



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. **STC/15-124/OA/2020**

आदेश की तारीख/Date of Order : - 18.11.2021

जारी करने की तारीख/Date of Issue :- 23.11.2021

DIN No: 20211164WT0000666F4E

द्वारा पारित/Passed by:-

आर गुलजार बेगम .R /**GULZAR BEGUM**

संयुक्त आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 20/JC/GB/2021-22

जिस व्यक्ति(यों) (को यह प्रति भेजी जाती है ,उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के 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-380015को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

उक्त अपील ,अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क) अपील (नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(3)

उक्त अपील की प्रति।

(4) 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) 2.00 दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(3) Copy of accompanied Appeal.

(4) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice F. No. **STC/15-124/OA/2020** dated **21.10.2020** issued to **M/s. SANATHANAN KANJAN PILLAI**, situated at 403, Ramchandra House, B/h. Dinesh Hall, Nr. Income Tax Circle, Navrangpura HO, Ahmedabad, Gujarat-380009

BRIEF FACTS OF THE CASE :

M/s. Sanathan Kunjan Pillai Nair, 403 Ramchandra House, B/H Dinesh Hall, Near Income Tax Circle, Ahmedabad, Naverangpura, HO, Ahmedabad, Gujarat, 380009-Gujarat (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.- AGDPN5797NST001 & are engaged in the business of Providing Taxable Services .

2. On perusal of the data received from CBDT, it was noticed that the assessee had declared different values in Service Tax Return (ST-3) and Income Tax Return (ITR/Form 22AS) for the Financial year 2015-16.

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

(Amount in Rs.)

Sr No	F. Y.	Total Sale of Service as per ITR	Total Gross Value Provided (STR)	Total Value for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	Higher Value (Value Difference in ITR & STR) Or (Value Difference in TDS & STR)	Resultant Service Tax short paid (including Cess)
1	2015-16	96724000/-	48005483/-	98638251.69/-	50632768.69/-	7341751/-

4. The Jurisdictional Deputy/Assistant Commissioner requested the assessee for a clarification vide letter dated 07.10.2020 regarding the differential value as mentioned above by submitting self certified documentary evidences such as Balance Sheet, Profit & Loss Account, Income Tax Returns, Form: 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns for the Financial Year 2015-16, However, no reply was received from the assessee.

5. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16, the service tax liability of the service tax assessee has been ascertained on the basis of income mentioned in the Income Tax returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the Service tax liability under Section 67 of the Finance Act, 1994.

6. No data was forwarded by CBDT, for the period 2016-17 and 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 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).

7. 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."

8. From the data received from CBDT, it is observed that the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the year 2016-17 to 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 letter from the Department. Therefore, the assessable value for the year 2016-17 and 2017-18 (upto June-2017) is not ascertainable at the time of issuance of 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 2016-17 to 2017-18 (upto-June 2017) not covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

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

10. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the noticee M/s .SANATHANAN KUNJAN PILLAI NAIR, have committed the following contraventions of the provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004:

- (i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner

and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994;

- (ii) Failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994 as discussed above;
- (iii) Failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have not paid service tax as worked out in the Table for Financial Year 2015-16 to 2017-18 (upto June-2017).
- (iv) All the above acts of contravention on the part of the said assessee appear to have been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid is required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years.
- (v) All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appears to be publishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.
- (vi) The said assessee is also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.
- (vii) Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

11. And whereas the above said service tax liabilities of the assessee, M/s. Sanathan Kunjan Pillai Nair, has been worked out on the basis of limited data/ information received from the Income tax department for the financial years 2015-16. Thus, the show cause Notice issued relates exclusively to the information received from the Income Tax Department.

12. Whereas, 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. 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.7341751/-(including Cess). It appears that the above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appears to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

13. Therefore, the Show Cause Notice No.STC/15-124/OA/2020 dated 21.10.2020 was issued to M/s. Sanathan Kunjan Pillai Nair,403 Ramchandra House, B/H Dinesh Hall, Near Income Tax Circle, Ahmedabad, Naverangpura, HO,Ahmedabad,Gujarat,380009-Gujarat as to why;

- (i) The Service Tax to the extent of Rs. 7341751/- (Rupees Seventy Three lakh Forty One Thousand Seven Hundred Fifty One Only) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;
- (ii) Service Tax liability not paid during the financial year 2016-17 and 2017-18 (upto June-2017),ascertained in future, as per para no. 7 and 8 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iv) Penalty under the provisions of Section 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.
- (v) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

14. The proceedings proposed and that may be taken against the said noticee, under the aforementioned provisions of the Central Excise Act, 1994 and the Central Excise Rules, 2002 or the Finance Act 1994 read with the Service Tax Rules, 1994 framed there under, are saved by the Section 174(2) of the CGST Act, 2017 and therefore the provisions of the Chapter V of the Finance Act, 1994 and the Rules made thereunder are applicable for the purpose of demand of Tax, Interest etc. and imposition of penalty under this notice.

15. DEFENCE REPLY:

The Tax payer vide letter dated 10.11.2020 has submitted their written submission *vide which they stated they are engaged in the business of works contract service. Clause (h) of section 66E specifies service portion in execution of works contract as a 'Declared Service'. As per section 65B (54) Works contract means a contract wherein transfer of property in goods involved in the execution of such contract and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, improvement, repair, renovation, alteration of any movable or immovable property. Service tax is leviable to tax only on value of taxable services involved in execution of works contract.*

Value of service portion involved in the execution of a works contract are to be determined as per provision contained in Rule 2A of service tax (Determination of value) Rules, 2006. The provisions of said rule are as follows: -

Rule 2A(i) of the said rules, provides that 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.

Rule 2A(ii) vide Notification No. 11/2014 Dated 11 July, 2014 provides that where value has not been determined under Rule 2A(i) as above, 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: -

Sr. No.	In case of works contracts entered into	ST shall be payable on ___ % of the total amount charged for the works contract
A	For execution of Original Works	40%
B	in case of works contract, not covered under sub-clause (A), including works contract entered into for,- (i) maintenance or repair or reconditioning or restoration or servicing of any goods; or (ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property	70%

Service provided by him is covered under Rule 2A and therefore it is taxable to the extent of value of service portion included in the value of works contract amount charged. Value of service portion is separately shown in reconciliation statement attached as Annexure – A.

15.1 As per Notification No. 30/2012-ST dated on 20.06.2012, vide Sr. No. 9, Service tax shall be payable in respect of services provided or agreed to be provided in service portion in execution of works contract under partial reverse charge mechanism, if services are provided by any individual / HUF / Firm to a Body Corporate. I am being an Individual proprietor therefore I was liable to pay service tax only to the extent of 50% of total service tax liability and balance 50% was paid by body corporate service recipient and has furnished the reconciliation statement for the year 2015-16 as detailed below;

Service Tax Liability for the F.Y. 2015-16

Particulars	Turnover as per Audit Report	Value of Goods as per Rule 2A	Value of Service	Turnover liable to RCM @ 50%	Net Taxable Value	Taxable Value as per ST-3
Fully Taxable (works contract)	1,62,57,923	-	1,62,57,923	-	1,62,57,923	
50% of Value @ 40%	1,27,55,550	76,53,330	51,02,220	25,51,110	25,51,110	
50% of Value @ 70%	3,18,96,580	95,68,974	2,23,27,606	1,11,63,803	1,11,63,803	
50% of Value @ 100%	3,58,13,947	-	3,58,13,947	1,79,06,974	1,79,06,974	
Goods Sale Turnover	70,95,637	70,95,637	-	-	-	
Total	10,38,19,637	2,43,17,941	7,95,01,696	3,16,21,887	4,78,79,810	4,80,05,484

Taxable @ 12.36%	1,36,00,837	14064448
Taxable @ 14%	1,90,41,708	18703771
Taxable @ 14.5%	1,52,37,265	15237265
Basic Service Tax	64,31,157	64,39,479
Education Cess	32,642	33,755
SH Education Cess	16,322	16,878
Swachch Bharat Cess	76,186	76,186
Total Service Tax	65,56,307	65,66,298
CENVAT Credit Utilized	11,18,332	11,18,332
ST to paid by Cash	54,37,975	54,47,966
Service Tax Paid	54,47,967	54,47,967
Interest paid	2,70,755	2,70,755
Late Filing Fees paid	-	-
Service Tax Pending / (Excess Paid)	(9,992)	(1)

15.2 Further, they submitted that the present Show Cause Notice has been issued after considering all the turnover / gross receipts shown in ITR as taxable value of service and It is submitted that Turnover / Gross Receipts includes value of goods supply involved in execution of works contract service as per provision of Rule 2A of service tax (Determination of value) Rules, 2006. Hence, in this case, service tax was paid on value of taxable service after deducting value of goods supplied involved in execution of works contract. Value of service portion is separately shown in reconciliation statement; that as per Sr. No. 9 of Notification No. 30/2012-ST dated on 20.06.2012, service tax shall be payable by service provider to the extent of 50% of taxable value of service and balance shall be paid by Recipient of Service. Hence, in this case, the 50% service tax was paid by him and balance 50% service tax was paid by Recipient of Service under partially reverse charge mechanism which have been shown in reconciliation statement attached; that they have discharged full service-tax liability as per provision of Finance Act, 1994 and Rules made there under and have fully disclosed service tax liability in ST-3. There is no short payment of service tax, hence the demand is not leviable and the show cause notice is liable to be dropped. Further with reference to the Para No. 6 (ii) they submitted that they have discharged full service-tax liability for the Financial Year 2016-17 and 2017-18 (upto June 2017) as per provision of Finance Act, 1994 and Rules made there under and have fully disclosed service tax liability in ST-3 and submitted that the related documents will be submitted in due course; that since no tax is recoverable, as stated in the foregoing paragraphs, the question of recovery of interest does not arise. Similarly, no penalty under Section 77 & 78 can be imposed.

16. PERSONAL HEARING:

The personal hearing in the matter was held on 28.09.2021. Shri Ramavatar Jangir, C.A. was appeared for personal hearing on behalf of Tax payer. He submitted reconciliation statement for the period 2016-17 to 2017-18 (Up to June 2017) alongwith the balance sheet and form 26AS, as detailed below and submitted that they had paid service Tax, whenever applicable and requested to drop all the proceedings. The details submitted for the year 2016-17 are summarized as under;

(Amount in Rs.)

Sr No	F. Y.	Total Sale of Service as per ITR	Total Gross Value Provided (STR)	Total Value for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	Higher Value (Value Difference in ITR & STR) Or (Value Difference in TDS & STR)	Resultant Service Tax short paid (including Cess)
1	2016-17	33032756	19,874,114	24084287	13158642	1973796.30

(Amount in Rs.)

Sr No	F. Y.	Total Sale of Service as per ITR	Total Gross Value Provided (STR)	Total Value for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	Higher Value (Value Difference in ITR & STR) Or (Value Difference in TDS & STR)	Resultant Service Tax short paid (including Cess)
1	2017-18	27390395	10989845	20073595	16400550	2460082.5

Reconciliation statement :**Service Tax Liability for the F.Y. 2016-17**

Particulars	Turnover as per Audit Report	Value of Goods as per Rule 2A	Value of Service	Turnover liable to RCM @ 50%	Net Taxable Value as per Books	Taxable Value as per ST-3
Fully Taxable (Cleaning services)	9,951,000	-	9,951,000	-	9,951,000	
Value @ 40% (Works Contract Service)	2,077,013	1,246,208	830,805	-	830,805	
50% of Value @ 40% (Works Contract Service)	833,613	500,168	333,445	166,723	166,723	
50% of Value @ 70% (Works Contract Service)	3,040,736	912,221	2,128,515	1,064,258	1,064,258	
50% of Value @ 100% (Works Contract Service)	16,649,810	-	16,649,810	8,324,905	8,324,905	
Goods Sale Turnover	480,584	480,584	-	-	-	
Total	33,032,756	3,139,180	29,893,576	9,555,885	20,337,690	19,874,114
					2,422,502	2,422,501
					17,915,189	17,451,613
					2,847,277	2,782,376
					101,688	99,371
					89,576	87,258
					3,038,541	2,969,005
					845,089	845,089
					2,193,452	2,123,916

<i>Service Tax Paid</i>	2,193,451	2,123,915
<i>Interest paid</i>	112,890	101,825
<i>Late Filing Fees paid</i>	6,200	6,200
Service Tax Pending / (Excess Paid)	1	1
Difference between Books and ST-3		69,536
Service Tax Paid on 03/06/2017		69,536

Note : We have paid Rs. 80,601 (Rs. 64,900 Basic + Rs. 2,318 SBC + Rs. 2,318 KKC Rs. 11,065 Interest) in WC Services dated 03/06/2017 vide challan no. : 08254

Service Tax Liability for the F.Y. 2017-18 upto June 2017

Particulars	Turnover as per Audit Report	Value of Goods as per Rule 2A	Value of Service	Turnover liable to RCM @ 50%	Net Taxable Value as per Books	Taxable Value as per ST-3
<i>Fully Taxable (Works Contract Service)</i>	5,413,074	-	5,413,074	-	5,413,074	
<i>Value @ 40% (Works Contract Service)</i>	4,066,301	2,439,781	1,626,520	-	1,626,520	
<i>50% of Value @ 40% (Works Contract Service)</i>	16,888,911	10,133,347	6,755,564	3,377,782	3,377,782	
<i>50% of Value @ 70% (Works Contract Service)</i>	-	-	-	-	-	
<i>50% of Value @ 100% (Works Contract Service)</i>	1,022,109	-	1,022,109	511,055	511,055	
<i>Goods Sale Turnover</i>	-	-	-	-	-	
Total	27,390,395	12,573,127	14,817,268	3,888,837	10,928,431	10,989,845
<i>Taxable Value @ 15%</i>					10,928,431	10,989,845
<i>Basic Service Tax</i>					1,529,980	1,538,578
<i>Swachch Bharat Cess</i>					54,642	54,949
<i>Krishi kalyan Cess</i>					54,642	54,949
Total Service Tax					1,639,264	1,648,476
<i>CENVAT Credit Utilized</i>					93,657	93,657
ST to paid by Cash					1,545,607	1,554,819
<i>Service Tax Paid</i>					1,554,822	1,554,822
<i>Interest paid</i>					130,861	130,861
<i>Late Filing Fees paid</i>					7,600	7,600
Service Tax Pending / (Excess Paid)					(9,215)	(3)
Difference between Books and ST-3						(9,212)

17. DISCUSSION AND FINDINGS:

17.1 I have carefully gone through the facts of the case and records available in the case file. I have also gone through the defence reply dated 04.11.2020 filed by the assessee. On going through the same, I find that the impugned show cause notice is issued based on the data shared and provided by the CBDT for the year 2015-16, on the ground that the assessee had earned substantial Service income of Rs. 73,41,751/- by way of providing taxable services, but

has not discharged their Service Tax liability fully and not paid the service tax. The issue in the impugned Show cause notice is whether the assessee is liable to pay service tax of Rs. 73,41,751/- on the difference value of Rs.5,06,32,768.69/- under provision to Section 73 of Finance Act, 1994 or not;

17.2. Thus, first and foremost I feel it necessary to understand the activities being carried out by the assessee. I find that after introduction of new system of taxation of services in negative list regime, any services for a consideration is taxable except those services specified in the negative or exempt list by virtue of mega exemption.

17.3 I find that the assessee in his defence reply dated 10.11.2020 has stated that they have rendered service of works contract.

18 The assessee has also submitted the copies of Income Tax Returns in Form ITR-6 for Year 2015-16, 2016-17 and 2017-18 filed with Income Tax Department as required under Section 11 of the Income Tax Act. On perusing these returns, I observe that the information about "the nature of company and its business" provided in the returns is shown as "Contract Sales & Other incomes".

19 The assessee has submitted the Independent Auditors' Reports for FY 2015-16, 2016-17 and 2017-18. I find that the Audit of the Individual is conducted under Section 44AB of the Company Act. The said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed. I find that the Profit and Loss Accounts for FY 2015-16, 2016-17 and 2017-18 recognises main Revenue as "Works Contract Services".

20 I find that the aforementioned records/ returns 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 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. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair. I find that in the SCN, the total amount of sales declared in ITR for the year is Rs. 9,67,24,000 and Total value for TDS for the same year declared is Rs. 9,86,38,251/-. However, the sales of goods turnover of Rs. 70,95,637 (exempted) has not been considered in ITR and therefore the actual value of sales arrived at Rs. 10,38,19,637/- as narrated in para 15.1 above is correct.

21 I have also gone through the Sales ledger for FY 2016-17 & 2017-18 (upto June 2017) furnish by the party vide submission dated 27.09.2021, which is narrated herein under;

FY 2016-17

50 % of 70%							
S.No.	Date	Total Value	After abattment of 30 % taxable value	Total ST	Net Taxable value for Service Provider	ST paid by Service Provider	Rate
1	21.07.2016	1324504	927152.8	139072.9	463576.4	69536.46	15
2	09.09.2016	1716232	1201362	180204.4	600681.2	90102	15
50% of 40 %							
S.No.	Date	TV	After abattment of 60 % taxable value	Total ST	Net Taxable value for Service Provider	ST paid by Service Provider	Rate
1	31.05.2016	67546	27018.4	3917.668	13509.2	1958.834	14.5
2	13.10.2016	766067	306426.8	45964.02	153213.4	22982.01	15
Other-Labour Work 100% of 100 %							
S.No.	Date	TV		Total ST payable	Net Taxable value for Service Provider	ST paid by Service Provider	Rate
1	31.05.2016	4817985		698607.8	2408993	349303.9	14.5
2	21.07.2016	4708285		706242.8	2354143	353121.4	15
3	09.09.2016	143375		21506.25	71687.5	10753.13	15
4	13.10.2016	6980165		1047025	3490083	523512.4	15
Other-Works Contract fully taxable							
S.No.	Date	TV		Total ST Payable	Net Taxable value for Service Provider	ST payable 100 % payable by Service provider	Rate
1	29.01.2017	8550000		1282500	8550000	1282500	15
2	10.02.2017	164000		24600	164000	24600	15
3	15.02.2017	1237000		185550	1237000	185550	15
Value@40%							
S.No.	Date	TV		Total ST Payable	Net Taxable value for Service Provider	ST payable 100 % payable by Service provider	Rate
1	27.03.2017	2077013	830805.2	124620.8	830805.2	124620.8	15

Non Taxable Supply of Material							
S.No.	Date	TV		Total ST Payable	Net Taxable value for Service Provider	ST payable 100 % payable by Service provider	Rate
1	09.09.2016	480584		0	480584	0	0

FY 2017-18(upto June 2017)

50% of 40 %							
S.No.	Date	TV	After abattment of 60 % taxable value	Total ST	Net Taxable value for Service Provider	ST paid by Service Provider	Rate
1	19.04.2017	10801712	4320685	648102.7	2160342	324051.4	15
2	23.06.2017	5791196	2316478	347471.8	1158239	173735.9	15
3	25.06.2017	296003	118401.2	17760.18	59200.6	8880.09	15

Other-Labour Work 100% of 100 %

S.No.	Date	TV		Total ST payable	Net Taxable value for Service Provider	ST paid by Service Provider	Rate
1	25.06.2017	649572		97435.8	324786	48717.9	15
2	30.06.2017	372537		55880.55	186268.5	27940.28	15

Other-Works Contract fully taxable

S.No.	Date	TV		Total ST Payable	Net Taxable value for Service Provider	ST payable 100 % payable by Service provider	Rate
1	30.06.2017	1801126		270168.9	1801126	270168.9	15
2	30.06.2017	1045588		156838.2	1045588	156838.2	15
3	30.06.2017	2185388		327808.2	2185388	327808.2	15
4	30.06.2017	380972		57145.8	380972	57145.8	15

Value@40%

S.No.	Date	TV		Total ST Payable	Net Taxable value for Service Provider	ST payable 100 % payable by Service provider	Rate
1	30.06.2017	2554892	1021957	153293.5	1021957	153293.5	15
2	30.06.2017	1511409	604563.6	90684.54	604563.6	90684.54	15

22. I find that the SCN shows the difference in value to the tune of Rs. 5,06,32,768/- for FY 2015-16 when value of sales/gross receipt as per ITR are compared with gross value declared in ST-3 as mentioned in forgoing paras. Further para 6 of the SCN states that the levy of service tax for FY 2016-17 and FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. I have also gone through the Service Tax Returns, Balance Sheet for the year 2016-17 and 2017-18 (Up to June 2017). On going through the ST-3 returns and financial records for FY, 2016-17 & 2017-18 (Up to June 2017), it is noticed that the assessee has declared service tax liability rightly in the ST-3 returns as narrated in aforesaid paras.

23 From the SCN, I 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.

24 I find that the *Clause (h) of section 66E specifies service portion in execution of works contract as a 'Declared Service'. As per section 65B (54) Works contract means a contract wherein transfer of property in goods involved in the execution of such contract and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, improvement, repair, renovation, alteration of any movable or immovable property. Service tax is leviable to tax only on value of taxable services involved in execution of works contract.*

Value of service portion involved in the execution of a works contract are to be determined as per provision contained in Rule 2A of service tax (Determination of value) Rules, 2006. The provisions of said rule are as follows: -

Rule 2A(i) of the said rules, provides that 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.

Rule 2A(ii) vide Notification No. 11/2014 Dated 11 July, 2014 provides that where value has not been determined under Rule 2A(i) as above, 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: -

Sr. No.	In case of works contracts entered into	ST shall be payable on ___ % of the total amount charged for the works contract
A	For execution of Original Works	40%
B	in case of works contract, not covered under sub-clause (A), including works contract entered into for,- (i) maintenance or repair or reconditioning or restoration or servicing of any goods; or	70%

<i>(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property</i>	
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Service provided by him is covered under Rule 2A and therefore it is taxable to the extent of value of service portion included in the value of works contract amount charged.

24.1 As per Notification No. 30/2012-ST dated on 20.06.2012, vide Sr. No. 9, Service tax shall be payable in respect of services provided or agreed to be provided in service portion in execution of works contract under partial reverse charge mechanism, if services are provided by any individual / HUF / Firm to a Body Corporate. I am being an Individual proprietor therefore I was liable to pay service tax only to the extent of 50% of total service tax liability and balance 50% was paid by body corporate service recipient and has furnished the reconciliation statement for the year 2015-16 as detailed below;

25. From the above, I find that the assessee has contested the demand of service tax on services rendered by them being works contract and has claimed the exemption from levy of service tax under Rule 2A(ii) vide Notification No. 11/2014 Dated 11 July, 2014 and vide Sr. No. 9As per Notification No. 30/2012-ST dated on 20.06.2012, , Service tax shall be payable in respect of services provided or agreed to be provided in service portion in execution of works contract under partial reverse charge mechanism, if services are provided by any individual / HUF / Firm to a Body Corporate.

26. I also find and observe from the sales register for the year 2015-16 to 2017-18 that sales shown in the register i.e in their balance sheet is appropriately mentioned in their annual account, the same is also confirmed through reconciliation statement.

27 Keeping in view the aforementioned detailed discussions, I find that the services rendered by the assessee is squarely covered under the Rule 2A(ii) vide Notification No. 11/2014 Dated 11 July, 2014 and find that the exemption is quite clearly available to the assessee as claimed by them. I am of the view that the assessee has rightly claimed the benefit of Notification No. 30/2012-ST dated 20.06.2012 read with Rule 2A of service tax (Determination of value) Rules, 2006.

28. I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN as the tax payer has already paid eligible service tax as stated in Reconciliation statement.

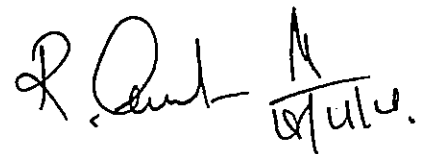
29. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. Accordingly, it is my considered view that the assessee has established their case quite unambiguously that the difference in value of service as discerned by the department by comparing the value of services in ITR/TDS and gross value of services provided in ST-3 Returns is basically on account of the benefit of the abatement in value service vide Notification number 30/2012-ST dated 20.06.2012 read with Rule 2A of service tax (Determination of value) Rules, 2006. being the Works Contract Services rendered by the assessee as

discussed hereinabove. I therefore hold that no more service tax is payable by the assessee as demanded in the subject SCN.

30. 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 in 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 of imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

31. I drop the proceedings initiated against M/s. Sanathan Kunjan Pillai Nair, 403 Ramchandra House, B/H Dinesh Hall, Near Income Tax Circle, Ahmedabad, Navarangpura, HO, Ahmedabad, Gujarat, 380009, vide Show Cause Notice F.No. STC/15-124/OA/2020 dated 21.10.2020.



(R. GULZAR BEGUM)
Joint Commissioner
Central Excise & CGST,
Ahmedabad North

By Regd. Post AD./Hand Delivery
F.No. STC/15-124/OA/2020

Date: .11.2021

To
M/s. SANATHANAN KUNJAN PILLAI NAIR,
403, RAMCHANDRA HOUSE,
B/H DINESH HALL, NR INCOME TAX CIRCLE,
NAVARANGAPURA HO, AHMEDABAD, GUJARAT, 380009.

Copy for information to:

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