



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20230664WT0000814706

फा.सं./F.No. STC/15-210/OA/21-22

आदेश की तारीख/Date of Order :- 28.06.2023

जारी करने की तारीख/Date of Issue :- 28.06.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त /Joint Commissioner

**मूल आदेश संख्या / Order-In-Original No. 10/JC/ LD /2023-24**

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रू. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

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

(1) उक्त अपील की प्रति।

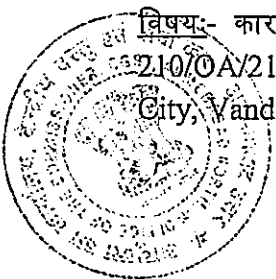
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-210/OA/21-22 dated 23.04.2021 issued to M/s Krishan, G-203, ICB Park, Nr. Vandematram City, Vandematram City, Gota, Ahmedabad-382481.





## BRIEF FACTS OF THE CASE

M/s. Krishan (hereinafter referred to as "the said service provider") situated at "G-203, ICB Park, Nr.Vrundavan City, Vandematram City, Gota, Ahmedabad - 382481 having PAN No. ALBPK4209K being engaged in the business of providing services was found not registered with the Service Tax department.

2. An 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" was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 to 2016-17, and details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the information received from the Income Tax Department, the said service provider had earned substantial service income, however, they did not obtain service tax registration and did not pay service tax thereon.

4. Since the said Service Provider had failed to submit the required details of services provided during the Financial Year 2015-16 to 2016-17, the service tax liability of the Service Provider was required to be ascertained on the basis of income mentioned in the ITR returns and Form 26-AS filed by the said Service Provider with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the service tax liability under Section 67A of the Finance Act, 1994 as the said Service Provider failed to determine the correct taxable value.

5. The Service tax payable is calculated on the basis of value of "sales of services under Sales/Gross Receipts from Services (Value from ITR)" as provided by the Income Tax Department for the Financial Year 2015-16 to 2016-17. By considering the said amount as taxable income, the service tax liability is calculated as under:-

Sr. No.	Financial Year	Sales/Gross Receipts from Services ( ITR) ( in Rs.)	Service Tax (in Rs.)
01	2015-16	14855820/-	2072675/-
02	2016-17	35901834/-	5355274/-
	TOTAL	50757654/-	7427950/-

Therefore, the said service provider has not discharged their Service Tax liability and thus is liable to pay Service tax including Cess [@ 12.36% for F.Y. 2015-16 & from 01-04-2015 to 31-05-2015] ; [@ 14% from 01-06-2015 to 14-11-2015] ; [@ 14.50% from 15-11-2015 to 31-05-2016] and @15% from 01-06-2016 to 31-03-2017] for amounting to Rs.74,27,950/- on the total value amounting to Rs.5,07,57,654/- along with applicable interest and penalty for the F.Y. 2015-16 to 2016-17.

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued 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 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 (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.'*

7. From the facts, it appears that the "Total Amount Paid/Credited Under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts from Services (From ITR)" for the F.Y. 2015-16 to 2016-17 has not been disclosed thereof by the Income Tax Department, nor the reason for the non-disclosure was made known to this department. Further, the said service provider has also failed to provide the required information even after the issuance of letters from the Department. Therefore, the assessable value for the year F.Y. 2015-16 to 2016-17 is not ascertainable at the time of issuance of this Show Cause Notice, Consequently, if any other amount is disclosed by the Income tax Department or any other sources/agencies, against the said service provider, action will be initiated against the said service provider 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 F.Y. 2015-16 to 2016-17 covered under this Show Cause Notice, will be recoverable from the said service provider accordingly.

8. With effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the Negative list are exempted. The nature of activities carried out by the said Service Provider appears to be covered under the definition of service and appears that not covered under the Negative List as given in the Section 66D of the Finance Act, 1994 and also declared services given in Section 66E of the Finance Act, 1994, as amended from time to time. These services also appears to be not exempted under Mega exemption Notification No. 25/ 2012-S.T. dated 20-06-2012, as amended from time to time, and hence the aforesaid services provided by the said Service Provider appears to be subjected to Service Tax under the provisions Section 66B of Finance Act, 1994.

9. As per Section 69(1) of the Act, every person liable to pay the Service Tax under this Chapter or the rules made there under shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.

10. As per Section 69(2) of the Act 1994, *any service provider, whose aggregate value of taxable service in a financial year exceeds Rs. 9 Lakh is required to take Registration.* Further, according to Notification No. 33/2012-(Service Tax) dated 20.06.2012, Central Government has exempted taxable services of aggregate value not exceeding ten lakh rupees in preceding year from the whole of the Service Tax leviable thereon under Section 66B of the Finance Act, 1994. Therefore, it appears that the said Service Provider was required to obtain Service Tax Registration and comply the Service Tax laws accordingly.

11. As per provision of Section 68 of Finance Act, 1994 read with Rule 6 of Service Tax Rule 1994 as amended, *every person providing taxable service to any person is liable to pay Service Tax at the rate prescribed in Section 66B to Central Government by the 5th of the month/ quarter immediately following the calendar month/ quarter in which the taxable service is deemed to be provided (except for the month of March which is required to be paid on 31st March).*

12. According to Section 70 of the Finance Act, 1994 read with Rule 7(1) of the Service Tax Rules, 1994, *every person liable to pay Service Tax shall himself assess the tax due on the services provided by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in ST-3 returns.*

13. It was also appeared that the said Service Provider had neither obtained a Service Tax registration for the services provided by them for the period of F.Y. 2015-16 to F.Y. 2016-17, concealed the value from the department, declared to the income tax department. Therefore, it appeared that the said Service Provider had not paid correct service tax by way of willful suppression of facts to the department in contravention of provision of the Finance Act, 1994 relating to levy and collection of service tax and the Rules made there under, with intent to evade payment of service tax. Therefore, the service tax amounting to Rs. 74,27,950/- is recoverable from them by invoking extended period of five years under first proviso to sub-section (1) of Section 73 of Finance Act, 1994 along with interest at the prescribed rate under Section 75 of the Finance Act, 1994 and also rendered himself liable for penal action under Section 78 of Finance Act, 1994.

14. As per the provisions of Section 72 of the Finance Act, if any person, liable to pay service tax having made a return, fails to assess the tax, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

15. As per the provisions of Section 73 (1) of the Finance Act where any service tax has not been levied or paid or has been short levied or short paid by the reasons of willful mis-statement or suppression of facts with intent to evade payment of service tax, the Central Excise 3

Officer may within five years from the relevant date, serve notice on the person chargeable with service tax which has not been levied or paid of which has been short levied or short paid requiring him to show cause why he should not pay amount specified in the notice.

16. As per Rule 6 of the Service tax Rules, 1994, the service tax shall be paid to the credit of the Central Government by 5<sup>th</sup> 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 of ST-3 within the prescribed time.

17. In view of the above, the said service provider have contravened the provisions of :

(a) Section 66 of the Finance Act, 1994 in as much as they have failed to collect and pay the service tax as detailed above, to the credit of Central Government.

(b) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they have not paid the service tax as mentioned above to the credit of the Government of India within the stipulated time limit;

( c ) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, as amended, in as much as they had failed to properly assess their Service Tax liability under Rule 2(1)(d) of Service Tax Rules, 1994 and failed to declare correct value of taxable services as well as exempted services to the department in the prescribed return in Form ST-3

18. It further appears that on account of all the above narrated acts of commission and omissions on the part of the said service provider, they have rendered themselves liable to penalty under the following proviso of the Finance Act, 1994 and Rules framed there under:-

▶ Section 70 and Section 77 of the Finance Act, 1994 as amended in as much as they failed to correctly self assess the tax due on the services provided and have not filed the correct ST-3 return and contravened the provisions of Service Tax laws.

▶ Section 78 of the Finance Act, 1994, in as much as they have suppressed the material facts from the department about service provided and value realized by them with intent to evade payment of service tax.

19. As per Section 70 of Finance Act, 1994, the fees for the late filing of return are prescribed. When the nature of default for late filing of fees is less than 15 days, the amount of penalty is Rs. 500 for 15 days; where the nature of default is more than 15 days & less than 30 days, the amount of penalty is Rs. 1000; and where the nature of default is more than 30 days, the amount of penalty is Rs. 1000 + Rs. 100 for each day subject to maximum penalty of Rs. 20000/-. Hence, they 4

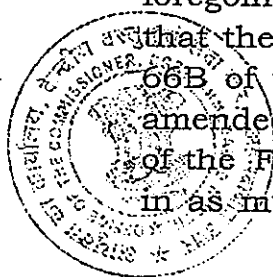
are liable for payment of late fees for non filing of ST 3 returns for the aforesaid period in stipulated time.

20. Section 70 of the Finance Act, 1994 stipulates that every person liable to pay the Service Tax shall himself assess the tax due. The Government has introduced self-assessment system under a trust based régime which casts the onus of proper assessment and discharging of the Service Tax on the Service Provider. The definition of "assessment" available in Rule 2(b) of Service Tax Rules, 1994 is reproduced as under:-

*"Assessment" includes self assessment of service tax by the assessee, re-assessment, provisional assessment, best judgment assessment and any order of assessment in which the tax assessed is nil; determination of the interest on the tax assessed or re-assessed."*

21. In the instant case, the said service provider has failed to properly assess the Service Tax liability. Thus, they have resorted to suppression of material facts by not reflecting the correct taxable income incurred in respect of the services liable to Service Tax in their ST-3 returns. Accordingly, it appears that the Service Tax as quantified herein above is liable to be recovered by invoking the extended period of limitation as provided for under Sec. 73 of the Finance Act, 1994 along with interest in terms of the provisions of Sec. 75 of the Finance Act, 1994. The said Service Provider has not disclosed full, true and correct information about the value of the service provided by them, and thus, it appears that there was a deliberate withholding of essential and material information from the department about service provided and value realized by them. It appears that all these material information had been concealed from the department deliberately, consciously and purposefully to evade payment of Service Tax. Therefore, in this case all essential ingredients exist to invoke the extended period in terms of proviso to Section 73(1) of Finance Act, 1994 to demand the Service Tax short not paid.

22. In view of discussion in the fore going paras, it appears that all the above acts of suppression of facts, misstatement and contravention, omissions and commissions are on the part of said service provider that they have willfully suppressed the facts, nature and value of service provided by them by not assessing and paying due Service Tax liability, therefore, the above said amounts of Service Tax of Rs. 74,27,950/- (Non-payment of Service Tax for the period 2015-16 to 2016-2017 on Income from taxable service provided by them), and Late fee (Non filing of Service Tax returns) for the above period is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years for the reasons stated herein foregoing paras. In view of the facts discussed in foregoing paras and material evidence available on record, it appears that the said service provider have contravened the provisions of Section 66B of the Finance Act, 1994, Section 68 of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules, 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as that they failed to determine; collect and pay Service Tax



amounting to Rs. 74,27,950/- (including applicable EC, SHEC, SBC & KKC) for the period F.Y. 2015-16 to 2016-17 as detailed above and they have failed to declare value of taxable service to the department and thus suppressed the amount of charges received by them for providing taxable services as detailed above.

23. Further, the said Service Provider failed (a) to take Service Tax Registration in accordance with the provisions of section 69 *ibid*; (b) to keep, maintain or retain books of account and other documents as required in accordance with the provisions of Finance Act, 1994; and (c) to pay the tax, accordingly the said Service Provider is liable to penalty under the provisions of Section 77(1) of Finance Act, 1994.

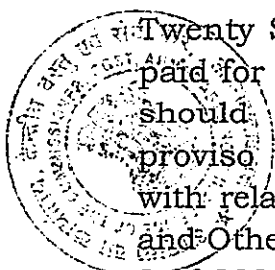
24. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appear to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In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

25. Moreover, in addition to the contravention, omission and commission on the part of the said the said service provider as stated in the foregoing paras, it appears that the said the said service provider has willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of service tax rendering themselves liable for penalty under Section 78 of the Finance Act, 1994. The said assessee was given opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 23.04.2021 but the said assessee did not appear for the same.

26. Therefore, Show Cause Notice No.STC/15-210/OA/2021-22 dated 23.04.2021 was issued to the assessee to called upon to show cause as to why:-

▶ The services rendered by them should not be considered as "taxable services" under Section 65 of the Finance Act, 1994, as amended, and the total/gross amount of Rs.50757654. 030000001/- received towards rendering such services should not be considered as taxable value of the said taxable services charged by them for the F.Y. 2015-16 to 2016-17;

▶ Service Tax of Rs. 7427950/- (Rupees Seventy Four Lakh Twenty Seven Thousand Nine Hundred Fifty Only) which was not paid for the F.Y.2015-16 to 2016-17 as per Table in para-5 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994; read with relaxation provisions of Section 6 of Chapter V of the Taxation and Other Laws(Relaxation of Certain Provisions) Ordinance, 2020(No. 2 of 2020) promulgated on 30.03.2020 by invoking extended period of time limit;





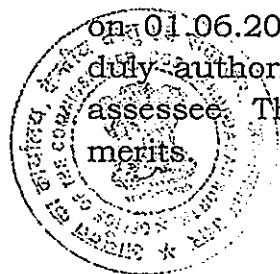
- ▶ Interest at the prescribed rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;
- ▶ Prescribed late fee, should not be recovered from them for each S.T.-3 return filed late, for the relevant period, under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 ;
- ▶ penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for the failure to make payment of service tax payable by them within prescribed time-limit;
- ▶ Penalty should not be imposed upon them under Section 77(1) of the Finance Act, 1994 for failure to take Service Tax registration as per the provisions of Section 69 of the Finance Act, 1994;
- ▶ Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994, for non-payment of Service Tax by willfully suppressing the facts from the department with intent to evade the payment of Service Tax as explained herein above.

## DEFENCE REPLY

27 In response to SCN dated 23.04.2021, the assessee vide letter dated 28.04.2023 had filed their reply to SCN wherein they stated that their firm is M/s. K. D. Engineers, a proprietary concern and Mr. Krishan is the proprietor of the entity. They are engaged in provision of works contract service and carrying the business of contractors and sub contractors of infrastructures project such as construction of road, bridges, dams and other civil and structural contracts of government and non government organization. Therefore they are neither liable for registration under service tax act or pay service tax as per Sl.No.13(a) of Notification No.25/2012- service tax dated 20.06.2012 as amended. According to which services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a road, bridge, tunnel or terminal for road transportation for use by general public. They have provided works contract of construction of four laning of Rohtak to Hissar Section of NH 10 under NHDP phase II, Haryana, laying of asphalt seal on bridge in construction of box slab/pipe convertor and minor bridges of four laning of UP/Haryana Border-Yamunanagar- Saha- Barwala-Panchkula Section of NH 73 in the State of Haryana as a sub contractor. The main contractor in these works are M/s.Sadbhav Engineers Ltd. They have also produced copies of works allotted by the main contractor.

## PERSONAL HEARING

28. In the instant case, Personal Hearing was granted to the assessee on 01.06.2023 and Shri Anil Rohal, & Shri Neeraj Garg, accountants and duly authorised representatives of the assessee attended on behalf of the assessee. They reiterated their reply to SCN and requested to decide the SCN on merits.



## DISCUSSION AND FINDINGS

29. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding to adjudicate the SCN.

30. I have carefully gone through the Show Cause Notice, reply to SCN, reconciliation statement, ledger accounts, and Form 26AS for the F.Y. 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.74,27,950/- for the F.Y. 2015-16 & 2016-17 on the basis of data received from Income Tax authorities. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs.74,27,950/- for the F.Y 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

31. On perusal of the reply to SCN and other related documents, I find that the assessee have receipt from providing services related to construction of road for general public. Here I would like to go the definition of service on which service tax is payable. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified according to the different category of services. Further after introduction of negative list with effect from 01.07.2012, service has been defined as:

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

- (a) an activity which constitutes merely,—*
  - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
  - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the constitution or*
  - (iii) a transaction in money or actionable claim.*
- (b) A provision of service by an employee to the employer in the course of or in relation to his employment.*
- (c) fees taken in any court or tribunal established under any law for the time being in force.*

From the definition it is evident that any activity carried out by any person to another person for any consideration is covered under the above definition of service. Further, the term "taxable service" is defined under Section 66B(51) of the Finance act, 1994 as under:

*(51) taxable service means any service on which service tax is leviable under Section 66B.*

It is clear that the service tax is levied under Section 66B of the Finance Act, 1994 which reads as under:

*Section 66B : Charge of service tax on and after Finance Act, 2012- There shall be levied a tax (hereinafter referred to as the service tax) at the rate fourteen percent on the value of all services other than those services specified in negative list, provided r agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed”*

According to which service tax is levied on all services other than those specified in negative list (Section 66 D of Finance act, 1994) in the taxable territory by one person to another. In this context the services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,

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

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) transport of goods or passengers; or 9
- (iv) Any service, other than services covered under clauses (i) to (iii) above, provided to business entities;

(b) services by the Reserve Bank of India;

(c) services by a foreign diplomatic mission located in India;

(d) services relating to agriculture or agricultural produce by way of—

- (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or [ \* \* \* ] testing;
- (ii) supply of farm labour;
- (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
- (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
- (v) loading, unloading, packing, storage or warehousing of agricultural produce;
- (vi) agricultural extension services;
- (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

(e) trading of goods;

(f) [\*\*\*\*].;

(g) selling of space for advertisements in print media;

(h) service by way of access to a road or a bridge on payment of toll charges;

(i) betting, gambling or lottery; Explanation. - For the purposes of this clause, the expression “betting, gambling or lottery” shall not include the activity specified in Explanation2 to clause (44) of section 65B;

(j) [ \* \* \* \* ]

(k) transmission or distribution of electricity by an electricity transmission or distribution utility; 10

(l) [ \* \* \* \* ]

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

(n) services by way of—

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;

(ii) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;

- (o) service of transportation of passengers, with or without accompanied belongings, by—
- (i) [ \* \* \* \* ]
  - (ii) railways in a class other than— (A) first class; or (B) an air-conditioned coach;
  - (iii) metro, monorail or tramway ,
  - (iv) inland waterways;
  - (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
  - (vi) metered cabs or auto rickshaws
- (p) services by way of transportation of goods—
- (i) by road except the services of— (A) a goods transportation agency; or (B) a courier agency;
  - (ii) [ \* \* \* ]
  - (iii) by inland waterways;
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

32. Thus with effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the negative list are exempted. It is not disputed that the assessee has provided taxable service and the service provided by them are not mentioned in the negative list given under Section 66D of the Finance Act, 1994. In view of the above the services provided by the assessee are covered under service tax and they are also liable to pay service tax on the said services.

33. In the instant case, I have gone through Show Cause Notice, reply to SCN, reconciliation statement, ledger accounts, invoices, copies of work orders and Form 26AS for the F.Y. 2015-16 & 2016-17. In their reply to SCN, they stated that they have provided service of construction of construction of four laning of Rohtak to Hissar Section of NH 10 under NHDP phase II, Haryana, laying of asphalt seal on bridge in construction of box slab/pipe convertor and minor bridges of four laning of UP/Haryana Border-Yamunanagar- Saha- Barwala-Panchkula Section of NH 73 in the State of Haryana as a sub contractor FY 2015-16 & 2016-17. The service provided are exempted under 13(a) of Notification No.25/2012 dated 20.06.2012 and therefore they are not liable to pay any service tax. They have provided copies of 26AS, copies of work orders, ledger account and other documents of the works done. In view of the above, I would like to examine the relevant Notification No.25/2012 dated 20.06.2012 related to road construction. The relevant portion of Notification No.25/2012-ST dated 20.06.2012.

*In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-*

13. *Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-*

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

In view of above, I find that Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road, bridge, tunnel, or terminal for road

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

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

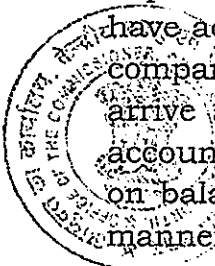
*29. Services by the following persons in respective capacities –...*

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

According to which the exempted works contract services provided by a sub contractor to another contractor is exempted from payment of service tax.

35. In this connection, I have gone through the work orders submitted by the said assessee. On perusal of the work orders, I find that the assessee has got work orders from main contractor M/s.Sadbhav Engineers P. Ltd. I have also gone through the copies of invoices and work orders and find that the work of construction of four laning road of Rohtak to Hissar Section of NH 10 under NHDP phase II, Haryana, laying of asphalt seal on bridge, construction of box slab/pipe convertor and minor bridges of four laning of UP/Haryana Border-Yamunanagar- Saha- Barwala-Panchkula Section of NH 73 in the State of Haryana of National Highway Authority of India was allotted to the assessee as a sub contractor. The entire works contract service done by the assessee is of construction various works related to National Highway construction for general public and for the NHAI. On perusal of the same, I find that the road construction work was provided to the NHAI via main contractor M/s.Sadbhav Engineering Limited which is covered under the entry No.13(a) of Notification No.25/2012 dated 20.06.2012 as the said road is constructed for use of general public and accordingly the said services are not attracting any service tax. Being a sub contractor, the services provided by the assessee is also exempted under 29(h) of Notification. In view of the above, the income of Rs.1,48,55,820/- for the FY 2015-16 & Rs.3,59,01,834/- for the FY 2016-17 accrued from providing construction of road/highway by the assessee is exempted from payment of service tax. Accordingly, the service tax demand of Rs.74,27,950/- on differential value of Rs.5,07,57,654/- is not sustainable and therefore required to be dropped.

36. I find that the financial and other records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company/ individual during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs of



the company/ individual. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

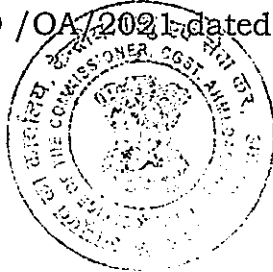
37. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. Accordingly, it is my considered view that the assessee has established their case quite unambiguously that the difference in value of service as discerned by the department by comparing the value of services in ITR/TDS and gross value of services provided in ST-3 Returns is basically on account of the exempt service being the construction of road services rendered by the assessee as discussed hereinabove which was not shown in ST-3 Returns. I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN. From the SCN, I find that the SCN has not questioned the taxability on any income other than the value of difference in ITR & STR. I, therefore, refrain from discussing the taxability on other income other than the sale of service.

38. In view of the above discussion and findings and also on perusal of the records available for the FY 2015-16 & 2016-17, I find that the difference in value of service by comparing the value of services in the books of accounts is basically on account of the services exempted vide Sr. No. 13(a) of the Notification No. 25/2012-ST dated 20.06.2012. As the income received from above service is exempted from taxable services by way of above referred Exemption Notification, I find that the service tax demand of Rs. 74,27,950/- is not sustainable and accordingly Show Cause Notice dt. 23.04.2021 is liable to be dropped. Further, as the SCN itself are not sustainable, there is no reason to charge interest u/s.75 of Finance Act, 1994 or to impose penalty u/s.76, 77 & 78 of Finance Act, 1994 upon the said assessee on this count.

39. In view of the above I pass the following order;

#### ORDER

40. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 74,27,950/- along with interest and penalties against M/s, Krishan vide SCN No.STC/15- 210 /OA/2021 dated 23.04.2021.



(Lokesh Damor)

Joint Commissioner  
Central GST & Central Excise  
Ahmedabad North

BY SPEED POST/HAND DELIVERY  
F.No. STC/15-210/OA/2021

Date:

To,  
M/s. Krishan  
"G-203, ICB Park, Nr.Vrundavan City,  
Vandematram City, Gota, Ahmedabad .

Copy to:

- 1) The Commissioner, Central GST & Central Excise, Ahmedabad North.
- 2) The DC/A.C, Central GST & Central Excise, Division-VI, Ahmedabad North.
- 3) The Supdt., CGST & C. Excise, Range-V , Division-VI, Ahmedabad North
- 4) The Supdt. Systems, CGST & CX, Ahmedabad North for uploading the order
- 5) Guard File.