आयुक्त का कार्यालय,
केंद्रीय जी. एस. टी. एवं
केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर,
कस्टम हॉउस, प्रथम तल,
नवरंगपुरा ,अहमदाबाद- 380009

OFFICE OF COMMISSIONER
CENTRAL GST & CENTRAL EXCISE,
AHMEDABAD- NORTH
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निबन्धित पावती डाक द्वरा/By R.P.A.D

DIN- 20220364WT000081868C

फा.सं./F.No. STC/15-34/OA/2020

आदेश की तारीख़/Date of Order :- 30-03-2022

जारी करने की तारीख़/Date of Issue :- 30-03-2022

द्वारा पारित/Passed by:- आर गुलजार बेगम / *R Gulzar Begum*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 112/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 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 विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5) 00. पांच रूपये (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/15-34/OA/2020 dated 28.09.2020 issued to M/s Shubham Incorporated, Alkapuri Society, 42, Nr. Water Tank, Ghatlodiya, Ahmedabad, Gujarat-380061.

BRIEF FACTS OF THE CASE

M/s. Shubham Incorporated, Alkapuri Society, 42, Nr. Water Tank, Ghatlodiya, Ahmedabad , Gujarat 380061 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Service Tax Registration No.- ABCFS0633EST001 & engaged in the business of Providing Taxable Services under the category of "Maintenance or repair service, Errection, Commissioning & Installation Service, Airport Service by Airport Authority, Transport of Goods by road/goods transport agency service & Work Contract Service"

2. On going through the third party CBDT data for the Financial Year 2014-2015, it has been observed that the assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2014-2015 as compared to the Service related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under.

TABLE (Amount in Rs.)

Sr. No.	F. Y.	Gross_Value_ Service_Provided (as per ST-3 returns.	Total Amount paid/Credited under 194C, 194H, 194I, 194J (in Rs.)	Difference Between Total Amount paid /credited from TDS & Gross value in service tax provided	Resultant Service Tax short paid (including Cess)
1.	2014-15	1,00,61,447	6,74,55,382	5,73,93,935	70,93,891

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 F. Y, 2014-15, Letters dated 08.02.2018, 30.05.2018, 25.06.2019, 30.09.2019 & 06.07.2020 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 can be done in this regard. No data was forwarded by CBDT, for the period 2015-16 & 2016-17. 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 2015-16 & 2016-17, 2017-18 (upto June-17). 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.'

4. 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 assessment year 2015-16, 2016-17 & 2017-18 (upto June-17) has not been disclosed thereof by the Income Tax Department, nor the reason for the nondisclosure 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 2015-16 & 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 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 2015-16, 2016-17 & 2017-18 (upto June-17) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

5. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said notice had not paid service tax as worked out as above in Table for Financial Year 2014-15.

6. As per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appears that the said service provider has not assessed the tax dues properly, on the services received by him, as discussed above, and failed to file correct ST-3 Returns thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

7. Further, as per Section 75 ibid, every person liable to pay the tax in accordance with the provisions of Section 68 ibid, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the noticee along with interest under Section 75of the Finance Act, 1994.

8. In view of above, it appeared that the Assessee has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of Rs.70,93,891/- (including Cess), by filing ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

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 2014-2015. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc., based on mutual trust and confidence are in place. From the evidences, it appears 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.70,93,891/- (including Cess). It appears that 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 appears 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. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appears that the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994, and penalty under provisions of Rule 7C of the Service Tax Rules, 1994.

10. Accordingly Show Cause Notice was issued to M/s.Shubham Incorporated called upon to show cause as to why:

i. The demand for Service tax to the extent of Rs.70,93,891/- (Rupees Seventy lakh Ninety Three Thousand Eight Hundred & Ninety One) short paid /not paid by them, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;

ii. Service Tax liability not paid during the financial year 2015-16 , 2016-17 & 2017-18 (Upto June-17) ascertained in future, as per Para no. 5 and 6 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 recovered from them under the provisions of Section 75 of the Finance Act, 1994;

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

v. Penalty should not be imposed upon them for late filing ST-3 return for the period April'2014 - September'2014 under the provisions of Rule 7C of the Service Tax Rules, 1994.

vi. Penalty should not be imposed upon them under the provisions of Section 77(1)of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Service Tax Act,1994.

vii. Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns. as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

DEFENCE REPLY

11. The assessee vide letter dated 29.12.2021 submitted their reply to SCN wherein they denied all the allegations levelled against them for non payment of service tax and suppressing the material facts from the department. The SCN was issued on the proposition on the information received from the IT Department for the year 2014-15, but what type of information revenue has been received and the source of said information has not been mentioned and no documentary evidence of income tax department have been relied upon in the SCN to corroborate the said source of information. Accordingly any allegation made without any documentary evidence does not have any legal value. The further stated that the subject SCN for demanding the service tax was issued on the basis of difference of taxable value shown in ST 3 Return filed for the year 2014-15 and 26AS statement but the revenue has not verified or conducted any enquiry with regard to the difference of amount and only on the basis of best judgement issued the present notice of demand of service tax.

12. The assessee further stated that the present SCN is issued without proper investigation and without any documentary evidence hence it was requested to drop the SCN. They have also mentioned the CBIC Instruction dated 26.10.2021 instructed to adjudicating authority that in cases SCN have already been issued without proper verification, they should pass judicious order after proper appreciation of facts

submitted by the assessee. They further stated that the demand of service tax was issued on the basis of ITR, Balance Sheet and 26AS as it is clearly mentioned in the subject SCN and all the documents are public documents and are available in public domain therefore extended period cannot be invoked in the case. For which theyahve relied upon the case law in the case of

- Mega Trends Advertising Ltrd Vs Commr of C.Ex & ST, Lucknow 2020(38)GSTL 57(tri-All

13. They further stated that there is no allegation of suppression of facts from the department wilfully. Or by means of any fraud or by collusion with intent to evade payment of service tax. On the contrary they have provided all the details have been provided in their ST 3 retunes and therefore invocation for extended period under section 73(1) of the Finance Act, 1994 is not correct and demand is clearly hit by limitation. They relied upon the following case laws in support of their claim:

- M/s.Parshwa Chemicals P.Ltd 2005 (189) ELT 257(SC)
- Continental Foundations Ft.venutre 2007(216) ELT 177 (SC)
- M/s.Mysore Kirloskar Ltd 2008(26)ELT 161(SC)
- Cosmic Dye Chemical 195(75)ELT 721(SC)
- HMM Limited 1995(76) ELT 497 (SC)

14. They are also engaged in supplying the RO water plant to industry and to this effect got the comprehensive work order which contains supply of equipment, accessories and arts of the RO Plant and erecting, commissioning and installation at the customer's premises. They further stated that they have received the different type of work order for supply of RO water plant/system and out of these work orders some work orders were composite in nature for supply of goods and service of installation, erecting and fitting of the RO system plant. All such type of work order were categorised under the work contract service. These works orders having the value of goods and value of service separately they have issued the invoices wherein mentioned the value of goods separately and paid the appropriate VAT on such goods mentioned the value of goods separately wherein charges the applicable; service tax in terms of Rule 2A(i) of service tax (Determination of Value) Rules 2006. The said view has been upheld by the higher appellant authorities in the following case laws:

- R.K.Industries Vs CCE 2013 32 taxmann.com 314 (New Delhi CESTAT))
- Balaji Tirupati Enterprises (2014) 43 taxman.com 42 (New Delhi-CESTAT)
- G.D Builders Vs.Union of India (2013) 40 taxman.415 (Delhi High Court"

15. From the above said case laws it can be concluded that where the VAT has been paid on actual value of material, the amount will; be deductible from the total value of Works contract to calculate taxable services. Accordingly they have correctly paid the service tax on value of service in terms of Rule 2A (i) .

16. Further some work orders of supply of RO water plant/system does not contain the value of goods and services separately and in such cases they are paying service tax in terms of Rule 2A(ii) of service tax(Determination of Value) Rules 2006 on 50% of value in terms of Noti.No.30/2012 dated 20.062012 by availing the abatement of 75%/60%. They have also submitted that they have the liberty to avail the option of payment of service tax each contract wise and not mandatory to pay service tax under either Rule 2A (i) i.e. normal valuation or Rule 2A(ii) i.e. composition scheme. They are also engaged in the supply of Repair and maintenance service to the customer and receive the work order for the same.

17. They further submitted that the present SCN is for recovery of Service Tax on the basis of difference between the gross value of service provided mentioned in the ST 3 return and value mentioned in 26 AS statement. In this regard, it was submitted that in composite contract they have paid service tax on value of service only and supply on goods on payment of applicable VAT. However the customer has deducted the entire value of contract considering it as composite contract, therefore, there is a

difference between the value of taxable service mentioned is ST 3 return and 26 AS statement for the year 2014-15.

18. Thus they have correctly paid the service tax and there is no short payment of service tax. Therefore they requested to drop the proceedings. They also stated that s they have no liability to pay service tax they are also not liable to pay interest u/e.75 of Finance Act, 1994. Further they also stated as there is no suppression of facts in this case no penalty u/s.78 is imposable. They have also relied upon the following case laws in this regard.

- Sun Pharmacuticasls Ind VS.Com.C.Ec & ST cestat Ahkmedabad 2017(49) STR9Tri-Amd)
- Gujarat Borosil Limited (2018 (364) ELT 281 (Tri Ahmedabad)
- Khaira and Associates Vs Com.Cust., C.Ex & service tAx 2020(34) GSTL 224 (Tri-del)
- Uniworth Textils Ltd 2013 (288) ELT 161 SC

19. They further stated that they have correctly declared the taxable valuation ST 3 returns and accordingly paid correct applicable service tax on supply of service hence no penalty is imposable u/s.77(1) and 77(2) of Finance Act,12994 as all the details are reflected in the their STR. And have correctly paid the applicable service tax hence penalty under section 77(1) & 77(2) of FA 1994 cannot be imposed. In support if their claim they relied upon the following decisions.

- Caladeys Indid Recefractories Ltd Vs CR Aurangabad 2014(36)STR 102(tri-Mum)
- Malay I Communication 2010 (18) STR 451 (Tri-Del)
- Adhunik Steel Ltd 2009 (13) STR 487 P&H)

In the light of the above case laws and above discussion the demand is not sustainable.

20. They have filed further submission dated 01.03.2022 during the course of P.H wherein they submitted that:

- There was a mistake happened while typing the transaction value in ST3. In some transaction instead of calcimining abatement in ST3 return abated value was mentioned in Gross Value. The value declared in ST is amounting to Rs.1,00,61,447/- the actual value of said transaction was Rs.1,27,17,413/-. So there was a difference of amounting to Rs.26,55,966/- that should be shown in claimed as abatement column but it was directly deducted in Gross value in ST 3 return. They attached copy of ST3 and summary alongwith invoices.

- The value have been shown in 26AS amounting Rs.3,80,59,887/- is sale of goods. As per Noti.No.24/2012ST service tax charged on value of service portion in work contract if goods value identify in the work order value of goods and service both are mentioned. They have attached work order , invoice and list of transactions.

- The value of Rs. 1,19,17,049/- shown in 26AS is belongs to supply of goods and service in the previous year. In this case the invoice has been issued and respective tax has been paid in the year but payment was received in the next year and client filed TDS on the basis of payment. They attached copy of work order and list of transactions.

- The value of Rs.18,56,606/- shown in the 26AS is received from Ex.Engineer, JHABHU is exempted from Service Tax per Noti.25/2012 Sl.No.12(e) service provided to Govt. They have not declared the same in their ST3 return as exempt supply. They have attached work order Invoice and Notification.

- Differential amount of Rs.29,04,427/- on which service tax has not paid by them is include work contract service to Soverign Metals Ltd (earlier known as Edelweiss Metals Limited) and Grerresheimer Pharma Packing Mumbai P Ltd. as per Noti.No.24/2012 ST assessee need to pay service tax on 40% of Works Contract service. Hence they have not paid service tax on Rs.20,94,458/- being work contract income . They attached copy of work order , Invoice and Notification.

PERSONNEL HEARING

21. Personnel Hearing in this case was held on 15.03.2022. Shri Jogender Gupta , Consultant, duly authrosied representative, attended on behalf of the assess. He has submitted reconciliation statement and written reply dated 01.03.2022 and requested to drop the proceedings.

DISCUSSION AND FINDINGS

22. 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 2014-15. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs. 70,93,891/- for the financial year 2014-15 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. 70,93,891/ on the differential taxable value for the financial year 2014-15 under proviso to section 73(1) of Finance Act, 1944 or not.

23. On perusal of SCN and other records, I find that the assessee is providing Works Contract services and erection, commissioning and installation services and are paying service tax and also filing ST 3 returns. Show Cause Notice was issued to recover service tax of Rs.70,93,891/- on differential value between the income shown in the Form 26 AS and ST 3 Returns. In their reply to SCN thee assessee submitted that they have an income of Rs.3,80,59,887/- from sale of goods. The assessee claimed that they have got work order in composite nature wherein supply of goods is also involved alongwith the installation of RO system. These work orders having the value of gods and value of services separately. In the instant case they have issued invoices wherein the they have mentioned value of goods separately and also paid appropriate VAT on the goods portion. They have also mentioned the value of services separately and applied applicable service tax from the service receiver. In this regard I would like to go through the Rule 2 A of service tax (Determination of value Rules) 2006 which is reproduced as under:

1 "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) 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.

Explanation.- For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services;

(vii) other similar expenses relatable to supply of labour and services; and

(viii) profit earned by the service provider relatable to supply of labour and services; 1 amended by Service Tax (Determination of Value) Second Amendment Rules, 2012 vide Notification no 24/2012-ST, dated 6.06.2012 w.e.f. 1.7.2012.

(c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment

of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(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;

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property , service tax shall be payable on sixty per cent. of the total amount charged for the works contract;

Explanation 1. - For the purposes of this rule,-

(a) "original works" means-

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

(b) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon: Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2.--For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004."

24. In this case the assessee has submitted the copies of detailed work orders wherein it was specifically and separately mentioned the details of various equipments and the value involved for the completion of work order. They have also mentioned the amount involved in the service portion wherein service tax is chargeable and accordingly charged service tax also. On perusal of the above work contract and other documents, I find that in the work contract the value of goods and service was defined and separately mentioned and therefore the value of goods involved is not a part of taxable value and therefore no service tax is payable thereon. Further on perusal of case laws cited also, I find that where the VAT has been paid on the actual value of the material the amount will be deductible from the gross value of the contract and service tax will be chargeable on the remaining amount only. In this case on perusal of works order and invoices, I find that the VAT has also been paid on the amount of Rs.3,80,59,887/- as the same is value of material involved in the works contract service. Accordingly I find that the said amount is not chargeable to service tax and therefore deductible from the differential value.

25. The assessee further stated that there was a mistake while typing the transaction value in ST3. In some of the transactions instead of claiming abatement in ST3 return, abated value was mentioned in the column of Gross Value. The value declared in ST is amounting to Rs.1,00,61,447/-however the actual value of said transactions was Rs.1,27,17,413/-. So there was a difference of Rs.26,55,966/- that should be shown in claimed as abatement column but it was directly deducted in Gross value column in ST 3 Return. They attached copy of ST3 and summary alongwith copies of invoices. In this connection, I have gone through the details of

various Bills and other details of the services involved therein. I have also gone through the relevant STR and find that while mentioning the value of services of GTA services, MRA services and works contract services they have mentioned the abated value in their returns in the place of gross value instead of the gross value involved in the service. They have provided bill wise gross value and the value shown in their ST3 returns. On perusal of the same, I find that the actual gross value is Rs.1,27,17,413/- while they have shown Rs.1,00,61,447/- as their gross value. It is a mistake while filing the ST 3 Return and therefore, I find that they are eligible for deduction of difference of Rs.26,55,966/- from the differential value demanded vide instant SCN.

26. They further contended that the value of Rs. 1,19,17,049/- shown in 26AS is belongs to supply of goods and service in the previous year. In this case the invoices have been issued and respective tax has been paid in the year 2013-14 but payment was received in the next year i.e.2014-15 and client filed TDS on the basis of payment. They attached copy of work order and list of transactions. On going through the 26AS, work order and relevant invoices, I find that the said invoices are issued during the year 2012-13 and therefore I find that the said amount of Rs. 1,19,17,049/- shown in the 26AS is not income related to the year 2014-15, hence the same is also eligible for deduction from the differential value demanded vide instant SCN.

27. The assessee further stated that they have an income of Rs.18,56,606/- shown in the 26AS is received from Ex. Engineer, JHABHU which is exempted from Service Tax as per Noti.25/2012 Sl.No.12(e) being service provided to Govt. They have not declared the said income in their ST3 return while filing relevant STR as exempted income. They have attached copies of work order, Invoice and Notification. In this regard, I have gone through the work order for sewage treatment given by Executive Engineer, Public Health Department Jhabhuva, MP. The assessee claimed exemption for the said service provided by them to Public Health Department under Noti.no.25/2012 dated 20.06.2012. I have gone the said Notification which reads as follows:

Notification No. 25/2012-Service Tax dated- 20th June, 2012, as amended. Incorporating changes made till issuance of notification no 10/2017-Service Tax dated 8-3-2017 G.S.R. 467(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) 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:-

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

*(a) ****

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

*(c) ****

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

28. On perusal of the documents submitted by the assessee, I find that the assessee had provided work order to construct structure for sewerage treatment plant as per the orders given by the Executive Engineer, Public Health Department, Jhabua, MP. As the work is executed for Executive Engineer, Public Health Department, Jhabua, MP, the said services are services provided to government and therefore covered under Sl.No.12(e) of Notification No.25/2012 dated 20.06.2012. Accordingly the value of Rs.18,56,606/- derived from the said services are exempted from the service tax. Therefore I find and accept that the claim that the said income

Rs.18,56,606/- is exempted from service tax in view of the Notification No.25/2012 dated 20.06.2012.

29. Further the assessee have provided works contract services of supply, erection and commissioning of water treatment plant amounting to Rs.10,30,500/- to Sovereign Metals Ltd (earlier known as Edelweiss Metals Limited) on which they have not paid service tax. Moreover they have also provided works contract services of supply, erection and commissioning of RO plant amounting to Rs.3,19,449/- to M/s. Grerresheimer Pharma Packing Mumbai P Ltd. The assessee have claimed that as per notification No.24/2012 they required to pay service tax on 40% of work contract value. I this connection I would like to go thought eh Noti.No.24/2012 dt.20.06.2012 which reads as under:

G.S.R. (E).- In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) number 11/2012 - Service Tax, dated the 17 th March, 2012, published in the Gazette of India, Extraordinary, vide number G.S.R. 209 (E), dated the 17 th March, 2012, the Central Government, hereby makes the following rules further to amend the Service Tax (Determination of Value) Rules, 2006, namely :-

1.(1) These rules may be called the Service Tax (Determination of Value) Second Amendment Rules, 2012.

(2) They shall come into force from the 1 st day of July, 2012

. 2 . In the Service Tax (Determination of Value) Rules, 2006 (hereinafter referred to as the said rules), for rule 2A, the following rule shall be substituted, namely:-

"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) 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. Explanation.- For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services;

(vii) other similar expenses relatable to supply of labour and services; and

(viii) profit earned by the service provider relatable to supply of labour and services;

(c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(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;

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent. of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property , service tax shall be payable on sixty per cent. of the total amount charged for the works contract;

Explanation 1.- For the purposes of this rule,-

(a) "original works" means-

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;
(d) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-
(i) the amount charged for such goods or services, if any; and
(ii) the value added tax or sales tax, if any, levied thereon: Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.
Explanation 2. --For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004."

30. On perusal of the above Notification, I find that Where the value has not been determined, the person liable to pay tax on the service portion involved in the execution of the works contract will be 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. On perusal of the documents, I find that the assessee provided original works and therefore they are required to pay service tax on 40% of the total value as envisaged in the Notification No.24/2012 dated 20.06.2012. In view of the above, the assessee is required to pay service on 40% of the total value of Rs. 13,49,949/- and according to which the assessee is required to pay service tax on the value Rs.5,39,979/- (40% of Rs.13,49,949/-) treated as non paid taxable income. They have also not availed any CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004. As envisaged under the said Notification.

31. Further the assessee could not provide any explanation regarding the differential amount of Rs.15,54,479/- and therefore the same is also treated as taxable income as the same amount is credited in the assessee's account in view of the Form 26AS. Accordingly the assessee is liable to pay service tax on total income of Rs.20,94,458/- (Rs.5,39,979/- + Rs.15,54,478/-). For the sake of clarity, the consolidated worksheet are tabulated and reconciled as under:

Description	2014-15
Value as per 26AS/SCN	67455382
Value as per ST 3	10061447
Differential value on which service tax as per SCN	57393935
Value of sale of goods as discussed	38059887
Difference	19334048
Difference in value shown in STR and actual value as discussed	2655966
Difference	16678082
Amt. credited in current year 2014-15 belongs to previous year 2013-14 as discussed	11917049
Difference	4761033
Amount exempted from ST as per Noti.No.25/2012 as discussed	1856606
Difference	2904427
Abatement as per Notification No.24/2012 as discussed	809970
Difference on which ST is payable	2094457

32. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, ITR, 26AS,reconciliation statement, I

find that the service tax demand of Rs.68,35,016/- is not sustainable and service tax demand of Rs.2,58,875/- is recoverable accordingly Show Cause Notice is disposed off.

33. On perusal of SCN, I find that the levy of service tax for FY 2015-16, 2016-17 & 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. However, I, do not find any charges leveled for the demand for the period 2015-16, 2016-17 & 2017-18 (Up to June 2017) in the charging para 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.

34. I further find that Shubham Incorporated have contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994, provided by them to their various service receivers during the period from 01.04.2014 to 31.03.2015:

(i) Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994; as the assessee 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) Section 67 of the Finance Act, 1994 as the assessee failed to determine the correct value of taxable service provided by them under as discussed above;

(iii) Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 as they 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 in as much as they have not paid service tax as worked out in the Table for Financial Year 2015-16.

35. All above acts of contravention constitute an offence of the nature as described under the provision of Section 77 of the Act, rendering themselves liable to penalty under Section 77(1) of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Service Tax Rules, 1994. They are also liable for penalty u/s. 77(2) of the Finance Act, 1994 for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994;

36. As far as imposition of penalty u/s.78 of Finance Act, 1994 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under section 78 of fiancé Act, 1994 as they failed to pay the correct duty with the intend to evade the same. It is also a fact that they had deliberately not shown in their ST-3 Returns, the actual service provision rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but on verification of data received from CBDT these facts would have not come to light. They have never informed the Service Tax department about the actual provision of taxable services so provided by them to their service recipients during the relevant time and they have also not shown the aforesaid actual provision of taxable service provided them, in respective ST-3 returns filed by them at

the relevant period. The assessee have thus, willfully suppressed the actual provision of taxable service provided by them with an intent to evade the Service Tax. It, thus, found that the assessee, as a service provider, deliberately suppressed the actual provision of the taxable services provided by them, from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed hereinabove. Hence I find that this is a fit case to impose penalty u/s.78 of Finance Act,1994.

37. Further I also find that the assessee filed their ST 3 return for the period April to September 2014 late by 153 days and therefore they are liable to pay penalty at prescribed rate as provided under Rule 7C of Service Tax Rules 1994.

38. Further, all the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part the service provider has 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/short paid is required to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years. All these acts of contravention of the provisions of Section 65, 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 liable to penal action under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

39. In view of the above discussion and findings, I pass the following orders:-

ORDER

(i) I confirm the Service Tax amounting to Rs. 2,58,875/- (Rs.Two Lakh Fifty Eight Thousand Eight Hundred Seventy Five only) under Section 73(1) of chapter V of Finance Act, 1994 read with section 174 of CGST Act,2017 as amended and order M/s. Shubham Incorporated to pay up the amount immediately.

(ii) I drop the Service Tax amounting to Rs.68,35,016/- (Rs.Sixty Eight Lakh Thirty Five Thousand Sixteen only) under Section 73(1) of chapter V of Finance Act, 1994 read with section 174 of CGST Act,2017 as amended as discussed above.

(iii) I order that interest be recovered from M/s. Shubham Incorporated on the service tax amount of Rs.2,58,875/- under the provisions of Section 75 of chapter V of the Finance Act, 1994.

(iv) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. M/s. Shubham Incorporated under Section 77(1) of the Finance Act, 1994.

(v) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. M/s. Shubham Incorporated under Section 77(2) of the Finance Act, 1994.

(vi) I impose penalty of Rs.13,300/- for the period April to September 2014 for delayed filing of ST3 returns under the provisions of Rule 7 C of Service Tax Rules, 1994.

(vii) I impose a penalty of Rs.2,58,875/- (Rs.Two Lakh Fifty Eight Thousand Eight Hundred Seventy Five only) on M/s. Shubham Incorporated under section 78 of the Finance Act 1994 as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s. Shubham Incorporated pays the amount of Service Tax as determined at Sl. No. (i) above and interest payable thereon at (ii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Shubham Incorporated shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

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

By Regd. Post AD./Hand Delivery
F.No.STC/15-122/OA/2020

Date: 25/03/2022

To
M/s. Shubham Incorporated,
Alkapuri Society, 42, Nr. Water Tank,
Ghatlodiya, Ahmedabad , Gujarat 380061

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