



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

DIN- 20220564WT00008858BD

फा.सं./F.No. STC/15-52/OA/2021

आदेश की तारीख/Date of Order :- 19.05-2022

जारी करने की तारीख/Date of Issue :- 19.05-2022

द्वारा पारित/Passed by:-

आर गुलजार बेगम /R Gulzar Begum

अपर आयुक्त / Additional Commissioner.

मूल आदेश संख्या / Order-In-Original No. 13/ADC/ GB /2022-23

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 रु. 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 रु. 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:

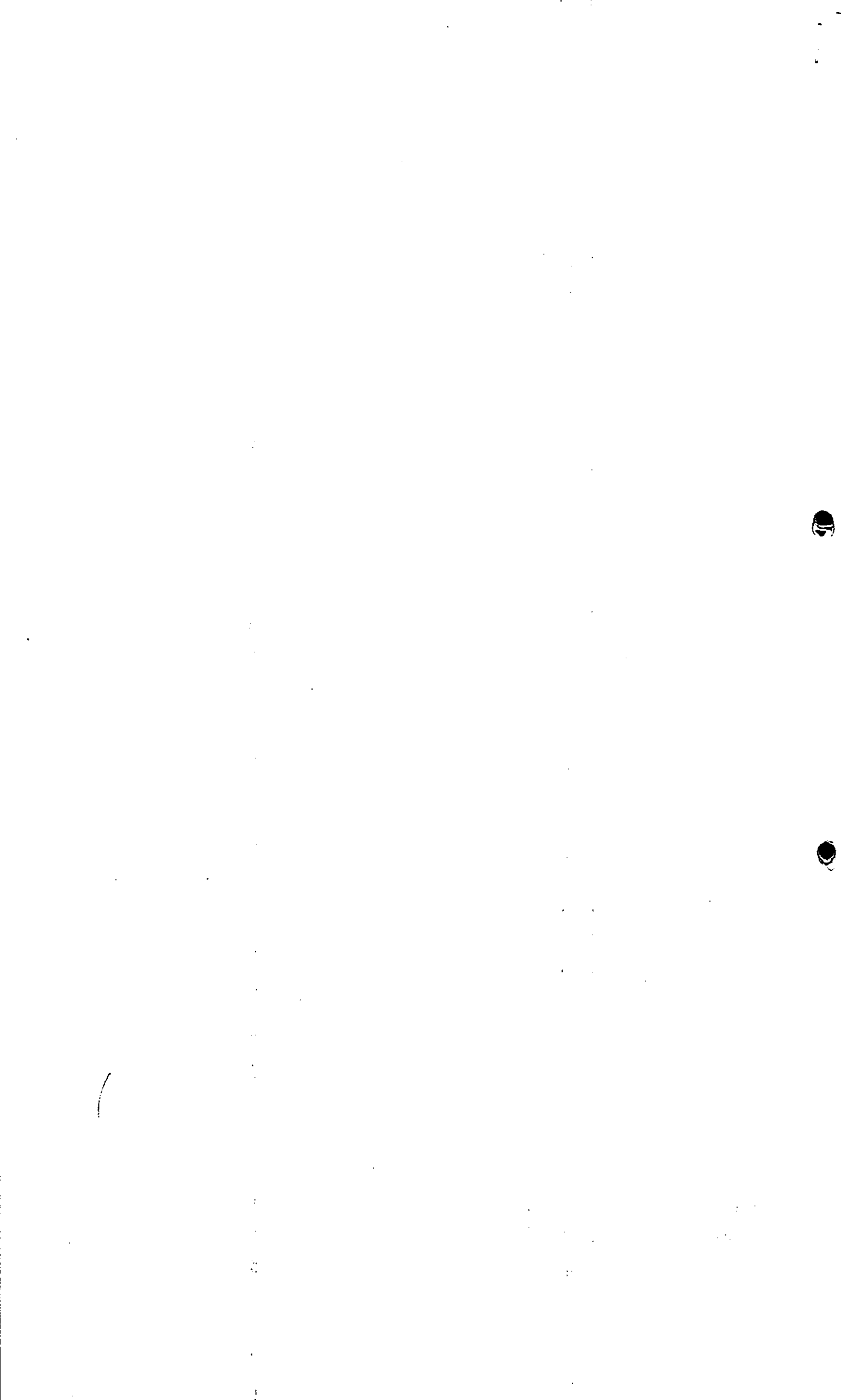
(1) Copy of accompanied Appeal.

(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.

कारण बताओ सूचना/ Proceeding initiated against Show Cause Notices F.No.STC/15-52/OA/2021 dated 23.04.2021 issued to M/s Saurabh Atul Kumar Mehta, B 204, Satyam Skyline Opp. Torrent Power Office, Sola Road, Ahmedabad-380013.





BRIEF FACTS OF THE CASE :

M/s SAURABH ATULKUMAR MEHTA, B 204, SATYAM SKYLINE, OPP TORRENT POWER OFFICE, SOLA ROAD, AHMEDABAD, Gujarat- 380013 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. AFFPM7273MSD001 and was engaged in Taxable Services.

2. Ongoing through the third party CBDT data for the Financial Year 2015-16 and 2016-17, it has been observed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 and 2016-17 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:

Sr. No.	F.Y.	Taxable Value as per ST-3 returns (In Rs.)	Gross Receipts From Services (Value from ITR/26AS) (In Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax short paid (in Rs.)
1	2015-16	0/-	33109311/-	33109311/-	4800850/-
2	2016-17	0/-	30323652/-	30323652/-	4548548/-
TOTAL					9349398/-

3. 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 2015-16 and 2016-17.

4. No data was forwarded by CBDT, for the period 2017-18 (upto June-2017) and the assessee has also failed to provide any information regarding rendering of taxable service for this period. Therefore, at this stage, at the time of issue of SCN, it is not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

5. with respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies that:

"2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short payment at the time of issue of SCN, the SCN would not be considered as invalid. It would 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. Co. v. UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not

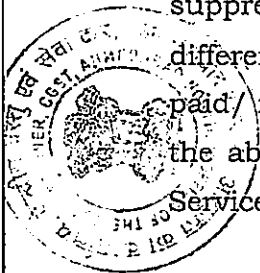
been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient."

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 75 of the Finance Act, 1994.

8. In view of above, it was observed 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. 9349398/-, by declaring less value in their 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 2015-16 and 2016-17. 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. 9349398/-. 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 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.

10. The said assessee was given opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 22.04.2021 but the said assessee did not appear for the same.

11. Therefore, M/s. SAURABH ATULKUMAR MEHTA, B 204, SATYAM SKYLINE, OPP TORRENT POWER OFFICE, SOLA ROAD, AHMEDABAD, Gujarat-380013 called upon to show cause to the Additional/Joint Commissioner, CGST &CX, Ahmedabad North having office at 1st Floor, Custom House, Navrangpura, Ahmedabad as to why:

- (i) The demand for Service tax to the extent of Rs. 9349398/- short paid /not paid by them in F.Y. 2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) 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 :

12. The assessee has furnished their defence reply on 24.04.2021 wherein they stated that he was assessed under VAT for the respective years and paid VAT amount on the income earned by him by way of repairing work; that his major revenue is from Ahmedabad Municipal corporation and he had paid VAT for work which is directly assigned to him; that there is some work which he got from other contractor on which he paid service tax as well as VAT on same amount due to wrong interpretation of provision. The details of turnover bifurcating VAT and service tax is tabulated hereunder:

Particulars	Turnover	Turnover considered in VAT	Turnover considered in service tax

Receipt from Ahmedabad Municipal Corporation	2,35,37,498/-	2,35,37,498/-	Works contract from Ahmedabad Municipal Corp
Receipt from other contractor	95,71,813/-	95,71,813/-	95,71,813/-

that, he attached Annual Accounts with Tax Audit Report for F.Y. 2015-16 and 2016-17, Return of Income for F.Y. 2015-16, 2016-17, quarterly VAT returns, Annual VAT Return, and VAT Audit Report for F.Y 2016-17 and relevant Service Tax returns. Further vide letter dated 01.05.2022, he stated that he is exempted from payment of Service Tax as per clause 12 (A) of mega Exemption Notification 25/2012 ST dated 20.06.2012.

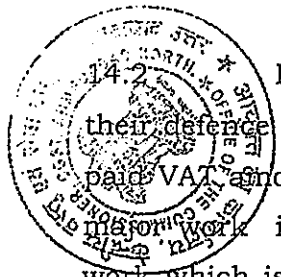
PERSONNEL HEARING :

13. Personnel hearing was granted to the assessee on 05.05.2022 wherein Shri Parin Shah, Chartered Accountant and authorised representative appeared before me for personnel hearing . He submitted written representation dated 01.05.2022 and requested to drop all further proceedings.

DISCUSSION AND FINDING :

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

14.1 I have carefully gone through the records of the case, documents submitted by the assessee, in reply to the show cause notice and also during the course of personal hearing. In the present case, Show Cause Notice has been issued to the assessee demanding Service Tax of Rs. 9349398/- for the financial year 2015-16 and 2016-17 on the basis of data received from Income Tax authorities. The said Service Tax demand has been issued on the basis of higher difference of Rs. 63432963/- with regards to total value for ITR/TDS and gross value provided in STR for the year 2015-16 and 2016-17. 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.



In reply to the show cause notice, the said assessee submitted through their defence reply that they were assessed under VAT for the respective years and paid VAT amount on the income earned by him by way of repairing work; that their major work is from Ahmedabad Municipal corporation and they had paid VAT for work which is directly assigned to them. There is some work which they got from other contractor on which they paid service tax as well as VAT on same amount due to wrong interpretation of provision. Further vide letter dated 01.05.2022, they stated

that they are exempted from payment of Service Tax as per clause 12 (A) of mega Exemption Notification 25/2012 ST dated 20.06.2012.

14.3 On perusal of documents available in file, I find that the assessee is running proprietary firm namely Sakar Builders and are providing work contract Services like Installing of Pavour block, construction of C.C. Road, Repairing of Footpath, Repairing of drainage line and plaster flooring and plumbing work to Ahmedabad Municipal Corporation. On work to work basis, the payment is being released by Ahmedabad Municipal Corporation. I find that the assessee has received various work order from the Dy. Engineer, "Mahanagar Seva Sadan" Ahmedabad for Installing of Pavour block, construction of C.C. Road, Repairing of Footpath, Repairing of drainage line and plaster flooring and plumbing work. Some of the work order are as detailed below ;

Sr. No.	Tharav Number	Date	Amount
1	1742	29.01.2015	341650
2	1161	19.08.2015	373225
3	498	18.06.2015	362638
4	1777	16.12.2015	359637
5	127	16.05.2015	706421
6	2541	16.03.2016	279751
7	102	16.02.2016	292714
8	2174	15.02.2016	114519
9	310	12.03.2015	899873
10	313	12.03.2015	900076
11	311	12.03.2015	899730
12	1017	01.08.2015	362929
13	1016	01.08.2015	272697
14	137	10.07.2015	995815
15	337	04.06.2015	129291
16	818	03.07.2015	281133
17	962	22.07.2016	173390
18	1095	22.07.2016	300268
19	1947	20.02.2016	198326
20	401	13.05.2016	249668
21	401	13.05.2016	227686
22	13	13.05.2016	489920
23	2446	11.03.2016	249655
24	652	08.06.2016	486640
25	857	08.06.2016	486640
26	65	02.06.2016	631507
27	95	02.06.2016	877377
28	64	02.06.2016	643040
29	58	01.06.2016	741570
30	54	01.06.2016	653490
32	77	01.06.2016	901919
33	60	01.06.2016	873741

14.4

Now I would like to discuss the taxability of work contract services :

Notification NO. 25/2012-ST dated 20.06.2012 provides exemption from paying Service Tax, I reproduce herewith the relevant portion of the said Notification;
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 -

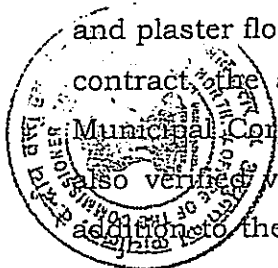
(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession

(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) ***

14.5 I find that the Notification No. 25/2012-Service Tax dated- 20th June, 2012 issued under Section 93(1) of the Act, grants exemption to the taxable services enlisted therein from whole of Service Tax leviable under section 66B of the Act. I find that the assessee has provided works contract Service like Installing of Pavour block, construction of C.C. Road, Repairing of Footpath, Repairing of drainage line and plaster flooring and plumbing work to Ahmedabad Municipal Corporation, a local authority. The assessee has contested the demand of service tax on services rendered by them being Civil Contractor carrying out contracts of Plumbing, Drainage for Government & Semi Government Organisation and covered by entry no. 12A of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012.

14.6 I have gone through the contract submitted by the assessee wherein I find that the local authority has awarded various contract for Installing of Pavour block, construction of C.C. Road, Repairing of Footpath, Repairing of drainage line and plaster flooring and plumbing work to the assessee as stated above. Based on the contract, the assessee after completion of the work raised the bills to Ahmedabad Municipal Corporation, and the amount is received after deduction of TDS . I have also verified various bills sanctioned by the Ahmedabad Municipal Corporation. In addition to the above, I have also verified the contract work ledger furnished by the



party, for the financial year 2015-16 and 2016-17, wherein I observed the most of the receipt during the year 2015-16 are from work Contract Service from Ahmedabad Municipal Corporation, a local authority. There are only two receipt entries amounting to Rs. 95,71,813/- during the year 2015-16, wherein they have paid the Service Tax on work contract Service. I have verified their Service Tax Returns and found that the assessee has paid the Service Tax on providing work contract Service to M/s. Sarjan Builders (As per work contract ledger).

14.7 I find that the assessee is eligible for the benefit of Sr. No. 12A of exemption Notification No. 25/2012-ST dated 20.06.2012 as they have provided **Services to a local authority by way of** Installing of Paviour block, construction of C.C. Road, Repairing of Footpath, Repairing of drainage line and plaster flooring and plumbing work to various areas and wards falls under the jurisdiction of Ahmedabad Municipal Corporation and therefore, the demand raised in the Show Cause Notice is not tenable in law and liable to be dropped.

14.8. I find that the Show Cause Notice reflect the Taxable Value as "0" in their ST-3 returns. However, the assessee has already filed the ST 3 for the period April 2015 to March 2017 under work contract Service. For the sake of clarity the figures have been reconciled as under:

Description	2015-16	2016-17
The gross receipt from Services as per show Cause Notice	33109311/-	30323652/-
LESS ; The Services provided under work contract Service as declared in their Service Tax returns and paid Service Tax accordingly	9571813/-	--
Less : Value in respect of works contract Services provided to Ahmedabad Municipal Corporation	23537498/-	30323652/-
Difference	0	0

14.9 Further, on perusal of SCN, I find that the levy of Service Tax for the financial year 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of subject SCN, if he 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 proviso to Section 73(1) read with master Circular No. 1053/02/2017 dated 10.03.2017, the service tax liability was to be recovered from the assessee accordingly, I however, do not find any charges level for the demand for the year 2017-18 (Up to June 2017), in charging para of the SCN. I find that the SCN had not questioned the taxability on any income other than the income from sale of services shown in ITR/Form 26AS. I therefore refrain myself from to enter in to the taxability on other income other than the sale of service.

14.10 In view of the facts and circumstances pertaining to the case, the demand is not tenable in law. Accordingly, I do not consider it necessary to delve on the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise for imposing penalty.

15 In view of the above discussion and findings, I pass the following order:

: ORDER :

16 I drop the demand of Rs. 93,49,398/- and proceedings initiated against M/s. SAURABH ATULKUMAR MEHTA, B 204, SATYAM SKYLINE, OPP TORRENT POWER OFFICE, SOLA ROAD, AHMEDABAD, Gujarat- 380013 and accordingly Show Cause Notice F.No. STC/15-52/OA/2021 dated 23.04.2021 is hereby disposed off.

R. Gulzar Begum

(R. Gulzar Begum)
Additional Commissioner
Central Excise & CGST,
Ahmedabad North

F.No. STC/15-52/OA/2021

Dated- 19/05/2022

BY REGD. POST A.D./SPEED POST/Hand Delivery

To
M/s. SAURABH ATULKUMAR MEHTA
B 204, SATYAM SKYLINE, OPP
TORRENT POWER OFFICE, SOLA
ROAD, AHMEDABAD, Gujarat- 380013

Copy for information to:

1. The Commissioner, CGST & CX, Ahmedabad North.
2. The Dy. /Assistant Commissioner, DIV-VII, CGST & CX, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, CGST & CX, Ahmedabad North.
4. The Superintendent, Systems, CGST & CX, Ahmedabad North
5. Guard File.

