आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH
पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद – 380009
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. **STC/15-180/OA/2020** आदेश की तारीख़/Date of Order:-25.03.2022

जारी करने की तारीख़/Date of Issue :- 25.03.2022

DIN NO: 20220364WT000011691A

द्वारा पारित/Passed by:- आर गुलजार बेगम */R. GULZAR BEGUM*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 105/ADC/GB/2021-22

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 विरूद्ध 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-380015को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो 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. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 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 Commissioner (Appeal) 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)

उक्त अपील ,अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-.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 विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 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.2.00.

विषयः- कारण बताओ सूचना/ Show Cause Notice No. GEXCOM/ADJN/ST/ADC/302/2020-ADJN-O/o COMMR-CGST-AHMEDABAD(N) dated 07.12.2020 issued to M/s. Ubec Technologies India P. Ltd, 72/427, Vijayakumar, Naranpura, Ahmedabad-380013

BRIEF FACTS OF THE CASE

M/s.Ubec Technologies India P.Ltd, 72/427, Vijayakumar, Naranpura, Ahmedabad-380013 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.- AABCU1752FSD001 & are engaged in the business of Providing Taxable Services. On perusal of the data received from CBDT, it was noticed that the assessee had declared different values in Service Tax Return (ST-3) and Income Tax Return (ITR/Form 26AS) for the Financial year 2015-16 & 2016-17.

2. On scrutiny of the above data, it is noticed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 & 2016-17as compared to the Service related taxable value declared by them in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

(Amount in Rs.)

Sr No	F. Y.	Total Gross Value Provided (STR)	Sale Of Services(ITR)	Total Value for TDS(including 194C,194Ia,194Ib,194J,194H)	Higher Value (Value Difference in ITR & STR) OR (Value Difference in TDS & STR)	Rate of Duty (including Cess)	Result ant Service Tax short paid
1	2015-16	32881956	32638372	52339173	19457217	14.5%	2821296
2	2016-17	38444740	38444739	61726275	23281535	15%	3492230
Total							6313526

3. To explain the reasons for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form: 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns for the Financial Year 2015-16 & 2016-17, Letter dated 07.10.2020 were issued to the said assessee. However, the said assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner. For this reason, no further verification could be done in this regard by the department. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16 & 2016-17, the service tax liability of the service tax assessee has 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 is considered as the total taxable value in order to ascertain the Service tax liability under Section 67 of the Finance Act, 1994.

4. No data was forwarded by CBDT, for the period 2017-18 (upto June-2017) and the assessee has also failed to provide any information regarding rendering of taxable service for this period. Therefore, at this stage, at the time of issue of SCN, it is not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017). With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies that:

"2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the

notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient."

5. From the data received from CBDT, it appears that the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2017-18 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 assessee has also failed to provide the required information even after the issuance of letters and summons from the Department. Therefore, the assessable value for the year 2017-18 (upto June-2017) 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 assessee, action will 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 2017-18 (upto-June 2017) not covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

6. The government has from the very beginning placed full trust on the service provider so far as service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust by the service provider, no matter how innocently. From the evidence on record, it appears that the said assessee had not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider appears to have made deliberate efforts to suppress the value of taxable service to the department and appears to have not paid the liable service tax in utter disregard to the requirements of law and the trust deposed in them. Such outright act in defiance of law, appears to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

7. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the assessee, have committed the following contraventions of the provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004:

(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 as discussed above;

(iii) Failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have not paid service tax as worked out in the Table for Financial Year 2015-16 to 2016-17.

(iv) All the above acts of contravention on the part of the said assessee appear to have

been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid is required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years.

(v) All 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 appears to be publishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

(vi) The said assessee is also 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) Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

8. The above said service tax liabilities of the assessee, UBEC TECHNOLOGIES INDIA PRIVATE LIMITED, has been worked out on the basis of limited data/ information received from the Income tax department for the financial years 2015-16 & 2016-17. Thus, the present notice relates exclusively to the information received from the Income Tax Department.

9. It has been noticed that at no point of time, the assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2015-16 to 2016-17. From the evidences, it was noticed that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs. 6313526/-(including Cess). The above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same is to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

10. Accordingly Show Cause Notice was issued to M/s.UBEC TECHNOLOGIES INDIA PRIVATE LIMITED, called upon to show cause as to why :

(i) The Service Tax to the extent of **Rs. 6313526** 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 2017-18 (upto June-2017),ascertained in future, as per paras no. 7 and 8 above, 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.

DEFENCE REPLY

11. The assessee vide letters dated 18.12.2020 & 27.01.2022 submitted their reply to SCN wherein they furnished the reconciliation statement for the year 2015-16 & 2016-17 wherein they reconciled the differential value on which the service tax of Rs.63,13,526/- demanded. They have furnished the details of trading sales of Rs.1,03,93,270/- during the year 2015-16 and Rs.1,51,11,090/- for the year 2016-17 on which they have claimed exemption from payment of service tax. The assessee submitted with respect to work in progress that in the case of Oil and Natural Gas Corporation Limited they have deducted TDS on contract of Rs.31,14,446/- and RS.5,57,937/-, which were not completed and are in progress and bill is to be raised when it gets complete, which they have shown as work in progress in notes to account No.13 in the audit report. Further with respect to adhoc provision done, in this case, ONGC have deducted TDS on provisioning basis based on their best estimate of work order and as per requirement of accounting standard, for which no invoice have been issued. Also provisioning by ONGC is based on budget fund allocation of project and on approximate basis on Rs.15,78,000/- for the eyar 2015-16 and Rs.26,20,000/- for the year 2016-17. This is no revenue or receipt on their part, they have to recognize liability and provide the books of accounts and hence they make the provision and deduct the TDS on the same. Next year the same will be converted in sales invoices as and when work get completed. This standard process which was followed year by year and as per requirement of accounting standards. So there is no difference between income as per audited accounts and 26AS as mentioned.

PERSONEEL HEARING

12. Personnel Hearing was granted to the assessee on 21.03.2022 and Shri Pritesh Shah, CA attended on behalf of the assessee. He reiterated the written reply submitted on 27.01.222 and requested to drop the proceedings.

DISCUSSION AND FINDINGS

13. 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 further.

14. I have carefully gone through the records of the case, submission made by the noticee, Audited Balance Sheet, ITR, STR and copies of invoices for the year 2015-16 to 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs. 63,13,526/- for the financial year 2015-16 to 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. 63,13,526/ on the differential taxable value for the financial year 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

15. On perusal of SCN and other records, I find that the assessee is providing Works Contract Services to M/s. Oil & Natural Gas Corporation Ltd and are paying service tax and also filing ST 3 returns. Show Cause Notice was issued to recover service tax of Rs. 63,13,526/- on differential value between the income shown in the Form 26 AS and ST 3 Returns. In their reply to SCN and reconciliation statement they stated that the difference is mainly due to non declaration of taxable value of trading sales of Rs.1,03,93,270/- for the year 2015-16 and Rs.1,51,11,090/- on which they were not liable to pay service tax, they did not shown the same in their ST 3 returns. I have gone through the audited balance sheet for both the years 2015-16 & 2016-17 wherein the said income is shown under Note 11 under the head revenue from

operations. It was also seen that they have paid vat on the said trading sales. Now, I discuss the relevant provision with regard to trading of goods;

As per the extant provisions of Chapter V of the Finance Act, 1994 activity of trading in Goods is not taxable. Levy of Service as per Section 66B is on Services only, said section reads as under:

> ***66B.*** *There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.*

Term 'Service' as defined in section 2 (44) excludes the activity of transfer title in goods by of sale, which is nothing for Trading.

> *(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***

Further, as seen in section 66B, all activities listed as Negative List in section 66D are also out of the ambit of Service tax. Activity of Trading in Goods is mentioned in section 66D (e), said section reads as under:

> *66D. The negative list shall comprise of the following services, namely:—*
>
> ***(e) trading of goods;***

16. Further, I find from the records available in the file that Sale of goods is taxable under the Gujarat Value Added Tax Act and assessee has paid the requisite VAT on the Sales and submitted VAT returns for the period 2015-16 & 2016-17. Therefore, in view of the above provision, I find that the assessee is not liable to pay Service Tax on the trading of goods as stated above for the year 2015-16 and 2016-17.

17. Further the assessee claimed deduction of Rs.46,14,858/- for the year 2015-16 and Rs.57,55,639/- for the year 2016-17 as the amount credited in the Form 26AS being the service tax involved in the total income, I find that the said income is allowed to be deducted from the differential income as service tax amount is included in the gross receipts of the assessee while deducting the TDS. Further an amount of Rs.31,14,446/- & Rs.5,57,937/- is claimed to be deductable as work in progress. The deductor have deducted the TDS on the works which were not completed and are in progress. In this case bills will be raised when it gets completed and therefore the said income also is not a part of taxable income for the said relevant year. In the audited Balance sheet also they have made provisions to these amount at Note No.13 of audited Balance Sheet. Accordingly this amount is also not includible in the taxable income as only provisions have been made for these amount as the work is in progress and are not realized during the relevant period.

18. Further there is an amount of Rs.15,78,000/- for the year 2015-16 and Rs.26,20,000/- for the year 2016-17 with respect to adhoc provision done. In case of ONGC, they have deducted TDS on provisioning basis based on their best estimate of work order and as per requirement of accounting standard, for which no invoice have been issued. Also provisioning by ONGC is based on budget fund allocation of project and on approximate basis. This is no revenue or receipt on their part, they have to recognize liability and provide the books of accounts and hence they make the provision and deduct the TDS on the same. Next year the same will be converted in sales invoices as and when work get completed. This standard process which was

followed year by year and as per requirement of accounting standards. On perusal of the audited balance sheet and other documents, I find that the said amount has not been realized during the relevant years and therefore such provisioning cannot be considered as taxable income for the relevant period. Hence I find that the claim of the asessee is correct and accordingly allowed to be deducted from their total income shown under Form 26AS. For the sake of clarity, the figures have been reconciled as under:

	PARTICULARS	2015-16	2016-17
A	Total value as per 26AS/SCN	52339173	61726275
B	Value as per ST 3	32881956	38444740
C	Differential value on which scn issued	19457217	23281535
D	Income from sale of goods	10393270	15111090
E	Service Tax	4614858	5755639
F	Adhoc provision done	1578000	2620000
G	Work In Progress	3114446	557937
H	Total (D+E+F+G)	19700574	24044666
	Difference(C-H) (Credit Note)	(-) 243357	(-)763131

19. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, ITR , reconciliation statement, I find that the service tax demand of Rs.63,13,526/- for the period 2015-16 & 2016-17 is not sustainable and accordingly Show Cause Notice dated 07.12.2020 is liable to be dropped. Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty upon noticee on this count.

20. 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.

21. On perusal of para 6 & 7 of the SCN, I find that the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. I however, do not find any charges levelled for demand for FY 2017-18 (upto June 2017) in charging part of the SCN. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income from sale of services. I therefore refrain from discussing the taxability on other income other than the sale of service.

22. In view of the facts and findings, I pass the following order;

ORDER

23. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 63,13,526/- along with interest and penalties vide SCN No. GEXCOM/ADJN/ST/ADC/302/2020-ADJN-o/O-COMMR-CGST-AHMEDABAD dated 07.12.2020.

(R.GULZAR BEGUM)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North

F.No.STC/15-180/OA/2020

Dated. 25/3/21

To
M/s.Ubec Technologies India P.Ltd,
72/427, Vijayakumar,
Naranpura, Ahmedabad-380013

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Deputy Commissioner Division-VII, Central Excise & CGST, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Central Excise & CGST, Ahmedabad North
4. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
5. Guard File