circle VI, CGST, Audit, Ahmedabad, which had covered the period from April 2016 to June 2017. The Audit Report was issued by the Assistant Commissioner, Circle-VI, CGST Audit, Ahmedabad from F.No. VI/1(b)-416/IA/AP-38/C-VI/20-21 dated 02.11.2021.

I find the Revenue Para -1 is more relevant in the subject SCN, the said Revenue Para of Audit Report APRN No.696/2016-17 and CE/ST-209/2021-22 dated 02.11.2021 are reproduced hereinunder for ease of reference:

- Audit Report APRN No.696/2016-17 for 2015-16:

"Revenue Para-1: Wrong availment of common Cevant Credit.

During the course of auit, it was revealed the assessee had availed common CENVAT credit for exempted as well as taxable services. They have availed credit amounting to Rs.2978 for the F.Y.2015-16, and not maintained any separate accounts of cenvat credit for exempted and taxable services. Cevnat credit rule 6 of Cenvat credit rules 2004 have provided provisions "obligation of manufactures of dutiable/exempted goods and provider of taxable of exempted services".

It was observed during audit that all the Cenvat credit availed/utilized during the F.Y.2012-13 and 2014-15 is attributable to exempted service/common credit. Thus, the credit wrongly availed by the assesse has to be reversed/recovered from them. So, the assessee is required to pay an amount determined as per Rule 6(3) read with Section 73 of the Finance Act (Service Tax),1994 along with interest and penalty thereon,. Details of the Cenvat Credit availed by the assessee are as under:

Year	*Service Tax*	*Interest*	*Penalty*	*Total*
2015-16	*2978*	*804*	*447*	*4229*

On pointing out wrong availment of CENVAT credit to the tune of Rs.2978/- the assessee had agreed to Pay Service Tax of Rs.2978/- alongwith applicable interest of Rs.804/- and penalty of Rs.447/- (Total 4229/-).

A letter of agreement dated 24.02.2017 has been submitted by the assessee in lieu of the said revenue para

Service Tax Rs.2978/-

Interest Rs.804/-
Penalty Rs.447/-
Total Rs.4229/-

1	*Amount Invovled*	*ST.2978/-+Int.804/-+penalty Rs.447/-, Total Rs.4229/-*
2	*Assess's contention*	*Agreed and paid*
3	*MCM decision*	*Para approved and settled*

- Audit Report NO.CE/ST-209/2021-22 for April,2016 to June,2017:

"Revenue Para-01: Wrong availment of Cevant Credit on input services used in exempted services (SSR05)

During the course of verification of financial records of the assessee, who are engaged inproviding works contract service, it has been observed that under work contract service, the assessee has provided taxable service as well as exempted serive. The assessee had availed common CENVAT credit on the input services used for exempted as well as taxable services. They have availed Common credit amounting to Rs.70,330/- during the period 2016-17 to 2017-18 (up to jun), and not maintained seprate accounts of cenvat credit for exempted and taxable services. Cenvat creit rule 6 of Cenvat Credit rules 2004 have provided provisions "obligation of manufactures of dutiable/exempted goods and provider of taxable of exempted services".

It was observed during audit that all the Cenvat credit availed/utilized during the F.Y.2016-17 & 2017-18 (up to June) is attributable to exempted service/common credit. Thus, the credit wrongly availed by the assesse has to be reversed/recovered from them. So, the assessee is required to pay an amount determined as per Rule 6(3) read with Section 73 of the Finance Act (Service Tax),1994 along with interest and penalty thereon,. Details of the Cenvat Credit availed by the assessee are as under:

Year	*Service Tax*	*Interest*	*Penalty*	*Total*
2016-17 & 2017-18 (up-to-jun)	*443*	*33*	*67*	*543*

On being pointed out, the assessee agreed with the audit objection and have paid S.T. Rs.443/-, interest Rs. 33, Penalty Rs.67/-, Total Rs.543/- vide DRC-03 (ARN No.AD2409210129181) dated 30.09.2021paid the Service Tax Rs. 47081/- alongwithInterst Rs. 28325/- and Penalty .

(Para proposed to be settled under Section 73 & 78 of the Finance Act,1994)"

24. Therefore, it is evident that the audit of records of assessee by the department for F.Y.2015-16 had already been conducted before the issuance of the subject SCN and for the period April,2016 to June,2017 after 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 Reports, I find that there is no short payment on the part of the assessee. I am of the view that audit of the assessee had been conducted by the department with reconciliation of financial records of the assessee, however, the SCN was issued only on the basis of data provided by the CBDT to CBIC without any relevant records/documents. Therefore, I am of the view that since departmental audit had been conducted, and assessee had filed the ST3 returns and had paid the legitimate service tax due on them, the demand raised in the notice is not substainable. The SCN issued to the assessee on the basis of third party data shared by CBDT to CBIC, after departmental 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.

25. In view of the facts and circumstances pertaining to the case as aforementioned, the demand is found to be 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 inclined to entering into discussions on the question of imposing penalty and interest. 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.N.J.Devani Builders Pvt. Ltd., B/h. Ishwar Bhavan, Navrangpura, Gujarat, vide Show Cause Notice F.No. STC/15-117/OA/2020 dated 21.10.2020.

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

By Regd. Post AD./Hand Delivery
F.No. STC/15-117/OA/2020

Date:16.02.2022.

To
M/s.N.J.Devani Builders Pvt. Ltd.,
B/h. Ishwar Bhavan,
Navrangpura,
Gujarat
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-I, Division-VII, Ahmedabad North.
4 The Superintendent (System), CGST, Ahmedabad North for uploading on website.
5 Guard File.