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| <p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p> |  |  <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE</p> |
| <p>फ़ोन नंबर./ PHONE No.: 079-27544557 फैक्स/ FAX : 079-27544463 E-mail:- oaahmedabad2@gmail.com</p> | | |

निवन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. **STC/15-41/OA/2020**

आदेश की तारीख/Date of Order : 15.11.2021

जारी करने की तारीख/Date of Issue : 16.11.2021

DIN NO: 20211164WT000000ADF0

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

संयुक्त आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No.22/JC/GB/2020-21

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

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015 को प्रारूप संख्या इ.ए.-1 (E.A.-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 (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ मने हुए निर्दिष्ट 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 F. No. **STC/15-41/OA/2020** dated **28.09.2020** issued to **M/s. Signature Developers** situated at 1st Floor, D Block, Signature 2, Near Sarkhej Sanand Circle, Sanand Road, Ahmedabad, Gujarat



BRIEF FACTS OF THE CASE;

M/s **Signature Developers** situated at 1st Floor, D Block, Signature 2, Near Sarkhej Sanand Circle, Sanand Road, Ahmedabad, Gujarat(hereinafter referred to as "the said assessee" for the sake of brevity) is engaged in providing services and for the same was registered with Service Tax Department having Registration (ST-2) No. ABRFS2213DSD001.

2. Whereas, as per the records available with this office, on going through the third party CBDT data for the Financial Year 2014-15, it is observed that the said assessee have declared less/not declared any taxable value in their Service Tax Return (ST-3) for the F.Y. 2014-15 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the financial year 2014-15. The details of difference as per CBDT data for the Financial year 2014-15 are as under :

| Sr. No. | Financial Year | Amount as per Income Tax Return(ITR)/Form 26AS (in Rs.) | Taxable value as per ST-3 Returns (in Rs.) | Differential amount (Less amount shown in ST-3 Return) (in Rs.) |
|---------|----------------|---|--|---|
| 01 | 2014-15 | 45355765/- | 2478908/- | 42876857/- |

Therefore, the said assessee is liable to pay Service tax including Cess@ 12.36% amounting to Rs. 5299580/- on the differential value amounting to Rs. 42876857/-along with applicable interest and penalty.

3. Whereas, it is observed that the clarification along with documents were called for from the said assessee for assessment purpose vide DC(Preventive)'s letter F.No. STC/Prev/Gr-I/TPD/2017-18 dated 12.02.2018 followed by Reminders dated 03.05.2018, 30.07.2019 and 13.07.2020. Further, it is also observed that the said assessee has been asked to furnish the reason for the difference between taxable value shown in ST-3 Return vis-à-vis Income Tax Return filed by the said assessee for the financial year 2014-15 alongwith submission of documents such as audited balance sheet, Profit & Loss account, ledgers, gross trial balance, ITR, Form 26AS, ST-3 Return by the Range office as well vide Supdt's letter F.No. CGST-06/04-31/DSCN/Signature Developers/AR-I/2020-21 dated 16.09.2020 but the said assessee has not complied.

4. Whereas, it is observed that the said assessee has neither submitted the documents nor extended the cooperation in the matter although sufficient time was provided. This act of non-cooperation of the said assessee has contravened the provisions of Section 72 of the Finance Act, 1994 and thus rendered themselves liable for penal action under Section 77 of Finance Act, 1994.

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 misstatement 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.

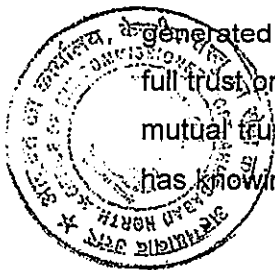
7. As per **Rule 6** of the Service tax Rules, 1994, the service tax shall be paid to the credit of the Central Government by 5th day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. **Rule 7** of the Service Tax Rules, 1994 stipulates that assessee shall submit their service tax returns in the form of ST-3 within the prescribed time.

8. Whereas, from the foregoing paras, it has been observed that the said assessee have failed to pay/short paid/deposit service tax to the extent of **Rs. 5299580/-** on the difference of taxable value during the period 2014-15 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 is observed that the said assessee have failed to discharge the service tax liability of **Rs. 5299580/-** (inclusive of Edu. Cess and S&H Edu. Cess) worked out on value of **Rs. 42876857/-** 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, it is observed that 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. Whereas 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 2014-15. 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. 5299580/-. 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 is observed that all these material information have been concealed from the department deliberately, consciously and purposefully to evade payment of service tax.

11. In view of the above, it is observed that 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 appear to have rendered themselves liable to penalty under **Section 77** of the Finance Act.

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

13. 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. 5299580/- (inclusive of Edu. Cess and S&H Edu. Cess) 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. 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.

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, the show cause Notice to M/s. **Signature Developers** situated at 1st Floor, D Block, Signature 2, Near Sarkhej Sanand Circle, Sanand Road, Ahmedabad, Gujarat issued from F. No. **STC/15-41/OA/2020** dated 28.09.2020 called upon to show cause to the **Additional Commissioner, Central GST & Central Excise, Ahmedabad North**, having office at **1st Floor, Custom House, Ashram Road, Navrangpura, Ahmedabad** as to :

(i) Differential amount of Service Tax amounting to Rs. 52,99,580/- (Rupees Fifty two Lak Ninty nine thousand Five hundred Eighty 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.

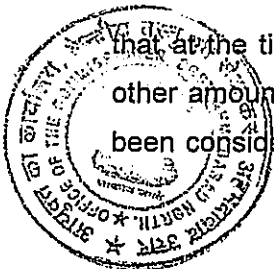
(vi) **penalty** should not be imposed upon them under **Section 78** of the Finance Act, 1994 as amended for suppressing and not disclosing the value of the said taxable service provided by them before the department with an intent to evade payment of service tax.

16. Defence Reply :

The assessee has submitted their written submission vide letter dated 27.07.2021; that the noticee was engaged in the business of Development & Construction and sale of property ; that the noticee had constructed a commercial complex viz., "**SIGNATURE-1** The B. U. permission has been issued by Ahmedabad Urban Development Authority (AUDA) Ahmedabad on 28.09.2012 i.e Competent Authority as defined under Section 66E of the Finance Act 1994; that the noticee sold various units in the above-mentioned commercial complex to various purchasers and legitimate S. T. was paid and relevant S. T. 3 returns were also filed from time to time that during the F. Y. 2014-2015, for which captioned SCN has been issued, the noticee sold 13 dully constructed units after B. U. permission Dt. 28/09/2012 for Rs. 7,53,68,365/- that they furnish the details of such sell are detailed below; Details of such sell are as under:

| Unit No. | Name | Amount |
|----------|--|--------------------|
| 101 | Sheela Goyal Co. 30% | 1,54,50,000 |
| 101 | Shri Hari Sampati Estates 70% | 3,60,50,000 |
| 804 | M. D. Inducto Cast Pvt. Ltd | 59,41,465 |
| 209 | Dhara Hasmukhbhai Shah | 14,30,000 |
| 503 | Renu Sandeep Agarwal | 14,30,000 |
| 808 | Rekhaben P. Valanki/ Dipakbhai Solan | 15,01,500 |
| 904 | Prashantbhai H. Desai/Devanshi Desai | 36,34,000 |
| 802 | Taurus Corp. Private Limited | 14,31,000 |
| 710 | Alliance International | 24,38,400 |
| 901 | Bhupendrasinh Chandansinh Chavda | 16,44,500 |
| 206 | Kanta Goyal | 17,87,500 |
| 402 | Varsha P.Rana/ PratapsinhRanjitsinh Rana | 12,00,000 |
| 706 | T4 Texultants Pvt. Ltd. | 14,30,000 |
| | Total | 7,53,68,365 |

that at the time of finalization of Balance Sheet, such sales amount after adjustment of some other amounts, net sale was reflected in Profit & Loss Account at Rs. 4,53,55,765/- which has been considered as the undisclosed value and S.T.3 and has been demanded on such value;



that the correct figure of Gross Sale is Rs. 7,53,68,365/- and not Rs. 4,53,55,765/-; that the purchasers have paid the consideration on various dates, which can be verified from the copies of Accounts of such purchaser which are enclosed herewith at Annexure-B; that from the account of such purchasers, it can be verified that entire amount of Rs. 7,53,68,365/- was received after B. U. Permission Dt. 28/09/2012, and therefore such sale was not at all taxable under S.T. laws; that Under the circumstances, the notice did not pay S. T. on such sales being non-taxable sales made after B. U. permission; that definition of Services defined in section 65(B)44 of the Finance Act, 1994, i.e . "Service" means any activity carried out by a person for another for consideration and include declared services"; that under Section 66 (E) of finance Act, the definition of declared service means "

66E. The following shall constitute declared services, namely:-

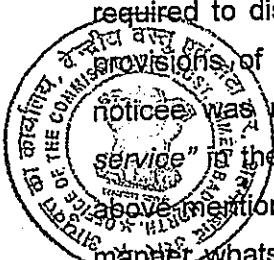
(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, **except where the entire consideration is received after issuance of completion-certificate by the competent authority.**

Explanation.- For the purposes of this clause,-

(I) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of nonrequirement of such certificate from such authority, from any of the following, namely:—

- (A) architect registered with the Council of Architecture constituted under the Architects Act, 1972; (20 of 1972.) or
 - (B) chartered engineer registered with the Institution of Engineers (India); or
 - (C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (II) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure;.....

that the said definition also specifically exclude the consideration received after issuance of completion certificate by the competent Authority for construction of complex building civil structure or a part thereof including complex or building intended for sale a buyer, wholly or partly ; that looking to the above it can be appreciated that though the activities are taxable but if entire consideration is received after issuance of completion certificate, such consideration is out of the purview of S. T. liabilities; that therefore, taking into account the facts of the case and the above-mentioned statutory provisions, your goodself will appreciate that the noticee was not required to pay service tax to the Government. And therefore no recovery can be made. ; that the noticee was never required to disclose the event of obtaining the B.U. permission to the Department under the provisions of the service tax law. Since the relevant construction service provided by the noticee was not an exempted service, it was not shown by the noticee under "Exempted service" in the relevant ST-3 returns; that merely because the noticee has not disclosed the above-mentioned facts (which the noticee was not required by law to disclose) does not, in any manner whatsoever, automatically mean that the noticee had suppressed the relevant facts;



that the penalty under section 78 of the Act can be imposed only for willful suppression with an intent to evade payment of service tax that the noticee humbly submits that it had not suppressed any value/ fact with an intention to evade payment of service tax that penalty under section 78 of the Act cannot be imposed in the present case ; that the proceedings proposed to be initiated to recover service tax of Rs. 52,99,580/- under proviso to Section 73(1) of the Finance Act, 1994 along with charging of interest under Section 75 of the Act and imposition of penalties under Sections 76, 77 and 78 of the Act may please be dropped ; that A personal hearing may please be granted to the noticee.

17. Additional Submission :

The noticee vide letter dated 29.09.2021 has additionally submitted that they have filed written submission on 27.07.2021 ; that earlier they have various ground about non taxability under Service Tax Laws on the ground that the entire amount was received after B. U Permission dated 28.09.2012; that in support of the same we enclose herewith a certificate issued by Chartered Accountant Viz. Devang Bhavsar certifying that the entire amount of Rs. 7,53,68,365/- was received after B. U. Permission; that they also furnish the ledger account of the receipt alongwith the B. U. permission dated 28.09.2012 issued by Ahmedabad Urban Development Authority (Auda); The Tax payer has also submitted submittssion vide letter dated 28.10.2021 with regard to accounting systems adopted by them.

18. Personnel Hearing :

Authorised representative of Signature Developer Shri Dinesh Bhavsar, Advocate appeared for Personnel Hearing . They stated that they have submitted additional submission 29.09.2021 alongwith CA certificate. He has also submitted executive summery

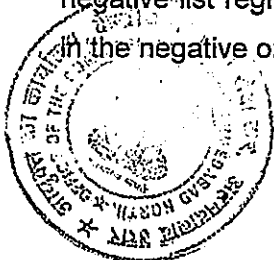
18.1 The tax payer vide letter dated 12.10.2021 has further submitted Form 26AS, ST-3 returns and Balance Sheet for the year 2014-15.

19. DISCUSSION AND FINDINGS:

19.1 I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 27.07.2021, 29.09.2021 and further submission dated 12.10.2021 and 28.10.2021 alongwith documents submitted by the assessee.

19.2. On going through the SCN, I find that data of Sales /Gross receipt from services as per ITR were shared by the CBDT with CBIC for FY 2014-15, provided by the assessee. The difference in value of service to the extent of Rs. 4,28,76,857/- was noticed and therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assesseees liable to pay service tax of Rs. 52,99,580/- on the differential value of Rs. 4,28,76,857/- under proviso to section 73(1) of Finance Act, 1944 or not.

19.3 Thus, first and foremost, It is 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.



19.4 In order to comprehend the actual nature of service, I would like to take support of the ITR, form 26AS and Audited balance sheet and profit and loss account for the FY 2014-15, under Section 44AB of the Income Tax Act, 1961 certified by Shri Rohit K Chokshi, Partner, G. K. Chokshi & Co. Ahmedabad as required under Section 139(1)(a) of the Income Tax Act. which have been submitted along with the additional submission dated 29.09.2021. I would also like to discuss and reproduce the relevant excerpt of the documents.

19.5 I find that the Profit and Loss Accounts for FY 2014-15 recognizes main Revenue as "Development & Construction of Commercial Project.". Hence, I find that the activities being carried out by the assessee for a consideration are squarely covered under the definition of "Service" as defined under Section 65B (44) of the Act and I also find that there is no dispute in this regard.

19.6 Further as the assessee in his written submission stated that definition of Services defined in section 65(B) of the Finance Act, 1994, i.e . "Service" means any activity carried out by a person for another for consideration and include declared services"; that under Section 66 (E) of finance Act, they are exempted to pay Service Tax. I have gone through the definition of Services.....

19.7 I find that with effect from 01.07.2012, certain activities have been made chargeable to Service Tax, as 'declared services' by virtue of Section 66E of the Finance Act, 1994. One of such declared services is Construction Services and the relevant text of the statute reads as under:

" Section 66E: The following shall constitute declared services, namely :

- a) -----
b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

Explanation. — For the purposes of this clause, —

(I)

(II)"

19.8 When the construction is completed and the "Completion Certificate" is obtained, what turns out is an immovable property. When such property is sold/transferred after 'Completion Certificate' is received, it is deemed to be sale of immovable property which is specifically excluded from the definition of service, in terms of Section 65 (B) (44) of the Finance Act 1994, of which the relevant text reads as under:

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include--

an activity which constitutes merely,—
a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or



19.09 From the above definition, it is clear that sale/transfer of title of immovable property, by way of sale, gift or in any other manner is excluded from the definition of service. Therefore, such a sale does not constitute 'Service'.

19.10 A conjoint reading of the above provisions of law makes it explicit that, the activity of construction attracts Service Tax, if a part or whole of the consideration towards such construction is received prior to Completion Certificate/Building Use permission is received. The activity of construction in which the entire consideration is received after Building Use permission, has been kept out of the scope of 'declared services'.

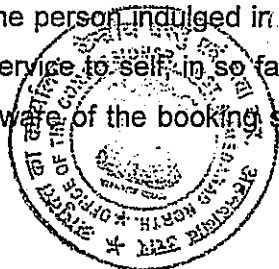
19.11 Accordingly, the said assessee is liable to pay Service Tax only for those units, which have been booked/sold before the issue of Building Use (BU) permissions dated 28.09.2012, under Section 66 of the Finance Act, 1994 read with Service Tax Rules, 1994 and consequentially no Service Tax would be paid for those units which have been sold after the issue of B.U. Permission.

19.12 Though construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, is considered to be a declared service under Section 66E (b) of the Finance Act, 1994, the developer/builder cannot be said to have provided or agreed to provide such service in respect of each individual unit, till such unit is booked/sold on full or part payment, before the requisite permission is obtained from the competent authority. This situation exists because the sale of unit after receipt of "completion certificate" does not constitute service.

19.13 In the typical case of Construction service, service is said to be provided to each individual who books/purchases flats/ units, on payment of part/full consideration and not in respect of the entire building constructed. In other words, the builder is agreeing to provide or provide services to multiple service recipients in respect of individual units of the same project. Till the time, an individual units is booked/sold, there is no element of service involved in as much as there is no service recipient and the natural corollary that follows is that no service is provided or agreed to be provided. In such a situation, it is service to self and therefore the developer/builder cannot be said to be the provider of output service (emphasis supplied) for the flats/units not booked/sold, at the time the requisite permission from the competent authority was issued. This will be the case for each individual flat/unit/shop constructed. This is the crux of the matter especially in light of the interpretation of the term 'declared service' under Sec. 65B(22) which read as under:

"declared service" means any activity carried by a person for another person for consideration and declared as such under section 66E".

In other words, the developer/builder is deemed to be the provider of output service only in those cases where the flats/units are booked/sold prior to obtaining the 'Completion Certificate' from the competent authority. Consequentially, no Cenvat credit can be availed in terms of Rule 3(1) supra, till the time a unit is booked on part/full payment of consideration, as till such time the person indulged in construction cannot be said to be the "Service provider" and is providing service to self in so far as the units not booked/sold. Fact remains that the builder is very well aware of the booking status of the individual flats/ units and this leads to his knowledge of the



fact whether he is an Output Service Provider for that particular units or otherwise. This position is very clear in light of the provisions of Sec. 65B(22) supra to which the builder cannot claim ignorance. Thus, the assessee cannot be held to be an Output Service Provider for the individual units still such time every single units is booked, prior to obtaining Completion Certificate. This is especially so in light of the fact that in the event that the unit is booked after receipt of Completion Certification, the builder is engaged in the activity of sale of immovable property and if the unit is booked before receipt of Completion Certification, the builder is engaged in providing Construction services to the proposed owner of the unit.

19.15 In a nutshell, till the time a units is booked on payment of part/full consideration, no service is provided or agreed to be provided. Thus, the assessee cannot be said to be an Output Service Provider in respect of such units in as much as there is no service recipient for such units and resultantly no service is provided or agreed to be provided.

19.16 I have also gone through the additional submission dated 29.09.2021 enclosing therewith a certificate issued by Chartered Accountant Viz. Devang Bhavsar certifying that the entire amount of Rs. 7,53,68,365/- was received after B. U. Permission; The B. U. permission has been issued by Ahmedabad Urban Development Authority (AUDA) Ahmedabad on 28.09.2012 i.e Competent Authority as defined under Section 66E of the Finance Act 1994; the same is reproduced herewith ;

66E. The following shall constitute declared services, namely:—

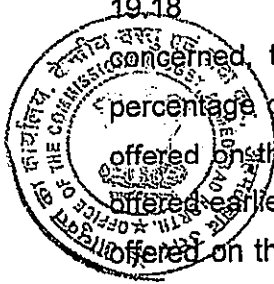
(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

Explanation.- For the purposes of this clause,-

(1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of nonrequirement of such certificate from such authority, from any of the following, namely:—

19.17 I have also gone through the ledger account of the receipt from each party for the year 2014-15, showing the entire amount has been received after issuance of B. U. Permission by Auda Ahmedabad.

19.18 The tax payer vide letter dated 27.10.2021, informed that as far as income tax is concerned, they have two options to offer income for income tax purpose which are (1) percentage completion Method i.e irrespective of amount received from purchasers, income is offered on the basis of percentage of works completed in respective year and finally income offered earlier is adjusted in the later years and (2) Project completion Method : i.e income is offered on the basis of sale deed executed with the purchaser. In other words the amount of sales deed executed during the respective years is offered for income tax purpose and they



have opted to offer Income on the basis of percentage completion method and accordingly the notice had offered Rs. 4,53,55,765/- in Profit and Loss Account on percentage completion Method. Remaining amount of Rs. 3,0,12,600/ has already offered as sales in previous years. Therefore, the receipt of Rs. 7,53,68,365/-has been received towards sale of 13 dully constructed units after B. U. permission Dt. 28/09/2012, as stated in Para No. 16 above. Therefore, I find that the assessee has correctly adopted the accounting method and Amount of Rs. 4,53,55,765/- in Profit and Loss Account mentioned for the year 2014-15 is according to the accounting method.

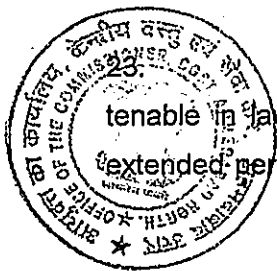
19.19 I have also gone through the service tax return filed by the assessee for the year 2014-15. I find the assessee has paid the service Tax on advance received on other taxable services on value of Rs. 9,53,008 and has also paid the service tax on the value of Rs. 15,25,900/- towards the renting of immovable property. Accordingly I find that the assessee has rightly paid the service tax on the taxable value of Rs. 24,78,908/- for the year 2014-15 as detailed in the Show Cause Notice.

19.20 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.

20 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.

21. 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 value of service as discerned by the department by comparing the value of services in ITR/TDS is basically on account of the exempt service rendered by the assesseeas they are not liable to pay Service Tax on the entire receipt and not obtained registration under the Service Tax. Since I am fully convinced with the arguments put forth by the assessee, I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

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

24 I drop the proceedings initiated against M/s **Signature Developers** situated at 1st Floor, D Block, Signature 2, Near Sarkhej Sanand Circle, Sanand Road, Ahmedabad, Gujarat having Registration (ST-2) No. ABRFS2213DSD001, vide Show Cause Notice F.No. STC/15-41/OA/2020 dated 28.09.2020.

R. Gulzar Begum
15/11/21.

(R. Gulzar Begum)
Joint Commissioner
Central GST & Central Excise
Ahmedabad North

F.No. STC/15-41/OA/2020

Dated-15.11.2021

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

To,

M/s **Signature Developers**,

1st Floor, D Block,

Signature 2,

Near Sarkhej Sanand Circle, Sanand Road,

Ahmedabad, Gujarat

SPC



Copy to:

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

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| પ્રાપ્ત કરવા |
| વસ્તુ અને સેવાકર, અમદાવાદ ઉત્તર |
| દિનાંક: 16-11-2021 |
| હસ્તાક્ષર: 3 |
| નામ: |

