



<p>T017_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>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20220564WT0000111BC2

फा.सं./F.No. STC/15-72/OA/2021

आदेश की तारीख/Date of Order :- 20.05-2022

जारी करने की तारीख/Date of Issue :- 20.05-2022

द्वारा पारित/Passed by:-

आर गुलजार बेगम IR Gulzar Begum

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 14/ADC/ GB /2022-23

जिस व्यक्ति(याँ) 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.

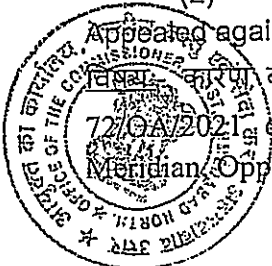
उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

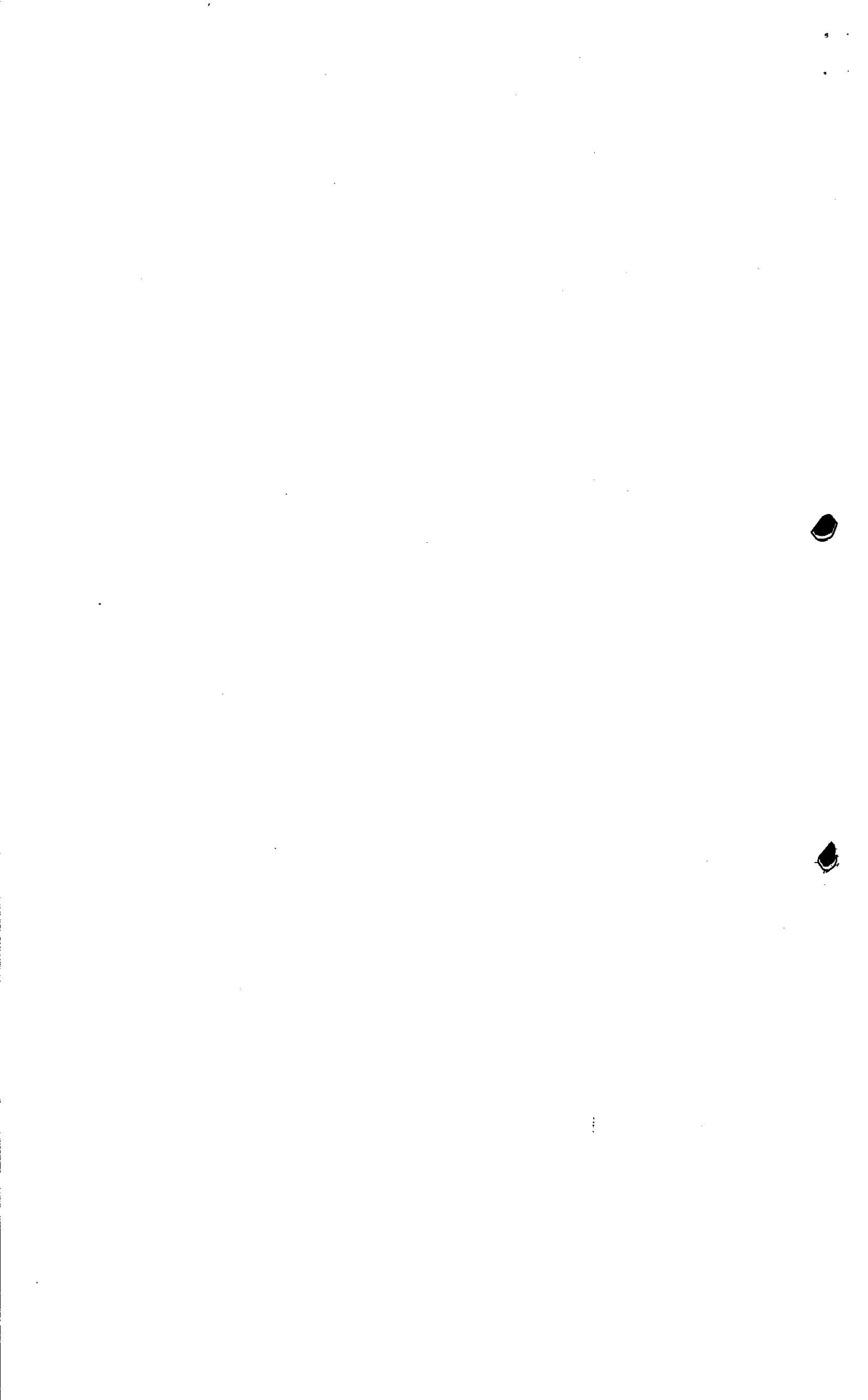
- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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.
विषय/कारण/बताओ सूचना/ Proceeding initiated against Show Cause Notices F.No.STC/15-72/OA/2021 dated 23.04.2021 issued to M/s Shree Khodal Developers, A-207, Ganesh Meridian, Opp. Gujarat High Court, S.G. Highway, Ahmedabad, Gujarat-380060.





BRIEF FACTS OF THE CASE

M/s Shree Khodal Developers, A-207, Ganesh Meridian, Opp.Gujarat High Court, S.G.Highway, Ahmedabad , Gujarat - 380060 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. ADCFS5709DSD001 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	0	0	0
2	2016-17	0	101175483	101175483	15176322
TOTAL					15176322

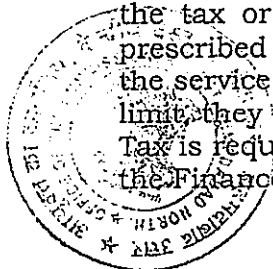
3. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said notice 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). With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies that:

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

5. 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.

6. 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.



7. In view of above, it was noticed 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. 15176322/-, 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.

8. It has been further 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. 15176322/-. 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.

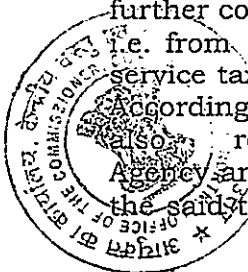
9. The said assessee was given opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 22.04.2021 but the said assessee did not appear for the same.

10. Therefore Show Cause Notice was issued to M/s.Shree Khodal Developers called upon to show cause as to why:

- (i) The demand for Service tax to the extent of Rs 15176322/- 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

11. The assessee vide their letter dated 01.02.2022 submitted the reply to SCN wherein they stated that the company was incorporated on 19.07.2016. The copies of PAN card and Partnership Deed were attached. They are mainly providing the service in nature of works contract service and for which they have Service Tax Registration dated 12.08.2016. Since the company was incorporated on 19.07.2016 they were not requirement to file Service Tax Return during the financial year 2015-16. They further contended that for the FY 2016-17, the firm was operational for three quarters, i.e. from 19.07.2016 to 31.03.2017. They had filed STR for the year and also paid service tax on total receipts on the services provided for the year under consideration. Accordingly they are not liable to pay any service tax or interest or penalty. They have also received service in the nature of Goods Transport Agency and was liable to pay service tax under RCM and accordingly they have paid the said tax also. The first Audit of M/s.Shree Khodal Developers was conducted on



12.02.2021 for the period April 2016- to June 2017 by the office of the Commissioner of Central Excise and Central Tax Audit and the copy of the FAR No.CE/ST-1102/2020-21 was also attached. They requested to pass assessment order accordingly.

PERSONEL HEARING

12. Personnel Hearing was granted to the said assessee and Shri Raj Patel, CA, duly authorize representative, appeared on behalf of the assessee. He has submitted reconciliation statement and stated that they have done works contract service and requested to consider their reply dated 01.02.2022 for necessary further action.

DISCUSSION AND FINDINGS

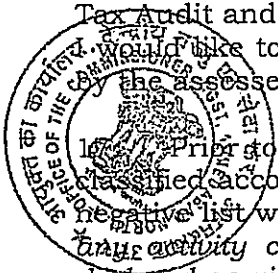
13. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding to adjudicate the SCN.

14. I have carefully gone through the records of the case, SCN, defence replies, reconciliation statement, audited Balance sheet, copies of Income Tax Returns for the FY 2015-16 and 2016-17, Form 26AS as well as oral submissions made by the said assessee during the proceedings. In the instant case, I find that the said assessee was registered with Service Tax Department under Registration No. ADCFS5709DSD001 and was engaged in providing "Works Contract Service". They were also paying service tax and filing ST 3 returns accordingly. On going through the third party CBDT data for the Financial Years 2015-16 and 2016-17, I find 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.

15. On perusal of case records and SCN, I find that for calculation and demand of the Service Tax, the maximum amount of difference between (i) Value of Services declared in ITR filed by the assessee & Value of Services provided as per Service Tax Returns or (ii) Value of Total Amount paid/Credited Under 194 C, 194 H, 194 I, 194 J & Value of Services provided as per Service Tax Returns i.e. the highest difference between these two is considered and the highest applicable rate is applied for Non-Payment/Short-Payment of Service Tax (Including Cess) for Financial Year 2015-16 and 2016-17 accordingly SCN was issued to the said assessee to recover the short paid Service Tax of Rs.1,51,76,322/- for the financial year 2015-16 and 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 78 of the Finance Act, 1994.

16. In their reply to SCN and during the personnel hearing the assessee stated that wherein they stated that the company was incorporated on 19.07.2016. The copies of PAN card and Partnership Deed were attached. They are mainly providing the service in nature of works contract service and for which they have Service Tax Registration dated 12.08.2016. Since the company was incorporated on 17.09.2016 they were not requirement to file Service Tax Return during the financial year 2015-16. They further contended that for the FY 2016-17, the firm was operational for three quarters, i.e. from 19.07.2016 to 31.03.2017. They had filed STR for the year and also paid service tax on total receipts on the services provided for the year under consideration. Accordingly they are not liable to pay any service tax or interest or penalty. They have also received service in the nature of Goods Transport Agency and was liable to pay service tax under RC and accordingly they have paid the said tax also. The first Audit of M/s.Shree Khodal Developers was conducted on 12.02.2021 for the period April 2016- to June 2017 by the office of the Commissioner of Central Excise and Central Tax Audit and the copy of the FAR No.CE/ST-1102/2020-21 was also attached. Now, I would like to examine the legal aspects of the said Works Contract Service provided by the assessee.

17. 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 "**service**" means any activity carried out by a person for another for consideration, and includes a declared service. 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.,



- (a) Service by the Government/Local Authority
 (b) Service by RBI
 (c) Service by Foreign Diplomatic Mission located in India
 (d) Service in relation to agriculture
 (e) Trading of goods
 (f) Manufacture of goods
 (g) Selling of space/time for advertisement
 (h) Services by access to road or bridge on a payment of Toll charges
 (i) Betting, gambling or lottery
 (j) Admission to Entertainment Events & Amusement Facilities
 (k) Transmission or distribution of electricity
 (l) Educational Services
 (m) Renting of Residential dwelling for use as residence
 (n) Financial services by way of extending deposits, loans or advances and inter se sale or purchase of foreign currency
 (o) Transportation of Passenger with or without accompanied belongings
 (p) Transportation of goods.
 (q) Mortuary/Funeral services

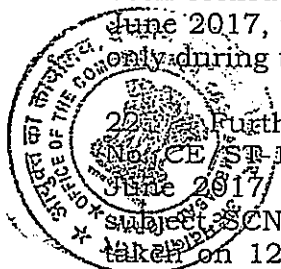
18. In view of the above, I find that the activity carried out by the assessee i.e. Works Contract Service falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List the security service provided by the assessee does not fall under category of negative list of services under the provisions of Section 66D of the Finance Act. Therefore, I find that the said service provider is liable to pay Service Tax on income earned from provision of Works Contract Service for the period 2015-16 to 2016-17.

19. Further, the assessee submitted copy of ST 2 registration certificate bearing ST No. ADCFS5709DSD001 issued by competent authority. On perusal of the same, I find that the assessee obtained registration on 12.08.2016 for works contract service and GTA services. In view of the above and also on perusal of the other documents submitted by the assessee, I accept the contention of the assessee that the company was incorporated on 19.07.2016 they were not required to file Service Tax Return during the financial year 2015-16. In view of the fact that the assessee has incorporated only on 19.07.2016 and taken service tax registration on 12.08.2016 only and as no demand of service tax proposed in the SCN, I do not discuss the taxability of any income for the year 2015-16.

20. Further, on perusal of the Balance Sheet, 26AS, copies of ST3 and other documents for the 2016-17 submitted by the assessee, I find that they have provided works contract Service to various clients and paid service tax on the same. Further they have received GTA services from GTA service providers and have also paid service tax on GTA services on RCM and accordingly they have filed service Tax Return for the period April 2016 to September 2016 and October 2016 to March 2017.

21. In their reply to SCN and during the course Personal Hearing the assessee contended that the Department has conducted audit on 12.02.2017 for the period April 2016 to June 2017 by the Office of the Commissioner of Central Excise and Central Tax and FAR No CE/ST-1102/2020-21 has also been issued on 25.03.2021 and they have furnished copy of the said Final Audit Report. I have gone through the Audit Report No. CE/ST-1102/2020-21 dated 25.03.2021 covering the period from April 2016 to June 2017 where in Revenue Para 1 of the said Audit Report, while reconciliation of ST-3 with their financial records, Service Tax of Rs. 4099/- alongwith the interest and penalty has been recovered for the year 2016-17. The said para has been settled accordingly. Since the Audit Report covers the period from June 2016 to June 2017, the Audit has observed the difference of Rs. 4099/- for the year 2016-17 only during the reconciliation.

22. Further, while going through the Audit report, I find that the Audit Report No. CE/ST-1102/2020-21 dated 25.03.2021 covering the period from June 2016 to June 2017 issued by the Audit Commissionerate and covering the period of the subject SCN must be considered. I find that the Audit of the assessee was under taken on 12.02.2021. However, the Audit has observed revenue paras out of which Para No. 3 is with reconciliation with their Financial records, as stated above and



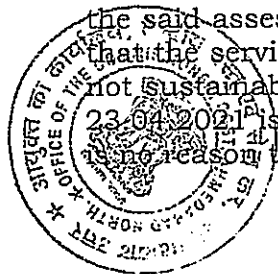
therefore differential revenue has been recovered based on the reconciliation statement.

23. Therefore, it is apparent from the Final Audit Report that the reconciliation of Income booked/ shown in the books of accounts of the assessee, for the period April 2016 to June 2017 was carried out with Taxable value disclosed in their ST-3 Returns filed by the assessee. It is also evident that the audit of records of assessee by the department had already been conducted before the issuance of the subject SCN. Despite of the above fact, the SCN seeks demand of the service tax on differential value worked out by comparing the Income as per ITR/ Form 26AS vis-à-vis Taxable value disclosed in ST-3 Returns. I find that apart from the differences noticed in the figures reported in ST-3 returns and in ITR/Form 26AS, the department had not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non payment of service tax. Having considered these factual and documentary evidences available on records, and relying on the Final Audit Report, I find that there is no short payment on the part of the assessee. The SCN issued to the assessee after audit of the assessee is beyond the law and is not justified. Thus, the subject SCN is liable to be dropped on merits being incorrect and legally not sustainable.

24. The Balance sheet and profit and loss account of an assessee is vital statutory records. Such records are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for evincing true financial position. Assessee was legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in unorganized method. The statute provides mechanism for supervision and monitoring of financial records. It is mandate 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 fair conclusion in respect of the balance sheet and profit and loss accounts. It is also onus upon 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. The Chartered Accountant, who audited the accounts of the assessee, being qualified professional has given declaration that the balance sheet and profit and loss accounts of the noticee reflect true and correct picture of the transaction and therefore, I have no optioned other than to accept the classification of incomes under profit and loss account as true nature of the business and to proceed to conclude instant proceedings accordingly.

25. 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, I however do not find any charges leveled for demand for FY 2017-18 (upto June 2017) in charging part of the SCN. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income from sale of services. I therefore refrain from discussing the taxability on other income other than the sale of service.

26. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, ITR, reconciliation statement, I find that the service tax demand of Rs.1,51,76,322/- for the period 2015-16 to 2016-17 is not sustainable and accordingly Show Cause Notice F.No.STC/15-72/OA/2021 dated 23.04.2021 is liable to be dropped. Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty upon assessee on this count.



27. Accordingly, I pass the following order;

ORDER

28. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 1,51,76,322/- along with interest and penalties vide SCN F.No. STC/15-72/OA/2021 dated 23.04.2021.

R. Gulzar Begum

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

F.No. STC/15-103/OA/2021

Dated: 20.05.2022

To
M/s Shree Khodal Developers, A-207,
Ganesh Meridian, Opp.Gujarat High Court,
S.G.Highway, Ahmedabad , Gujarat - 380060.

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-III, Division-VII, Central Excise & CGST, Ahmedabad North
4. The Superintendent (System) CGST, Ahmedabad North for uploading on website.
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