



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

पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद - 380009

FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD - 380009

ई-मेल/E-Mail : ofad|hq-cgstamdnorth@gov.in, oaahmedabad2@gmail.com

फ़ोन/Phone : 079-27544599 फ़ैक्स/Fax : 079-27544463



निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-205/OA/21-22

आदेश की तारीख/Date of Order:- 09.06.2022

जारी करने की तारीख/Date of Issue :- 09.06.2022

DIN NO: 20220664WT0000948530

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

अपर आयुक्त / Additional Commissioner

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

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

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से) 60 साठ (दिन के अन्दर आयुक्त) अपील, (केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015 को प्रारूप संख्या 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।

(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/15-205/OA/2021-22** dated ~~23.04.2022~~ **09.06.2022** issued to **M/s Parth Associates**, situated at A-605, EMPIRE Business Hub, Opp. Shakti Farm, Science City Road, Sola, Ahmedabad-380060

BRIEF FACTS OF THE CASE

M/s. PARTH ASSOCIATES (hereinafter referred to as "the said service provider") situated at "A-605 EMPIRE BUSINESS HUB OPP , SHAKTI FARM SCIENCE CITY ROAD SOLA Ahmedabad 24 380060.", having PAN No. AAFFP0320H being engaged in the business of providing services was found not registered with the Service Tax department.

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 information received from the Income Tax Department, the said service provider had earned substantial service income, however, they did not obtain service tax registration and did not pay service tax thereon.

4. Since the said Service Provider had failed to submit the required details of services provided during the Financial Year 2015-16 to 2016-17, the service tax liability of the Service Provider was required to be ascertained on the basis of income mentioned in the ITR returns and Form 26-AS filed by the said Service Provider 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 67A of the Finance Act, 1994 as the said Service Provider failed to determine the correct taxable value.

5. The Service tax payable is calculated on the basis of value of "sales of services under Sales/Gross Receipts from Services (Value from ITR)" as provided by the Income Tax Department for the Financial Year 2015-16 to 2016-17. By considering the said amount as taxable income, the service tax liability is calculated as under:-

Sr. No.	Financial Year	Sales/Gross Receipts from Services (ITR) (in Rs.)	Service Tax (in Rs.)
01	2015-16	68583302/-	9568704/-
02	2016-17	0/-	0/-
	TOTAL	68583302/-	9568704/-

6. Therefore, the said service provider has not 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.9568704/- on the total value amounting to Rs.68583302/- along with applicable interest and penalty for the F.Y. 2015-16 to 2016-17.

7. Unquantified demand at the time of issuance of SCN

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified 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 would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the notice are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI, 1982 (OIO) 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.'

7. From the facts, it appears that the "Total Amount Paid/Credited Under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts from Services (From ITR)" for the F.Y. 2015-16 to 2016-17 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 said service provider has also failed to provide the required information even after the issuance of letters from the Department. Therefore, the assessable value for the year F.Y. 2015-16 to 2016-17 is not ascertainable at the time of issuance of this Show Cause Notice, Consequently, if any other amount is disclosed by the Income tax Department or any other sources/agencies, against the said service provider, action will be initiated against the said service provider 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 F.Y. 2015-16 to 2016-17 covered under this Show Cause Notice, will be recoverable from the said service provider accordingly.

8. With effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the Negative list are exempted. The nature of activities carried out by the said Service Provider appears to be covered under the definition of service and appears that not covered under the Negative List as given in the Section 66D of the Finance Act, 1994 and also declared services given in Section 66E of the Finance Act, 1994, as amended from time to time. These services also appears to be not exempted under Mega exemption Notification No. 25/ 2012-S.T. dated 20-06-2012, as amended from time to time, and hence the aforesaid services provided by the said Service Provider appears to be subjected to Service Tax under the provisions Section 66B of Finance Act, 1994.

9. The said Service Provider had neither obtained a Service Tax registration for the services provided by them for the period of F.Y. 2015-16 to F.Y. 2016-17, concealed the value from the department, declared to the income tax department. Therefore, it appears that the said Service Provider had not paid correct service tax by way of willful suppression of facts to the department in contravention of provision of the Finance Act, 1994 relating to levy and collection of service tax and the Rules made there under, with intent to evade payment of service tax. Therefore, the service tax amounting to Rs. 9568704/- is recoverable from them by invoking extended period of five years under first proviso to sub-section (1) of Section 73 of Finance Act, 1994 along with interest at the prescribed rate under Section 75 of the Finance Act, 1994 and also rendered himself liable for penal action under Section 78 of Finance Act, 1994.

10. 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.

11. 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.

12. 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. In view of above, it was noticed that the said service provider have contravened the provisions of :

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.

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;

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.

13. It further appears that on account of all the above narrated acts of commission and omissions on the part of the said service provider, they have rendered themselves liable to penalty under the following proviso of the Finance Act, 1994 and Rules framed there under:-

Section 70 and Section 77 of the Finance Act, 1994 as amended in as much as they failed to correctly self assess the tax due on the services provided and have not filed the correct ST-3 return and contravened the provisions of Service Tax laws.

Section 78 of the Finance Act, 1994, in as much as they have suppressed the material facts from the department about service provided and value realized by them with intent to evade payment of service tax.

14. In the instant case, the said service provider has failed to properly assess the Service Tax liability. Thus, they have resorted to suppression of material facts by not reflecting the correct taxable income incurred in respect of the services liable to Service Tax in their ST-3 returns. Accordingly, it appears that the Service Tax as quantified herein above is liable to be recovered by invoking the extended period of limitation as provided for under Sec. 73 of the Finance Act, 1994 along with interest in terms of the provisions of Sec. 75 of the Finance Act, 1994. The said Service Provider has not disclosed full, true and correct information about the value of the service provided by them, and thus, it appears that there was 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 had been concealed from the department deliberately, consciously and purposefully to evade payment of Service Tax. Therefore, in this case all essential ingredients exist to invoke the extended period in terms of proviso to Section 73(1) of Finance Act, 1994 to demand the Service Tax short not paid.

15. In view of discussion in the fore going paras, all the above acts of suppression of facts, misstatement and contravention, omissions and commissions are

on the part of said service provider that they have willfully suppressed the facts, nature and value of service provided by them by not assessing and paying due Service Tax liability, therefore, the above said amounts of Service Tax of Rs. 9568704/- (Non-payment of Service Tax for the period 2015-16 to 2016-2017 on Income from taxable service provided by them), and Late fee (Non filing of Service Tax returns) for the above period is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years for the reasons stated herein foregoing paras. In view of the facts discussed in foregoing paras and material evidence available on record, it appears that the said service provider have contravened the provisions of Section 66B of the Finance Act, 1994, Section 68 of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules, 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as that they failed to determine; collect and pay Service Tax amounting to Rs. 9568704/- (including applicable EC, SHEC, SBC & KKC) for the period F.Y. 2015-16 to 2016-17 as detailed above and they have failed to declare value of taxable service to the department and thus suppressed the amount of charges received by them for providing taxable services as detailed above.

16. Further, the said Service Provider failed (a) to take Service Tax Registration in accordance with the provisions of section 69 *ibid*; (b) to keep, maintain or retain books of account and other documents as required in accordance with the provisions of Finance Act, 1994; and (c) to pay the tax, accordingly the said Service Provider is liable to penalty under the provisions of Section 77(1) of Finance Act, 1994.

17. 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, it appears that the said the said service provider have contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said the said service provider appear to have rendered themselves liable to penalty under Section 76 & Section 77 of the Finance Act.

18. Moreover, in addition to the contravention, omission and commission on the part of the said the said service provider as stated in the foregoing paras, it appears that the said the said service provider 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.

19. Accordingly Show Cause Notice dated 23.04.2021 was issued to the assessee to show cause as to why :-

- The services rendered by them should not be considered as "taxable services" under Section 65 of the Finance Act, 1994, as amended, and the total/gross amount of Rs.68583302/- received towards rendering such services should not be considered as taxable value of the said taxable services charged by them for the F.Y. 2015-16 to 2016-17 ;

Service Tax of Rs. 9568704/- (Rupees Ninety Five Lakh Sixty Eight Thousand Seven Hundred Four Only) which was not paid for the F.Y.2015-16 to 2016-17 as per Table in para-5 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994; read with relaxation provisions of Section 6 of Chapter V of the Taxation and Other Laws(Relaxation of Certain Provisions) Ordinance, 2020(No. 2 of 2020) promulgated on 30.03.2020 by invoking extended period of time limit ;

Interest at the prescribed rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994 ;

Prescribed late fee, should not be recovered from them for each S.T.-3 return filed late, for the relevant period, under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 ;

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 ;

Penalty should not be imposed upon them under Section 77(1) of the Finance Act, 1994 for failure to take Service Tax registration as per the provisions of Section 69 of the Finance Act, 1994 ;

Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994, for non-payment of Service Tax by willfully suppressing the facts from the department with intent to evade the payment of Service Tax as explained herein above.

DEFENCE REPLY

20. The assessee vide letter dated 22.06.2022 submitted that they are working in the field of construction of various works awarded by Govt. and as per Notification No.25/2012 service tax under clause 12,13 and 14 said services are qualified for exempt so they are not liable for service tax on said services. They have attached copies of work order and bills to prove that they are exempt as per the provisions of finance act 1994. The further stated that they are neither liable for taking registration nor to pay tax and requested to drop the SCN.

PERSONNEL HEARING

21. Personel Hearing was granted to the assessee on 07.06.2022. Shri Dhiraj Patel attended on behalf of the assessee and requested to consider the case on merits.

DISCUSSION AND FINDINGS

22. 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.

23. I have carefully gone through the Show Cause Notice, submission made by the assessee, Balance Sheet, 26AS, for the year 2015-16 to 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.95,68,704/- for the financial year 2015-16 to 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. 95,68,704/- for the financial year 2015-16 to 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

24. On perusal of the reply to SCN and other documents, I find that the assessee is engaged in providing various services to Government such as various construction activities/works contract for construction of canal and related works of various

Irrigation Divisions of Government of Gujarat such as Ahmedabad Irrigation Division, Kachch Branch Canal, Himatnagar Irrigation Division, Irrigation and Maintenance /division Rajkot etc.

25. Before adjudicating the issue, I would like to go 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. Further 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.,

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

26. In view of the above, I find that the activity carried out by the assessee i.e. works contract service/construction falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List. Further the said services 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 security services for the period 2015-16 to 2016-17.

27. On perusal of reply to SCN and other documents,, I find that the assessee is carrying out construction services in relation to canals and other works provided to various Irrigation Divisions of Government of Gujarat. The said services to Govt is exempted from the purview of service tax vide Sl.No.12,13 and 14 of Mega Notification No.25/2012 dated 20.06.2012 as amended. It is pertinent to mention the relevant portion of the said Notification hereunder.

NOTIFICATION No.25/2012-Service Tax

New Delhi, the 20th June, 2012

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do,

hereby exempts the following taxable services leviable thereon under section 66B of the said Act, namely:-

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

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

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;

28. The said assessee in their reply to SCN claimed that vide mega exemption notification No.25/2012-ST dated 20.06.2012, services provided by way of erection, construction, maintenance, repair, alteration, renovation or restoration canal, dam or other irrigation works is exempted for payment of service tax.

29. On perusal of SCN, I find that the service tax demand of Rs.95,68,704/- was made on the sales/gross receipts from services of ITR of Rs.6,85,83,302/- for the year 2015-16. However on perusal of profit and loss account, I find that the total sales is amounting to Rs.8,00,75,651/-. As the income shown in the profit and loss account is higher side, I take the amount of Rs.8,00,75,651/- for adjudication.

29. On perusal of reply to SCN, copies of work orders, Copies of RA Bill, invoices, profit and loss account, 26AS and other documents, I find that assessee provided services such as various construction activities/works contract such as construction of parapet wall for Narmada Canal, construction of branch canal at Virangam etc, extension of kachch branch of narmada canal etc allotted by various Irrigation Divisions of Government of Gujarat such as Ahmedabad Irrigation Division, Kachch Branch Canal, Himatnagar Irrigation Division, Irrigation and Maintenance Division Rajkot etc. They have also provided copies of agreement with various Irrigation Divisions of Government of Gujarat and also produced the copies of work allotted to them, Copies of RA Bill, invoices, 26 AS etc. On perusal of Sr.No.12(d) of the Notification No.25/2012-ST, Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of canal, dam or other irrigation works is exempted for payment of service tax.

30. Further on perusal of SCN, copies of work orders, Copies of RA Bill, invoices and other documents and also relevant portion of Notification No.25/2012 dated 20.06.2012, I find that the services of construction of parapet wall for Narmada Canal, construction of branch canal at Virangam etc, extension of kachch branch of narmada canal etc allotted by various Irrigation Divisions of Government of Gujarat such as Ahmedabad Irrigation Division, Kachch Branch Canal, Himatnagar Irrigation Division, Irrigation and Maintenance Division Rajkot etc are covered under the exemption

Notification 25/2012 dated 20.06.2012. In view of the above, I find that total amount of Rs.8,00,75,651/- is received on in lieu of providing the above services to Government and are duly exempted from the purview of service tax vide Noti.No.25/2012 dated 20.06.2012 and therefore assessee is not liable to pay any service tax of Rs.95,68,704/- demanded and accordingly the same is required to be dropped.


31. 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.

32. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, 26AS, reconciliation statement, I find that the service tax demand of Rs. 95,68,704/- for the period 2015-16 to 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.

33. In view of the above I pass the following order;

ORDER

34. I order to drop the proceedings initiated against M/s. PARTH ASSOCIATES vide SCN No. STC/15-205/OA/2021-22 dated 23.04.2021 for recovery of service tax of Rs.95,68,704/- with interest and penalties.



(R.GULZAR BEGUM)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North
Dated- 9/6/21

F.No. STC/15-205/OA/2021-22

To

M/s. PARTH ASSOCIATES

"A-605 EMPIRE BUSINESS HUB, OPP.SHAKTI FARM,
SCIENCE CITY ROAD SOLA Ahmedabad 380060.

Copy to:

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