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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <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 & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p> |
| <p>फ़ोन नंबर/ PHONE No.: 079-27544557</p> | <p>फैक्स/ FAX : 079-27544463</p> | <p>E-mail:- oaahmedabad2@gmail.com</p> |

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20230664WT000000B874

फा.सं./F.No. STC/15-81/OA/2021

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
संयुक्त आयुक्त /Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 12/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.

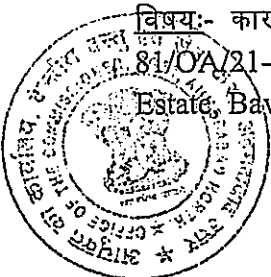
उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

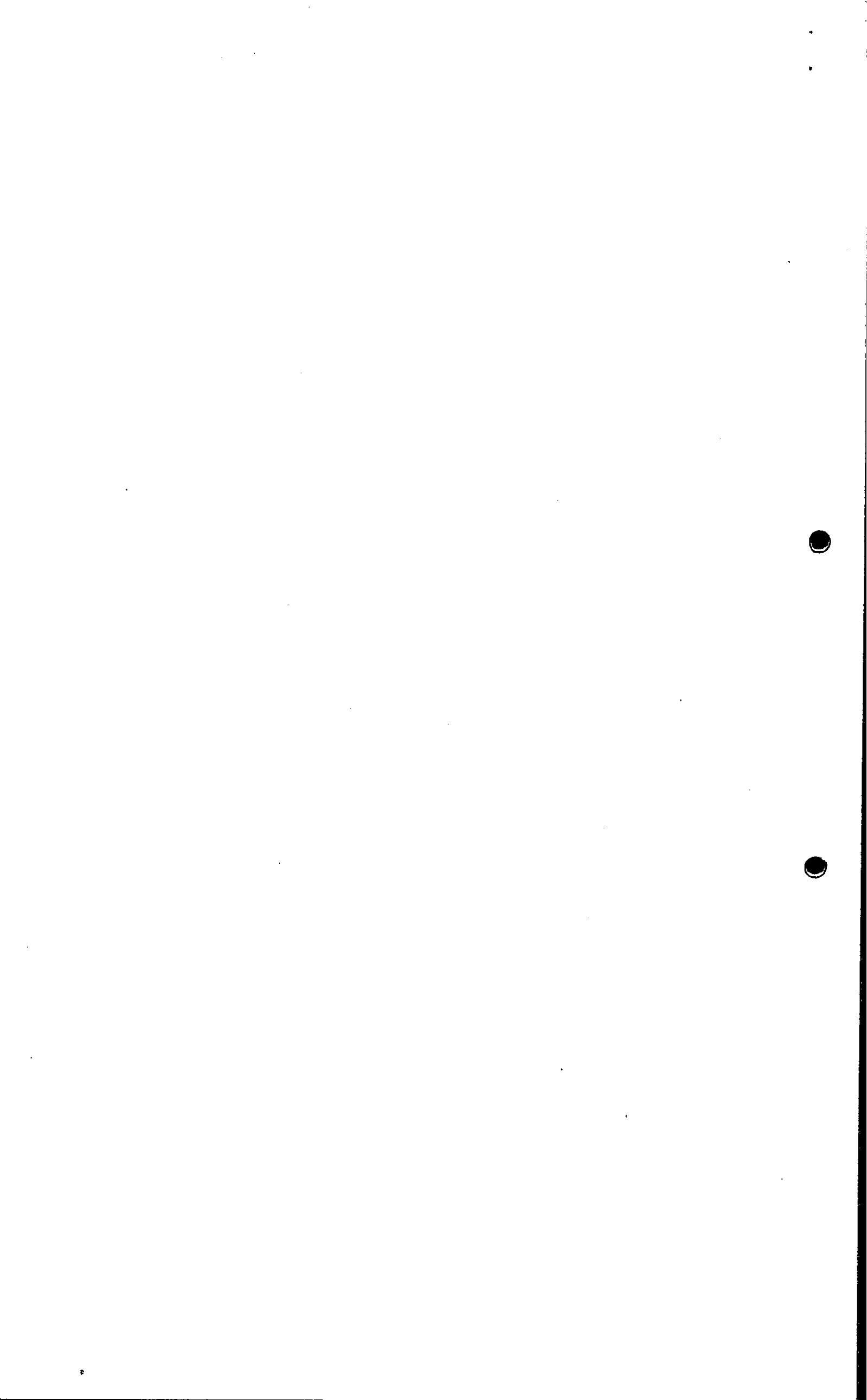
- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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/15-81/OA/21-22 dated 23.04.2021 issued to M/s Venu Engineers, 435, Shubhalaxmi Industrial Estate, Bavla Road, Moraiya, Changodar, Ahmedabad-382213.





BRIEF FACTS OF THE CASE

M/s. Venu Engineers, situated at 435, Shubhalaxmi Industrial Estate, Sarkhej Bavla Road, Moraiya, Changodar, Ahmedabad, Gujarat, 382213 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. AACFV2739FST001.

2. On receipt of data from the CBDT for the period 2015-16 and 2016-17, it was noticed that the said assessee has shown as 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' in Form 26AS as under:

| YEAR | Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' | Value of Services provided as per Service Tax Returns |
|---------|--------------------------------------------------------------------|-------------------------------------------------------|
| 2015-16 | 77955562 | Return not filed |
| 2016-17 | 40544966 | Return not filed |

However, it was found that they had failed to file the ST-3 returns for the F.Y. 2015-16 and 2016-17 with correct value/receipts.

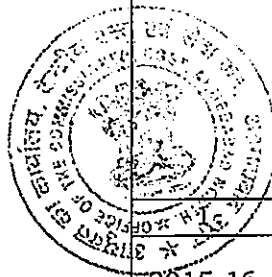
3. From the above, it appeared that the said assessee had suppressed the 'Gross Value of Services Provided' by not filing ST-3 Returns for the F.Y. 2015-16 and 2016-17 and consequently short paid / not paid the applicable Service Tax on whole amount of services provided by them.

4. To explain the reasons for non-filing of ST-3 return/non payment of service tax for the F.Y. 2015-16 and 2016-17 and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form: 26AS and Service Tax (ST-3) Returns for the F.Y. 2015-16 and 2016-17 letters dated 12.04.2021 & 15.04.2021 were issued to the said assessee. However, the said assessee neither submitted any details / documents nor responded to the letters in any manner. For this reason no further verification could be done in this regard.

5. In view of facts stated hereinabove, that the amount of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' as per data received from the CBDT for Financial Year 2015-16 and 2016-17 is Rs. 7,79,55,562/- and Rs.4,05,44,966/- respectively. And since the said party has not provided any relevant details/data, the exact Service Tax liability cannot be ascertained. Therefore, for the purpose of calculation and demand of the Service Tax under this notice, the amount provided by the CBDT under the head 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' is considered which is worked out as under.

Table-I

| YEAR | Value of Total Amount paid/Credited Under 194C, 194H, 194I, 194J' | Total sale of service | Value of Services provided as per Service Tax Returns | Difference between 2 and 4 | Difference between 3 and 4 | Higher Difference |
|---------|-------------------------------------------------------------------|-----------------------|-------------------------------------------------------|----------------------------|----------------------------|-------------------|
| | 2 | 3 | 4 | 5 | 6 | 7 |
| 2015-16 | 77955562 | Not provided | Return not filed | 77955562 | Nil | 77955562 |
| 2016-17 | 40544966 | 43688965 | Return not filed | 40544966 | 43688965 | 43688965 |



6. As per Table-I given hereinabove, higher difference for the purpose of calculation of Service Tax were derived as Rs. 7,79,55,562/- and Rs.4,36,88,965/- for the year of 2015-16 & 2016-17 respectively, considering the highest applicable rate, Service Tax comes to which is worked out as under.

Table-II

| Financial Year | Highest Difference | Basic Service Tax | Amount of Service Tax |
|----------------|--------------------|---------------------------------|-----------------------|
| 2015-16 | 77955562 | 14.50% (14% + 0.5% SBC) | 11303556 |
| 2016-17 | 43688965 | 15% (14% + 0.5% SBC + 0.5% KKC) | 6553345 |
| | | TOTAL | 17856901 |

7. 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 assessee had not paid service tax as worked out in Table-II above for Financial Year 2015-16 & 2016-17.

8. 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-3 returns). 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 ST-3 Returns thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

9. 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 75 of the Finance Act, 1994.

10. From the foregoing paras and discussion made herein above, it appears that the noticee has contravened the provisions of -

(i) Section 67 of the Finance Act, 1994 in as much as they have failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the period 2015-16 & 2016-17;

(ii) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they failed to make payment of service tax during the period 2015-16 & 2016-17, to the credit of the Government account within the stipulated time limit;

(iii) Section 70 of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value and to file correct ST-3 returns during the period 2015-16 & 2016-17.

(iv) Section 77 of the Finance Act, 1994 as much as they did not provide required data / documents, as called for from them.

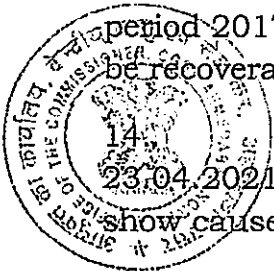
11. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part the noticee has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said service tax not paid 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 along with applicable interest. All these acts of contravention of the provisions of Section 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 on part of noticee appears to have rendered them for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time.

12. Unquantified demand at the time of issuance of SCN.

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issue by the CBEC, New Delhi clarified that: *'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'*

13. From the facts, it was noticed that the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J for the assessment year 2017-18 (upto June-2017) 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 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 (April-June 2017) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

Therefore, Show Cause Notice No.STC/15-81/OA/2021-22 dated 23.04.2021 was issued to M/s. Venu Engineers are hereby called upon to show cause as to why:-



- (i) The said differential amount should not be considered as taxable value and the Service tax involved in the said amount to the extent of Rs. 1,78,56,901/- short paid /not paid by them, should not be recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Service Tax liability not paid during the financial year 2017-18 (upto June-2017), ascertained in future, as per paras no. 12 and 13 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 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 Rules, 1994.
- (vi) 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

15. The assessee vide letter dated 07.06.2023 submitted their reply to the SCN wherein it was stated that they are partnership firm and provided works contract services to body corporate and other than body corporate. They stated that work contract means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax. Such contract for the purpose of carrying out construction, erection, commissioning, installation, completion fitting out, repair, maintenance renovation and alteration. Service provider is under obligation to discharge the service tax liability on service portion in execution of a work contract. However in few cases this obligation is partially shifted to service recipient. Notification No.30/2012-ST dated 20.06.2012 bring the concept of partial Reverse Charge Mechanism on service portion in execution of a work contract according to which taxable services provided by a partnership firm to business entity registered as body corporate, located in taxable territory, the service provider is liable to pay only 50% of the service tax and the remaining 50% will be deposited by the service recipient. Further they stated that they are providing works contract services of original works as defined in the Service Tax Rules and accordingly they are liable to pay service tax on abated value of 40% of the total receipts. In support of their claim they have also produced copies of invoices of the service receivers. They are partnership firm and provided works contract services to body corporate amount to Rs.7,93,87,674/- for the FY 2015-16 and Rs.4,36,88,964/- for FY 2016-17 and have paid service tax accordingly. They have also provided reconciliation statement and they stated

that as they have already paid required tax on work contract service in FY 2015-16 & 2016-17 they are not required to pay any service tax and requested to drop the proceedings, but not filed ST 3 Returns. They have also produced copies of invoices, form 26 AS, copies of ledger accounts and audited balance sheet for perusal.

PERSONAL HEARING

16. Personal Hearing in this case was granted to the assessee on 22.06.2023 and Shri Sandip Patel, CA, duly authorised representative appeared on behalf of the assessee and he reiterated with written submissions dated 07.06.2023. He further submitted additional submissions during the course of P.H and requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

17. 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.

18. I have carefully gone through the records of the case, submission made by the assessee, Audited Balance Sheet, and copies of invoices and other documents for the FY 2015-16 & 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.1,78,56,901/- for the financial years 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. 1,78,56,901/ on the differential taxable value for the financial years 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

19. 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,—

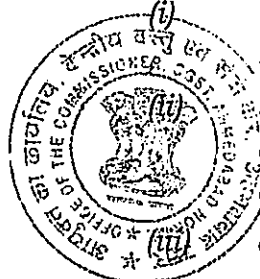
(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(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, 194 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"

20. According to which service tax is levied on all services other than those specified in negative list (Section 66D 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
- (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 Explanation 2 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.

21. 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 works contract services 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.

22. On perusal of SCN and other records, I find that the assessee is providing works contract services such as civil work for up gradation of fire fighting system, Civil works modifier solvent plant, degassing sills, at LDPE plant, construction of factory shed foundation, security cabin, Civil work of tailing filter press equipment foundations at JSL, Bhilwara etc for various clients such as Indus Projects Limited, Reliance Industries Limited, GR Infra projects Ltd, Jindal Saw Limited as original works. They have also paid service tax but not filed any service tax return as required under Finance Bill, 1994 and Rules made thereunder. Show Cause Notice was issued to recover service tax of Rs.1,78,56,901/- on the income shown in the Form 26 AS of the assessee for the FY 2015-16 & 2016-17. In this connection, I have gone through the definition given under Section 65 of Finance Act, 1994 of works contract service which reads as follows.

Clause 44 of section 65B of Finance Act, 1994 defines the Work Contract as follows: "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and

~~such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.~~

according to which the services provided such as civil work for up gradation of fire fighting system, Civil works modifier solvent plant, degassing sills, at LDPE plant, construction of factory shed foundation, security cabin, Civil work of tailing filter press equipment foundations at JSL, Bhilwara etc for various clients such as Indus Projects Limited, Reliance Industries Limited, GR Infra projects Ltd, Jindal Saw Limited as original works is covered under the definition of works contract service. The assessee in their reply stated that they are providing the said services along with material and therefore the said service provided is categorized under the Works contract service. As the material is involved in these services the taxable value is to be determined as per Rule 2A of service tax (Determination of value Rules) 2006 which reader as under:

"2A. Determination of value of service portion in the execution of a works contract.- Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

(i) 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; *L 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-

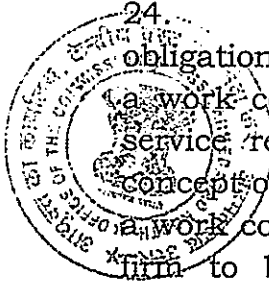
(i) the amount charged for such goods or services, if any; and

(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."

23. On perusal of the copies of invoices and description of works and other records, I find that the assessee has provided works contract services such as civil work for up gradation of fire fighting system, Civil works modifier solvent plant, degassing sills at LDPE plant, construction of factory shed foundation, security cabin, Civil work of tailing filter press equipment foundations at JSL, Bhilwara etc which is correctly covered under the definition of original works and accordingly the assessee is liable to pay service tax on 40% of the total value as provided under Rule 2A(ii)(A) of service tax (Determination of value Rules) 2006.

24. The assessee further claimed that Service provider is under obligation to discharge the service tax liability on service portion in execution of a work contract. However in few cases this obligation is partially shifted to service recipient. Notification No.30/2012-ST dated 20.06.2012 bring the concept of partial Reverse Charge Mechanism on service portion in execution of a work contract according to which taxable services provided by a partnership firm to business entity registered as body corporate, located in taxable territory, the service provider is liable to pay only 50% of the service tax and the remaining 50% will be deposited by the service recipient and therefore they



are liable for payment of service tax only 50% of the total service tax liability. The relevant portion of the Notification is as under:

GSR.....(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-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 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

I. The taxable services,-

- (A) (i) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;
- (ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,-
- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (c) any co-operative society established by or under any law;
- (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- (e) any body corporate established, by or under any law; or
- (f) any partnership firm whether registered or not under any law including association of persons;
- (iii) provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory;
- (iv) provided or agreed to be provided by,-
- (A) an arbitral tribunal, or
- (B) an individual advocate or a firm of advocates by way of support services, or
- (C) Government or local authority by way of support services excluding,-
- (1) renting of immovable property, and
- (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994,
- to any business entity located in the taxable territory;
- (v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or **service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;**
- (B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;
- (II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

Table

| Sl.No | Description of a service | Percentage of service tax payable by the person providing service | Percentage of service tax payable by the person receiving the service |
|-------|------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|-----------------------------------------------------------------------|
| 9. | in respect of services provided or agreed to be provided in service portion in execution of works contract | 50% | 50% |

Explanation-I. - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

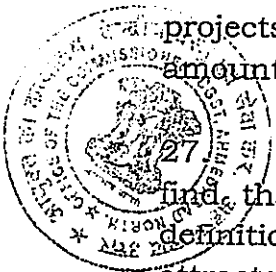
Explanation-II. - In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

25. According to which the works contract service provided to in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory. Here in the instant case the service provider is a partnership firm and the service receiver is body corporate wherein the assessee is liable to pay 50% of the service tax liability. Accordingly in this case the assessee, the service provider is required to pay 50% of the service tax liability. For the sake of clarity, I would like to discuss the matter FY wise.

FINANCIAL YEAR 2015-16

26. On Perusal of SCN, Reply to the show cause notice, Form 26AS, Balance sheet, Ledger copy, copies of work orders, reconciliation statement and copies of invoices for the FY 2015-16, I find that total income as per the SCN and Form No. 26 AS is Rs.7,79,55,562/- whereas as per the audited balance sheet of the assessee the total income comes to Rs.7,93,87,674/-. As the income shown in their audited books is on the higher side, I take Rs. 7,93,87,674/- as their income for the year 2015-16 for determining the taxability of the income. On perusal of the documents, I find that the assessee has provided works contract services such as civil work for up gradation of fire fighting system, Civil works modifier solvent plant, degassing sills, at LDPE plant, construction of factory shed foundation, security cabin, Civil work of tailing filter press equipment foundations at JSL, Bhilwara etc for various clients such as Indus Projects Limited, Reliance Industries Limited, GR Infra projects Ltd, Jindal Saw Limited as original works located in taxable territory amounting to Rs.7,93,87,674/-.

On perusal of copy or work order, invoices and other documents, I find that the said works contract services is correctly covered under the definition of original works and accordingly the said services provided attracted service tax on 40% of the total value as provided under Rule 2A(ii)(A)



of service tax (Determination of value Rules) 2006. In the instant FY, the assessee have received total receipts of Rs.7,93,87,674/- and after availing abatement of 60%, the taxable value comes to Rs.3,17,55,070/- as 40 % of the total receipts as the said works treated as original works. Accordingly the total liability is calculated as Rs.46,04,485/- @ 14.05%, the relevant rate of service tax.

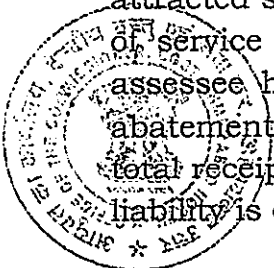
28. I, further find that, the assessee provided the services to body corporate and the entire income is received from body corporate on which the assessee is liable to pay 50% of the total service tax liability under partial Reverse Charge Mechanism as envisaged under Notification No.30/2012 dated 20.06.2012. Accordingly I find that the total liability of the assessee comes to Rs.23,02,242/- (50% of total liability of Rs.46,04,485/-). In this connection, the assessee contended that they have paid the service tax in time, however they could not file ST 3 Returns in time. In this connection, they have produced copies of challans and on verification it was noticed that they have paid the entire service tax in time vide challan Nos.1160 dated 31.08.2015, 1213 dated 21.09.2015, 1210 dated 21.09.2015, 1205 dated 21.09.2015, 00922 dated 14.12.2015 and 1140 dated 10.02.2016 which are reflected in the system. Therefore the claim of the assessee that they have paid the entire service tax is accepted and find that the assessee has fulfilled their service tax liability of Rs.23,02,242/- for the FY 2015-16 and accordingly they have no service tax liability pending for payment. As the assessee has paid the applicable service tax of Rs.23,02,242/-, I find that the service tax demand of Rs.1,13,03,556/- on differential value of Rs.7,79,55,562/- is not sustainable and therefore liable to be dropped.

FINANCIAL YEAR 2016-17

29. On Perusal of SCN, Reply to the show cause notice, Form 26AS, Balance sheet, Ledger copy, copies of work orders, reconciliation statement and copies of invoices for the FY 2016-17, I find a the assessee has provided works contract services such as civil work for up gradation of fire fighting system, Civil works modifier solvent plant, degassing sills, at LDPE plant, construction of factory shed foundation, security cabin etc for various clients such as Indus Projects Limited, ONGC Ltd and Reliance Industries Limited, as original works located in taxable territory amounting to Rs.4,36,88,964/-.

30. On perusal of copy or work order, invoices and other documents, I find that the said works contract services is correctly covered under the definition of original works and accordingly the said services provided attracted service tax on 40% of the total value as provided under Rule 2A(ii)(A) of service tax (Determination of value Rules) 2006. In the instant FY, the assessee have received total receipts of Rs.4,36,88,964/- and after availing abatement of 60%, the taxable value comes to Rs.1,74,75,585/- as 40 % of the total receipts as the said works treated as original works. Accordingly the total liability is calculated as Rs.26,21,338/- @ 15%, the relevant rate of service tax.

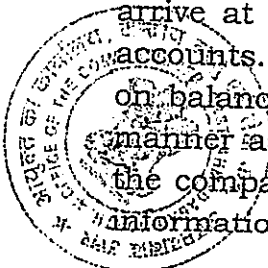
31. I, further find that, the assessee provided the entire services to body corporate and the entire income is received from body corporate on which the assessee is liable to pay 50% of the total service tax liability under partial Reverse Charge Mechanism as envisaged under Notification No.30/2012 dated 20.06.2012. Accordingly I find that the total liability of the assessee comes to



Rs.13,10,669/- (50% of total liability of Rs. 26,21,338/-). In this connection, the assessee contended that they have paid the service tax in time, however they could not file ST 3 Returns in time. In this connection, they have produced copies of challans and on verification it was noticed that they have paid the entire service tax in time vide challan Nos.1491 dated 19.09.2016, 14334 dated 04.10.2016, 14443 dated 04.10.2016, 408 dated 09.08.2016, 14459 dated 04.10.2016 and 405 dated 29.08.2016 which are reflected in the system.. Therefore the claim of the assessee that they have paid the entire service tax is accepted and find that the assessee has fulfilled their service tax liability of Rs. 13,10,669/- for the FY 2016-17 and therefore they have no service tax liability pending for payment. As the assessee has paid the applicable service tax of Rs. 13,10,669/- in full, I find that the service tax demand of Rs.65,53,345/- on differential value of Rs.4,36,88,965/- is not sustainable and therefore liable to be dropped. For the sake of clarity, I reconcile the figures as under:

| S.No. | Particulars | 2015-16 | 2016-17 |
|-------|-------------------------------------------------------------------------------|----------|----------|
| 01 | Gross Receipts as per P/L /SC/26AS as discussed | 79387674 | 43688965 |
| 02 | Less: abatement @60% being original works as discussed | 47632604 | 26213379 |
| 03 | Taxable Value(1-2) | 31755070 | 17475586 |
| 04 | Less: Amt. covered under partial RCM as per Noti.No.30/2012 as discussed(50%) | 15877535 | 8737793 |
| 05 | Net Taxable Value | 15877535 | 8737793 |
| 06 | Service Tax Rate | 14.5% | 15% |
| 06 | Service Tax payable (incl. cess) | 2302242 | 1310669 |
| 07 | S.T. Paid | 2302242 | 1310669 |
| 08 | S.T.Payable | 0 | 0 |

32. 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.



33. 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 they have paid the applicable service tax, however stated that they could not file their 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.

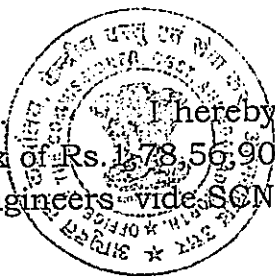
34. Further, on perusal of the SCN, I find that the levy of service tax for 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was 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. Since the assessee has not provided any details/information/documents for the FY 2017-18 (upto June 2017) and the department has not also adduced any information/evidence and the reason for the non disclosure has also not been made known to the department, I refrain myself from entering into the said period to determine the liability as otherwise of assessee for service tax.

35. 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 non filing of ST 3 returns. Further being providers of works contract services of original works, they are also eligible for abatement @ 60% on the total receipts. Further, as the assessee being a partnership firm and the service recipients are falling under the definition of body corporate, the assessee is liable to pay service tax @ 50% of the total liability in view of Noti.No.30/2012 dated 20.06.2012. As they have paid the applicable service tax for the FY 2015-16 & 2016-17 as discussed above, I find that the service tax demand of Rs.1,78,56,901/- for the FY 2015-16 & 2016-17 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. 77 & 78 of Finance Act, 1994 upon the said assessee on this count.

36. 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.1,78,56,901/- along with interest and penalties against M/s. Venu Engineers vide SCN No.STC/15- 81 /OA/2021-22 dated 23.04.2021.



(Lokesh Damor)

Joint Commissioner
Central GST & Central Excise
Ahmedabad North

BY SPEED POST/HAND DELIVERY

F.No. STC/15-81/OA/2021-22

Date:

To,
M/s. Venu Engineers,
435, Shubhalaxmi Industrial Estate,
Sarkhej Bavla Road, Moraiya, Changodar,
Ahmedabad, Gujarat, 382213.

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-III, Division-IV, Ahmedabad North
- 4) The Supdt. Systems, CGST & CX, Ahmedabad North for uploading the order
- 5) Guard File.



