



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-167/OA/21-22

आदेश की तारीख/Date of Order:- 07.06.2022

जारी करने की तारीख/Date of Issue :- 07.06.2022

DIN NO: 20220664WT0000948530

द्वारा पारित/Passed by:- आर गुलजार बेगम *IR. GULZAR BEGUM*

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 21/ADC/GB/2022-23

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

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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 इ.ए (1-A.E) 1-में दाखिल कर सकता है। इस अपील पर रु) 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।

(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) 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:

- (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.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice F. No. **STC/15-167/OA/2021-22** dated **07.06.2022** issued to **M/s Munaf S. Desai**, 9, SAHKAR ESTATE, NR. HOTEL SUKH SAGAR, SANAND CIRCLE, AHMEDABAD, GUJARAT-380010.

BRIEF FACTS OF THE CASE

M/s MUNAF SULEMANBHAI DESAI, 9, SAHKAR ESTATE, NR. HOTEL SUKH SAGAR, SANANAD CIRCLE, AHMEDABAD, Gujarat- 380010 (hereinafter referred to as "the said assessee" for the sake of brevity) are engaged in providing services and for the same was registered with Service Tax Department having Service Tax Registration No. ANHPD0752ASD001.

2. An analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 to 2016-17, and details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the records available with this office, on going through the Third party Data received from CBDT of the said assessee for the F.Y. 2015-16 to 2016-17, the Sales/Gross Receipt from Services (Value from ITR) are not tallied with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16 to 2016-17. It appears that the said assessee have declared less/not declared any taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 to 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16 to 2016-17. The details of difference as per CBDT data for the F.Y. 2015-16 to 2016-17 are as under :

Sr. No	Financial Year	VALUE DIFFERENCE in ITR & STR / TDS & STR) (Whichever is higher) (in Rs.)	Service Tax (in Rs.)
1.	2015-16	46605622	6502390
2.	2016-17	40188236	5994653
	TOTAL	86793859	12497044

4. Therefore, the said assessee has less discharged their Service Tax liability and thus is liable to pay Service tax including Cess [@ 12.36% for F.Y. 2015-16 & from 01-04-2015 to 31-05-2015] ; [@ 14% from 01-06-2015 to 14-11-2015] ; [@ 14.50% from 15-11-2015 to 31-05-2016] and [@15% from 01-06-2016 to 31-03-2017] for amounting to Rs.12497044/- on the differential value amounting to Rs. 86793859/- along with applicable interest and penalty for the F.Y. 2015-16 to 2016-17.

5. As per the provisions of **Section 72** of the Finance Act, if any person, liable to pay service tax having made a return, fails to assess the tax, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

6. As per the provisions of **Section 73(1)** of the Finance Act where any service tax has not been levied or paid or has been short levied or short paid by the reasons of willful mis-statement or suppression of facts with intent to evade payment of service tax, the Central Excise Officer may within five years from the relevant date, serve notice on the person chargeable with service tax which has not been levied or paid of which has been short levied or short paid requiring him to show cause why he should not pay amount specified in the notice.

7. As per Rule 6 of the Service tax Rules, 1994, the service tax shall be paid to the credit of the Central Government by 5th day of the month, immediately following the

said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that assessee shall submit their service tax returns in the form of ST-3 within the prescribed time.

8. From the above, it was noticed that the said assessee have failed to pay/short paid/deposit service tax to the extent of Rs. 12497044 /- on the difference of taxable value during the period 2015-16 to 2016-17 by declaring less value in their ST-3 Returns vis-a-s their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services received/provided by them with an intent to evade payment of service tax. Thus, it appears that the said assessee have failed to discharge the service tax liability of Rs. 12497044/- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) worked out on value of Rs. 86793859/- and therefore, service tax is required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

9. In view of above, the said assessee have contravened the provisions of :

- (a) Section 66 of the Finance Act, 1994 in as much as they have failed to collect and pay the service tax as detailed above, to the credit of Central Government.
- (b) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they have not paid the service tax as mentioned above to the credit of the Government of India within the stipulated time limit;
- (c) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, as amended, in as much as they had failed to properly assess their Service Tax liability under Rule 2(1)(d) of Service Tax Rules, 1994 and failed to declare correct value of taxable services as well as exempted services to the department in the prescribed return in Form ST-3.

10. It has been noticed that at no point of time, the said assessee has disclosed full, true and correct information about the value of the services provided by them 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 to 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. 12497044 /-. Thus, it appears that there is a deliberate withholding of essential and material information from the department about service provided and value realized by them. It appears that all these material information have been concealed from the department deliberately, consciously and purposefully to evade payment of service tax.

11. As per Section 75 *ibid* every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (as such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appears that the said assessee has short paid/non-payment of Service Tax of 12497044/- on the actual value received towards taxable services provided which appears to be recoverable under proviso to Section 73(1) of the Finance Act alongwith interest under Section 75 *ibid* not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee has suppressed the facts to the department and contravened the provisions with an intent to evade payment of Service

Tax. The said assessee has not discharged their Service tax liability and hence is liable to pay interest under Section 75 of the Finance Act.

12. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax appears to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of service tax as discussed in the foregoing paras and therefore, the said amount of service tax amounting to Rs. 12497044 /- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) not paid is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

13. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appear to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, the said assessee have contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee have rendered themselves liable to penalty under Section 76 & Section 77 of the Finance Act.

14. Moreover, in addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appears that the said assessee has willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of service tax rendering themselves liable for penalty under Section 78 of the Finance Act, 1994.

15. Therefore, Show Cause Notice was issued to M/s Munaf Sulemanbhai Desai called upon to show cause as to why;

(i) Differential amount of Service Tax amounting to Rs.12497044/- (Rupees One Crore Twenty Four Lakh Ninety Seven Thousand Forty Four only) (inclusive of Edu. Cess and S&H Edu. Cess) short paid/not paid by them, should not be confirmed/demanded under proviso to Section 73(1) of the Finance Act, 1994.

(ii) interest at the appropriate rates should not be recovered from them as prescribed under Section 75 of the Finance Act, 1994 from the due date on which the Service Tax was liable to be paid till the date on which the said Service Tax is paid.

(iii) penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for the failure to make payment of service tax payable by them within prescribed time-limit.

(iv) penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for the failure to assess the correct tax liability.

(v) penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 as amended for suppressing and not disclosing the value of the said taxable service provided by them before the department with an intent to evade payment of service tax.

DEFENCE REPLY

16. The assessee vide letter dated 21.05.2021 submitted their reply to SCN wherein they submitted that Shri Munaf Suleman Desai prop. Of M/s. Desai Transport Services is full time two type service provider i.e. Man Power Supplier Service and

Transport Freight Service as per Noti.No.30/2012. They have also provided RCM details of the said services, copies of agreement, copies of balance sheet and copies of invoices issued, Form 26AS, and reconciliation statement for the year 2015-16 & 2016-17 and requested to re assess the matter.

PERSONNEL HEARING

17. Personnel Hearing in this case was granted on 01.06.2022. Shri Bashir U Sawan, Advocate appeared on behalf of the assessee and stated that they have done services on RCM basis, hence requested to drop the proceedings.

DISCUSSION AND FINDINGS

18. 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.

19. I have carefully gone through the Show Cause Notice, submission made by the assessee, Balance Sheet, 26AS, for the year 2015-16 & 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.1,24,97,044/- for the financial year 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 76, 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. 1,24,97,044/- for the financial year 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

20. On perusal of the reply to SCN and other documents, I find that the assessee is engaged in providing Man Power Supply Service and Goods Transport Agency Service. Here I would like to go to the definition of service on which service tax is payable. 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

21. In view of the above, I find that the activity carried out by the assessee i.e. Manpower Recruitment Agency Service/GTA 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 Manpower Recruitment Agency Service and GTA Services for the period 2015-16 to 2016-17. Further the liability to pay service tax on Manpower Recruitment Services has been notified at Sr.No.8 of Noti.30/2012 provides that the extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable service specified in (I) shall be as specified in the following table.

Sl.No.	Description of Services	Percentage of service tax payable by the person providing service 01.04.2015 onwards	Percentage of service tax payable by the person receiving service 01.04.2015 onwards	Percentage of service tax payable by the person providing service .F.Y.2014-15	Percentage of service tax payable by the person receiving service F.Y.2014-15
1	In respect of services provided or agreed to be provided by way of supply of manpower for any purpose	NIL	100%	25%	75%

22. Further, I find that as per Noti.No.30/2012-ST dated 20.06.2012 vide Sr.No.8 Service Tax shall be payable in respect of service provided or agreed to be provided in the case of security service by service provider to the extent of service tax on 25% of value of taxable service and balance service tax on 75% of value of taxable service to be paid by the person receiving the service under partial reverse charge mechanism, if service are provided by any individual/HUF/proprietary concern/partnership firm to the business entity registered as Body corporate. Subsequently the said Noti. No. 30/2012-ST dated 20.06.2012 was amended through Noti.7/2015 dated 01.03.2015 and according to which if the service provider is individual/HUF/Proprietor/partnership Firm and service receiver is business entity registered as body corporate, entire (100%) service Tax is payable by service receiver with effect from 01.04.2015.

23. Further the liability to pay service tax on GTA Services has been notified vide Rule 2(d)(B)(V) of Service Tax Rules, 1994 which reads as under:

Rule 2(d)(B)(V) of the Service Tax Rules, 1994 provided that;

- (d) "person liable for paying service tax", -
- (i) (B) in relation to service 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,—
- (I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (II) 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;
- (III) any co-operative society established by or under any law;
- (IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under;
- (V) any body corporate established, by or under any law; or

- (VI) any partnership firm whether registered or not under any law including association of persons; any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage : Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

24. Further Para I(A)(ii) and Para II of Notification No. 30/2012-ST dated 20.06.2012 as amended provided that service tax payable on services 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;

(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 Service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving service
01	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	NIL	100%

25. 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.

26. In the instant case the assessee provided various services such as Man Power Supply Service and Goods Transport Agency Service. The assessee submitted reply to SCN, copy of invoices, Form 26AS, profit and loss account and reconciliation statement for the year 2015-16 & 2016-17 and claimed benefit of Noti.No.30/2012 dated 20.06.2012 as amended for exemption from payment of service tax being service provider. I have gone through the reconciliation statement reply to SCN and other documents submitted by the assessee. For the sake of clarity, I would like to discuss the matter financial year wise.

FINANCIAL YEAR 2015-16

27. On perusal of Show Cause Notice, Profit & Loss account and reconciliation statement furnished by the assessee, I find that total income credited as per 26AS is Rs. 4,66,05,622/- during the year, hence the SCN is proposed for demanding service tax on differential income of Rs. 4,66,05,622/-. The assessee in their reply to SCN submitted copy of Form No. 26AS, Profit and Loss account and other documents for financial year 2015-16. The said assessee has shown an income of Rs. 4,66,24,008/- in their profit and loss account. As the income shown in their financial accounts is on higher side, I take the income of Rs. 4,66,24,008/- for adjudication as the income for the year under reference. Out of the total income of Rs.4,66,24,008/- they have received income of Rs.1,91,84,892/- under the head Man Power Supply Agency services and Rs.2,74,39,116/- from GTA Services during the year. They have claimed benefit of Notification No. 30/2012-ST dated 20.06.2012 as amended and according to which if the service provider is individual/HUF/Proprietor/partnership Firm and service receiver is business entity registered as body corporate, entire (100%) service Tax is payable by service receiver w.e.f 01.04.2015.

28. On perusal of reconciliation statement, copies of ledger accounts and other details submitted by the said assessee, I find that, during the F.Y 2015-16 the said assessee have an income of Rs.1,68,77,408/- from the Man Power Supply Agency service as income by providing the said services to body corporate. In the instant issue the service tax liability has to be discharged by the service receiver under RCM according to Noti.No.07/2015 dt.01.03.2015 as the receiver is falling under the definition of corporate entity. Therefore the liability to pay service tax on the income earned by providing Manpower Supply Agency services fall on the service receiver being a corporate body. However the assessee himself paid service tax of Rs.23,07,484/- on the services provided by them even though the liability to pay service tax falls on the service receiver. In the profit and loss account they have shown their total income as Rs.1,91,84,892/- (Rs.1,68,77,408/- + Rs.23,07,484/-) under the category of Man Power Supply Agency Services. Therefore being the provider of Man Power Supply Agency service, the assessee is not liable to pay any service tax on the said income received from providing the above service as the service receiver is liable to pay service tax in accordance with Notification No.30/2012 dated 20.06.2012 as amended.

29. Further on perusal of above documents, I find that the remaining amount of Rs.2,74,39,116/- is earned from providing services of GTA services to Corporate body. As per provisions contained in Rule 2(d)(B)(V) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, service tax on GTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) and dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder is payable in RCM by the service recipient. In view of the above service tax on the income of Rs. 2,74,39,116/- received from GTA Services is payable by the recipient of service and not the service provider as per the above Notification. Accordingly being the provider of GTA service, the assessee is not liable to pay service tax on this income also.

FINANCIAL YEAR 2016-17

30. On perusal of Show Cause Notice, Profit & Loss account and reconciliation statement furnished by the assessee, I find that total income credited as per 26AS is Rs. 4,01,88,236/- during the year, hence the SCN is proposed for demanding service tax on differential income of Rs. 4,01,88,236/-. The noticee in their reply to SCN submitted copy of Form No. 26AS, Balance Sheet/ Profit and Loss account and other documents for financial year 2016-17. The said assessee has shown an income of Rs. 4,64,06,585/- in their profit and loss account. As the income shown in their balance sheet is on higher side, I take the income of Rs.4,64,06,585/- for adjudication as the income for the year under reference. Out of the total income of Rs.4,64,06,585/- they have received income of Rs.68,76,642/- under the head Man Power Supply Agency services and Rs.3,95,29,943/- from GTA Services during the year under reference. The assessee claimed benefit of Noti. No. 30/2012-ST dated 20.06.2012 as amended and according to which if the service provider is individual/HUF/Proprietor/partnership Firm and service receiver is business entity registered as body corporate, entire (100%) service Tax is payable by service receiver w.e.f 01.04.2015.

31. On perusal of reconciliation statement, copies of ledger accounts and other details submitted by the said assessee, I find that, during the F.Y 2016-17 the said assessee have an income of Rs.59,88,820/- from the Man Power Supply Agency service as income by providing the said services to body corporate. In the instant issue the service tax liability has to be discharged by the service receivers under RCM according to Noti.No.07/2015 dt.01.03.2015 as the receiver is falling under the definition of corporate entity. Therefore the liability to pay service tax on the income earned by providing Manpower Supply Agency services fall on the service receiver being a corporate body. However the assessee himself paid service tax of Rs.8,87,822/- on the services provided by them even though the liability to pay service tax falls on the service receiver. In the profit and loss account they have shown their total income as Rs.68,76,642/- (Rs.59,88,820/- + Rs.8,87,822/-). Therefore being a provider of Man Power Supply Agency service, the assessee is not liable to pay any service tax on the said income received from providing the above service as the service receiver is liable to pay service tax in accordance with Notification No.30/2012 dated 20.06.2012 as amended

32. Further on perusal of above documents, I find that the remaining amount of Rs.3,95,29,943/- (Rs.4,64,06,585/- - Rs.68,76,642/-) is earned from providing services of GTA services to Corporate body. As per provisions contained in Rule 2(d)(B)(V) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, service tax on GTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) and dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder is payable in RCM by the service recipient. In view of the above service tax on the income of Rs.3,95,29,943/- is payable by the recipient of service and therefore being the provider of GTA, the assessee is not liable to pay service tax on this income also. For the sake of clarity the figures have been reconciled as under:

DESCRIPTION	2015-16	2016-17
Total Income as discussed	46624008	46406585
Income from GTA service under RCM	27439116	39529943
Income from Man Power Agency service under RCM as discussed	19184892	6876642
Difference	0	0

33. 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. 1,24,97,044/- for the period 2015-16 & 2016-17 is not sustainable and accordingly Show Cause Notice 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 noticee on this count.

Accordingly, I pass the following order;

ORDER

34. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 1,24,97,044/- along with interest and penalties vide SCN No. STC/15-167/OA/2021-22 dated 23.04.2021.

R. Gulzar Begum

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

F.No. STC/15-167/OA/2020

Dated: *23/4/21*

To
M/s MUNAF SULEMANBHAI DESAI,
9, SAHKAR ESTATE,
NR. HOTEL SUKH SAGAR,
SANANAD CIRCLE, AHMEDABAD,
Gujarat- 380010

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Deputy Commissioner Division-VI, Central Excise & CGST, Ahmedabad North.
3. The Superintendent, Range-I, Division-VI, Central Excise & CGST, Ahmedabad North
4. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
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