



आयुक्त का कार्यालय



OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर  
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-71/OA/2020

आदेश की तारीख/Date of Order: - 22.11.2021

जारी करने की तारीख/Date of Issue :- 23.11.2021

DIN NO: 20211164WT0000888C07

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

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 23/JC/GB/2021-22

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

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील ,इसकी प्राप्ति से) 60 साठ (दिन के अन्दर आयुक्त) अपील ,(केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन ,अंबावाड़ी ,अहमदाबाद-380015को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

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

(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/15-71/OA/2020** dated **29.09.2020** issued to **M/s Sunrise Computer & Management Consultancy Private Limited** situated at **Manmohan Complex, 1, Navrangpura, Police Station, Ahmedabad, Gujarat-380009.**

## BRIEF FACTS OF THE CASE

M/s Sunrise Computer & Management Consultancy Private Limited, Manmohan Complex, 1, Navrangpura, Police Station, Ahmedabad-380009 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.AACCS7336LST001 and was engaged in providing "Manpower recruitment/supply agency service", "Online information and database access service and/or retrieval service through computer network" and "Business Auxiliary Service".

2. On going through the third party CBDT data for the Financial Year 2014-2015, 2015-16 and 2016-17, it has been observed that the assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2014-2015, 2015-16 and 2016-17 as compared to the Service related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

#	F.Y.	Taxable Value of services provided as per ST-3 returns (In Rs.)	Difference Between Total Amount paid/Credited from TDS/ITR and Gross Value in Service Tax Provided or Higher value of Difference Between Total Amount paid/Credited from TDS/ITR and Gross Value in Service Tax Provided, as applicable(In Rs.)	Rate of Service Tax (in %)	Resultant Service Tax short paid, including Cess (in Rs.)
1	2014-15	24683779	3532203	12.36	436580
2	2015-16	22062426	7330024	14.50	1062853
3	2016-17	39118943	23957657	15.00	3593649
Total		85865148	34819884	##	5093082

3. Various letters dated 13.02.2018, 30.09.2019 and 06.07.2020 were issued to the assessee for clarification in this regard. Since the said assessee has not provided any details/data for such difference, the reasons for such difference cannot be ascertained and therefore, the exact Service Tax liability cannot be adjudged. Therefore, for calculation and demand of the Service Tax, the maximum amount of difference between (i) Value of Services declared in ITR filed by the notice & Value of Services provided as per Service Tax Returns or (ii) Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' & Value of Services provided as per Service Tax Returns i.e. the highest difference between these two is considered and the highest applicable rate is applied for Non-Payment/Short-Payment of Service Tax (Including Cess) for Financial Year 2014-15, 2015-16 and 2016-17 as detailed in the above table.

4. In view of above, it was observed that the Assessee has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of Rs.50,93,082/- (Including Cess), by declaring less value in their ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period

prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

5. It has also been noticed that at no point of time, the assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2014-2015, 2015-16 and 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it appeared 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.50,93,082/- (Including Cess). It was noticed that the above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same is to be recoverable from them under the provisions of Section 73 of the Finance Act, 1994 along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appears that they have rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

6. Accordingly Show Cause Notice dt.29.09.2020 was issued to M/s Sunrise Computer & Management Consultancy Private Limited, asking them to show cause as to why :

- (i) The demand for Service tax to the extent of Rs.50,93,082/- (Including Cess) (Rupees Fifty Lacs Ninety Three Thousand and Eighty Two Only) short paid /not paid by them, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

#### DEFENCE REPLY

7. The assessee vide letter dated 18.03.2021, 28.09.2021 and 04.10.2021 submitted their replies to the Show Cause wherein they contended that they were engaged in providing "Manpower recruitment/ supply agency service", "Online information and database service and/or retrieval service through computer network" and "Business auxiliary service". Moreover, they have executed contracts from Election Commission through various District Collectors and Municipal Corporations for **printing and binding of Electoral Lists** involving supply of printed lists, which

are goods and attracting VAT liability under the Gujarat Value Added Tax Act, 2003. Similarly, they have printed and supplied OMR sheets/ question papers for various entities. They further clarified that due to shifting of their registered office, this office letters dated 13.02.2018, 30.09.2019 and 06.07.2020 did not reach them. They were not aware about these letters seeking specified information. Similarly, the Show Cause-Cum-Demand Notice under consideration has not been received by them at relevant time. As per telephonic talk, they have arranged to collect this Show Cause-Cum-Demand Notice in person around 20/01/2021 and requested to grant time for reply. They expressed their deepest regret for delay in compliance of letters as well as Show Cause-Cum-Demand Notice.

8. The assessee in their reply to SCN submitted that they are preparing electoral lists of citizen of India on behalf of Election Commission through respective District Collectors and Municipal Corporations and also printed and supplied OMR sheets/ question papers. These contracts involve supply of printed and bound electoral lists and OMR sheets/ question papers as per their directions. As they are supplying printed and bound electoral lists and OMR sheets/ question papers, they fall within the definition of goods as per the provisions of the Gujarat Value Added Tax Act, 2003 and are liable to VAT. Thus, along with the services like "Manpower recruitment/ supply agency service", "Online information and database service and/ or retrieval service through computer network" and "Business auxiliary service" enumerated in para 2 above, they have supplied goods in the form of printed and bound electoral lists and printed and supplied OMR sheets/ question papers, which are supply of goods liable to VAT and falls in Negative List under section 66D(f) of Finance Act, 1994 "Services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption." A copy of sample work order has been furnished by the assessee.

9. They further submitted that as is evident from the details furnished, total turnover for F.Y. 2014-15 as per their books is Rs. 3,48,90,484/-, consisting of supply of goods of Rs. 1,03,24,388/- and the value of supply liable to service tax is Rs. 2,45,66,096/-. Turnover as per ST-3 is Rs. 2,46,83,779/-, because they have made excess payment of service tax on value of Rs. 1,17,683/-. Turnover as per VAT Annual Return in Form 205 is Rs. 1,29,96,881/-, because they have made excess payment of VAT on value of Rs. 23,38,769/-. A copy of reconciliation of income as per books with information furnished in Service Tax and VAT returns and Form 26AS, copy of sample work orders and VAT annual return in Form 205 along with Audited Balance Sheet and Profit and Loss Account for the F.Y. 2014-15 was also enclosed by them. Total turnover as per VAT and ST-3 returns matches with the books of account barring difference of Rs. 1,17,683/- on which they have made excess payment of service tax and Rs. 23,38,769/- on which they have made excess payment of VAT.

10. They further submitted that the total turnover for F.Y. 2015-16 as per their books is Rs. 2,87,32,718/-, consisting of supply of goods of Rs. 53,15,282/- and the

value of supply liable to service tax is Rs. 2,34,17,436/-. A copy of reconciliation of income as per books with information furnished in Service Tax and VAT returns and Form 26AS, copy of sample work orders and VAT annual return in Form 205 along with Audited Balance Sheet and Profit and Loss Account for the F.Y. 2015-16 is enclosed and collectively marked as **Annexure C**. Turnover as per ST-3 is Rs. 2,20,62,426/-, because they have not included taxable value of Rs. 13,55,010/- in ST-3 by oversight. They have paid service tax of Rs.1,96,476/- (Rs. 1,06,775/- plus Rs. 89,701/- both paid on 23/06/2016) along with interest of Rs. 17,053/- (paid on 23/06/2016). Revised calculation of Data Processing Service for F.Y. 2015-16 along with a copy each of paid challans (Rs. 1,23,828/- plus Rs. 89,701/-) they have also submitted. Thus, they have paid service tax on the taxable supply of Rs. 2,34,17,436/- (Rs. 2,20,62,426/- as per ST-3 plus Rs. 13,55,010/- on which tax is paid on 23/06/2016). Total turnover as per VAT and ST-3 returns matches with the books of account.

11. Total turnover for F.Y. 2016-17 as per Balance sheet is Rs. 6,28,80,452/-, consisting of supply of goods of Rs. 2,37,61,509/- and the value of supply liable to service tax is Rs. 3,91,18,943/-. A copy of reconciliation of income as per books with information furnished in Service Tax and VAT returns and Form 26AS, copy of sample work orders and VAT annual return in Form 205 along with Audited Balance Sheet and Profit and Loss Account for the F.Y. 2016-17 was also enclosed by them. Total turnover as per VAT and ST-3 returns matches with the books of account. It is clear from the above details that there is no case of failure to pay/ short payment/ deposit of service tax of any amount. Similarly, there is no case of declaring less value in their ST-3 vis-à-vis our ITR/ Form 26AS as explained in preceding paragraphs. There is no case of failure to assess service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

12. They have fully explained and reconciled the differences pointed out in the Show Cause Notice with necessary documentary evidences for Financial Year 2014-15, 2015-16 and 2016-17. There is, therefore, no case of suppression, let alone knowing suppression, of the facts regarding receipt of/ providing of services by them. There is no act of omission on their part resulting into non-payment of service tax on account of suppression of material facts and contravention of provisions of the Finance Act, 1994 with intent to evade payment of service tax. Hence, the provisions of section 73 regarding recovery of tax, section 75 regarding interest thereon and section 78 regarding liability for penalty are not attracted in their case. In view of the above they requested to drop the SCN.

13. The assessee has enclosed Service tax returns in Form ST-3 for the period from 01-04-2014 to 30-06-2017, Ledger account of Papers Sales i.e. Sale of Goods for financial year 2014-15, 2015-16 and 2016-17 along with sample invoices for each customer for every financial year. Further, for financial year 2014-15 the difference

between taxable value as per Form ST-3 and Gross value of services provided as per ITR is explained in the table given below:

Sr. No.		Particulars	Amount
1		Gross value of services provided as per ITR	28215982
2	Less:	Taxable value as per ST-3	24683779
3		<b>Shortfall as mentioned in SCN</b>	<b>3532203</b>
4	Add:	Excess amount on which service tax is paid (Refer Note 1)	117683
5	Less:	Difference due to mis-reporting of gross value of services and gross value of goods in ITR (Refer Note 2)	3649886
6		<b>Shortfall</b>	<b>0</b>
		Note 1:	
		Taxable value of services as per ST-3	24683779
	Less:	Taxable value of services as Audit Report	24566096
		Excess amount on which service tax is paid	117683
		Note 2:	
		Gross value of services provided as per ITR	28215982
	Less:	Correct value of services provided as per Audit Report	24566096
		Difference due to incorrect reporting of gross value of services in ITR	3649886

Further, for financial year 2015-16 the difference between taxable value as per Form ST-3 and Amount paid / credited as per Form 26AS is explained in the table given below:

Sr. No.		Particulars	Amount
1		Amount paid or credited as per Form 26AS	29392450
2	Less:	Taxable value as per ST-3	22062426
3		<b>Shortfall</b>	<b>7330024</b>
4	Add:	Amount on which TDS is not deducted by customers	214419
5	Add:	Amount on which TDS is deducted by customers in next financial year	303353
6	Add:	Taxes on which the customers have not deducted TDS	2792113
7	Add:	Rounding off	8
8	Less:	Amount on which ST-3 is paid but not reported in ST-3	1355010
9	Less:	Sale of earlier year on which TDS is deducted in current year	571841
10	Less:	Service tax on sale of services during the year	3285423
11	Less:	VAT on sale of goods during the year	112361
12	Less:	Sale of goods as per books	5315282
13		<b>Shortfall</b>	<b>0</b>

15. For financial year 2016-17 the difference between taxable value as per Form ST-3 and Amount paid / credited as per Form 26AS is explained in the table given below:

Sr. No.		Particulars	Amount
1		Amount paid or credited as per Form 26AS	63076600
2	Less:	Taxable value as per ST-3	39118943
3		<b>Shortfall</b>	<b>23957657</b>
4	Add:	Amount on which TDS is not deducted by customers	75871
5	Add:	Amount on which TDS is deducted by customers in next financial year	1597433
6	Add:	Taxes on which the customers have not deducted TDS	5219892
7	Less:	Rounding off	41
8	Less:	No invoices issued for entry no. 8 Rs. 303532 and entry no. 11 of Rs. 353889 in Form 26AS aggregating to Rs. 657421 while no TDS is made on invoice no. SC/16-17/221 of Rs. 167670. Net difference is Rs. 489751 (657421- 167670)	489750
9	Less:	Sale of earlier year on which TDS is deducted in current year	233547
10	Less:	Service tax on sale of services during the year	5716131
11	Less:	VAT on sale of goods during the year	649875
12	Less:	Sale of goods as per books	23761509
13		<b>Shortfall</b>	<b>0</b>

16. They have not supplied services for amount paid / credited at entry no. 3(8) of Rs. 303532 and entry no. 3(11) of Rs. 353889 in Form 26AS of FY 2016-17 aggregating to Rs. 657421/- hence there is excess deduction of TDS on Rs. 657421 by Electronics and Quality Development Centre. Further no TDS is made on invoice no. SC/16-17/221 of Rs. 167670 issued to Electronics and Quality Development Centre. Hence the customer has made excess TDS on Rs. 489751 (657421- 167670). Copy of ledger account of Electronics and Quality Development Centre along with the copy of the said invoice are enclosed. Further, the amount of sale of earlier year on which TDS is deducted in current year, Service tax on sale of services during the year and Sale of goods as per books can be verified from reconciliations and Form 26AS furnished as Annexure E. For reference, a copy each of reconciliation of taxable value as per Form ST-3 and Amount paid or credited as per Form 26AS for financial year 2014-15, 2015-16 and 2016-17 along with reconciliation of turnover as per books and turnover as per VAT and ST returns and Form 26AS for financial year 2014-15, 2015-16 and 2016-17 are also enclosed by them.

17. Thus the assessee have fully explained and reconciled the differences pointed out in the Show Cause Notice with necessary documentary evidences for Financial Year 2014-15, 2015-16 and 2016-17. There is, therefore, no case of suppression, let



alone knowing suppression, of the facts regarding receipt of providing of services by us. There is no act of omission on our part resulting into non-payment of service tax on account of suppression of material facts and contravention of provisions of the Finance Act, 1994 with intent to evade payment of service tax. Hence, the provisions of section 73 regarding recovery of tax, section 75 regarding interest thereon and section 78 regarding liability for penalty are not attracted in our case. In view of the above they requested to drop the SCN.

18. The assessee vide letter dated 04.10.2021 submitted that in reference to Show Cause-Cum-Demand Notice No. STC/15-71/OA/2020/530 dated 29-09-2020, they tried to rectify the ITR for financial year 2014-15 however, due to some technical glitches, the functionality to rectify ITR for financial year 2014-15 is not available on the new income-tax portal. They enclosed a copy of a screen shot of error message shown on the new income-tax portal while making a rectification request along with the rectified ITR for financial year 2014-15 (software generated) wherein the correct values of sale of goods of Rs. 10324388 and sale of services of Rs. 24566096/- are reported.

19. Without prejudice to above, they submitted that as per the original ITR as well as the audited financial statements of financial year 2014-15 their total sale is of Rs. 34890484/- out of which Rs. 10324388/- is pertaining to sale of goods and Rs. 24566096/- is pertaining to sale of services. We have furnished in our previous replies' ledger account of sale of goods, work orders, VAT annual return and sample invoices to substantiate the said sale of goods of Rs. 10324388/- for financial year 2014-15. Further, against the sale of services of Rs. 24566096/- we have paid service tax on Rs. 24683779/- thereby they have made an excess payment of service tax on value of Rs. 117683/-. Thus, there is no short payment or non-payment of service tax on any part of our sales for financial year 2014-15. The said information is further summarized in the table below:

Sr. No.		Particulars	Amount F.Y. 14-15
1		Value of total sales as per ITR / Audited financial statements	34890484
2	Less:	Sale of goods as per books not liable to service tax	10324388
3	Less:	Sale of services as per books on which applicable service tax is paid and duly reported in ST-3	24566096
4		Shortfall liable to service tax	Nil

In view of above, they requested to drop the proposal.

#### PERSONNEL HEARING

20. A personal hearing was granted to the said assessee on 29.09.2021 and was attended by Shri Arjan M Kadegia, Managing Director of the assessee company and Shri Nikunj M Patel, Partner of M/s.KUVB & Co, CA. They have submitted

reconciliation statement for the F.Y 2014-15, 2015-16 and 2016-17, copies of ITR, copies of STR , 26 AS, Audited Balance Sheet. They reiterated their earlier written submissions submitted on various dates and requested to drop the proceedings.

#### DISCUSSION AND FINDINGS

21. I have carefully gone through the records of the case, SCN, defence replies, reconciliation statement, duly audited Balance sheet, copies of Income Tax Returns for the FY 2014-15, 2015-16 AND 2016-17, Form 26AS as well as oral submissions made by the said assessee during the proceedings. In the instant case, I find that the assessee is registered under Service Tax having Registration No.AACCS7336LST001 and was engaged in providing "Manpower recruitment/supply agency service", "Online information and database access service and/or retrieval service through computer network" and "Business Auxiliary Service". For calculation and demand of the Service Tax, the maximum amount of difference between (i) Value of Services declared in ITR filed by the notice & Value of Services provided as per Service Tax Returns or (ii) Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' & Value of Services provided as per Service Tax Returns i.e. the highest difference between these two was considered and the highest applicable rate was applied for Non-Payment/Short-Payment of Service Tax (Including Cess) for Financial Year 2014-15, 2015-16 and 2016-17 as detailed in the above table.

22. The details such as ledger accounts of various heads such as sale of goods, sale of services, copies of ST 3 Returns for the relevant years, reconciliation statement for the entire period, audited balance sheet, ITR and Form 26 AS have been thoroughly verified and the following observation have been made. The issue in the impugned Show cause notice is whether the assessee is liable to pay service tax of Rs. 50,93,082/- on the difference value of Rs. 3,38,19,884/- under provision to Section 73 of Finance Act, 1994 or not; For the sake of clarity, I would like to discuss the taxability of the income Financial Year wise.

#### FINANCIAL YEAR 2014-15

23. On perusal of the Show Cause Notice and other documents available on record, I find that Show Cause Notice was issued to recover service tax on differential value of Rs.35,32,203/- which is the difference between the income from sale of service of Rs.2,82,15,982/- shown in their Income Tax Return and the assessable value of Rs.2,46,83,779/- shown in their ST 3 return (Rs.2,82,15,982/- - Rs.2,46,83,779/- = Rs.35,32,203/-). The assessee in their replies explained the reasons for the difference that due to oversight they have mentioned less income i.e Rs.66,74,502/- under the head sale of products in their ITR by mistake instead of the actual sale of products of Rs.1,03,24,388/-. The actual figure in the case of sale of product is Rs.1,03,24,388/- and which has been verified from the balance sheet and ledger account and find that the contention of the assessee is correct as they have shown Rs.1,03,24,388/- as their income from sale of products in their audited Balance sheet. In this issue I find that

the said financial Audit Report for the financial year has been certified by KUVB & Co, Chartered Accountant, who was statutory auditor of noticee and conducted audit in terms of Section 44AB of the Income Tax Act, 1961. Balance sheet and profit and loss account of an assessee is vital statutory records. Such records are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for evincing true financial position. Every assessee was legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in unorganized method. The statute provides mechanism for supervision and monitoring of financial records. It is mandate upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive fair conclusion in respect of the balance sheet and profit and loss accounts. It is also onus upon auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs. KUVB & Co Chartered Accountant, being qualified professional has given declaration that the balance sheet and profit and loss accounts of the noticee reflect true and correct picture of the transaction. Moreover the ledger account and balance sheet also reflects that the said amount of Rs.1,03,24,388/- is derived from sale of products and therefore, I accept the income from sale of product as 1,03,24,388/- as claimed by the assessee.

24. On perusal of income ledger and other submissions of the assessee, I find that the assessee are preparing electoral lists on behalf of Election Commission of India and also printed and supplied OMR sheets/question papers as per direction of the clients. These contracts involves supply of printed and bound electoral lists and OMR sheets/question papers, they fall under the definition of goods as per provisions of Gujarat Value Added Tax Act, 2003 and are liable to VAT and which also falls under Negative List under Section 66D(f) of Finance Act, 1994. Therefore the income of Rs.1,03,24,388/- is not service taxable and therefore the same is required to be deducted from the total income. On perusal of various records, I find that the remaining income is earned from various other services such as manpower recruitment agency services, online information and database services and/or retrieval service through computer network and business auxiliary service. However the assessee has declared total income of Rs.2,46,83,779/- in their ST 3 return against the income declared in their ITR of Rs.2,82,15,982/- which is in excess of Rs.35,32,203/-. However the difference of their income from sale of products comes to Rs.36,49,886/- (Rs.1,03,24,388/- - Rs.66,74,502/-) more than the differential income which results excess payment of service tax on differential duty of Rs.1,17,683/-. For sake of clarity the figures have been regrouped and reconciled as under:

Financial Year	2014-15
Income as per ITR and as mentioned in SCN	2,82,15,982

Taxable Value of services provided as per ST 3 (Rs.29,41,077/- taxable value provided to proprietary firms)	2,46,83,779
Difference on which service tax demanded	35,32,203
Difference due to misreporting of gross value of services and gross value of goods in ITR as discussed above	36,49,886
Difference	1,17,683

25. On perusal of reconciliation statement, ITR, ST-3 returns and other documents, I find that the service tax demanded in the SCN is due to misreporting in their ITR which comes to Rs.36,49,886/- which is more than the difference of Rs.35,32,203/- on which service tax is demanded. In view of the above facts and submissions, I find that the demand of Service Tax of Rs. 4,36,580/- on differential amount of Rs. 35,32,203/- proposed in the SCN for the year 2014-15 is not sustainable and liable to be dropped.

#### FINANCIAL YEAR 2015-16

26. On perusal of reconciliation statement and records of the case, SCN, defence replies, reconciliation statement, duly audited Balance sheet, copies of Income Tax Returns, I find that an amount of Rs. 2,93,92,450/- is paid or credited as per Form 26AS however the assessee has declared Rs.2,20,62,426/- as their income in their ST 3 returns, therefore SCN is issued to demand the service tax on differential value of Rs.73,30,024/- (Rs.2,93,92,450/- - Rs.2,20,62,426/-). The difference has been explained by the said assessee in their replies to SCN and during the period of personnel hearing. The assessee in their reply to SCN and reconciliation statement, it was contended that the amount shown as paid or credited in the 26 AS is lower than the actual credit as per their books of accounts. On perusal of documents and ledger accounts, I find that there is an income of Rs.2,14,419/- in which the TDS has not been deducted by the customers, an income of Rs.3,03,353/- on which the TDS has been deducted by the customer in the next financial year and there is an income of Rs.27,92,113/- is the taxes on which customers have not deducted TDS by M/s.Gujarat Mineral Research and Development Society, Gujarat Social Infrastructure Development Board Society,, Industrial Extension Bureau and Govt.Labour Office , Veraval. Accordingly the shortfall is calculated as Rs.1,06,39,909/-. The said difference has been reconciled by the assessee on the basis of their accounts and ledger accounts.

On this point, the assessee reconciled that they have paid service tax on an amount of Rs.13,55,010/- but they have not reported this value in their ST 3 return while filing the same. The assessee himself submitted that they have not paid the service tax on the differential amount of Rs.13,55,010/- at the time of filing of their ST 3 Return. However, they have discharged the unpaid service tax liability of Rs.1,23,828/- and interest of Rs.89,701/- vide e-challan on 23.06.2016 and copy of

same has also been furnished by them. On perusal of ST 3 returns and the documents, I find that they have paid the unpaid service tax along with interest, hence the said amount is required to be deducted from their differential income. Moreover there is a sale of Rs.5,71,841/- pertains to earlier year on which TDS was deducted in the current year by M/s.Industrial Extention Bureau, Collector Office, Election Branch, Kanbivaga Branch, and Vadodara Municipal Corporation and therefore the same is eligible for deduction. Service tax paid on sale of service amounting to Rs.32,85,423/- is also eligible for deduction and VAT of Rs.1,12,361/- has also been deductible from the total income. All these income/deductions have been reflected in the relevant 26 AS statement. On perusal of income ledger and other submissions of the assessee, I find that the assessee are preparing electoral lists on behalf of Election Commission of India and also printed and supplied OMR sheets/question papers as per direction of the clients. These contracts involves supply of printed and bound electoral lists and OMR sheets/question papers, they fall under the definition of goods as per provisions of Gujarat Value Added Tax Act, 2003 and are liable to VAT and which also falls under Negative List under Section 66D(f) of Finance Act, 1994. Therefore the income of Rs.53,15,282/- shown as the income from sale of goods is not a service and therefore the same is deductible from the total income and according to which there is no shortfall on which service tax is required to be recovered during the year. For sake of clarity the reconciliation is explained in the tabulated form as under:

1	Financial Year	2015-16
2	Income as per FORM 26 AS and as mentioned in SCN	2,93,92,450
3	Taxable Value of services provided as per ST 3	2,20,62,426
4	Difference on which service tax demanded	73,30,024
5	Amount on which TDS is not deducted by customers	2,14,419
7	Amount on which TDS is not deducted by customers in next financial year	3,03,353
8	Taxes on which the customers have not deducted TDS	27,92,113
9	Round off	8
10	<b>Total ( 4 to 9)</b>	<b>1,06,39,917</b>
11	Deductions	
12	Amount on which ST-3 is paid but not reported in ST-3	13,55,010
13	Sale of earlier year on which TDS is deducted in current year	5,71,841
14	Service tax on sale of services during the year	32,85,423
15	VAT on sale of goods during the year	1,12,361
16	Sale of goods as per books	53,15,282
	<b>Total deductions (12 to 16)</b>	<b>1,06,39,917</b>
17	<b>Difference</b>	<b>0</b>

27. On perusal of reconciliation statement and records of the case, SCN, defence replies, reconciliation statement, duly audited Balance sheet, copies of Income Tax Returns, I find that the service tax demanded in the SCN is due to various reason as discussed above. The assessee has explained and reconciled the difference of Rs.73,30,024/- and accordingly I find

that the demand of Service Tax of Rs. 73,30,024/- on differential amount of Rs.2,20,62,426/- proposed in the SCN for the year 2015-16 is not sustainable and liable to be dropped

#### FINANCIAL YEAR 2016-17

28. On perusal of Show Cause Notice and other documents, I find that an amount of Rs. 6,30,76,600/- is paid or credited as per Form 26AS however the assessee has declared Rs. 3,91,18,943/- as their income in their ST 3 returns, therefore SCN is proposed to recover the service tax of Rs.35,93,649/- on differential value of Rs. 2,39,57,657/- (6,30,76,600/- Rs. 3,91,18,943/- as per SCN). The difference has been explained by the said assessee in their replies to SCN and during the period of personnel hearing. The assessee in their reply to SCN and reconciliation statement, it was contended that the amount shown as paid or credited in the 26 AS is lower than the actual credited or paid amount. They explained that there is an income of Rs.75,871/- in which the TDS has not been deducted by one of their customer i.e Govt.Labour Officer, Veraval, hence the said income is required to add to their total income. Further, there is an income of Rs.15,97,433/- on which the TDS has been deducted by the customers i.e Dr.Babasaheb Ambedkar Open University, Gujarat Mineral Research and Development Society, Industrial Extention Bureau, Collector office election Branch, Kanbivaga Bharuch in the next financial year and therefore not shown as the income during the current year, hence the same is also required to be included in the current year income. Further tax amount of Rs.52,19,892/- on which customers i.e. Gujarat Mineral Research and Development Society, Industrial Extention Bureau and Lions Computer Consultancy have not deducted TDS and that has not been credited in their Form 26 AS.

29. The said difference has been reconciled by the assessee on the basis of their notes of balance sheet and ledger accounts. On reconciliation, it was explained that they have not supplied services for amount paid/credited at Entry No.3(8) of Rs.3,03,532/- and Entry No.3(11) of Rs.3,53,889/- in Form 26 AS of FY 2016-17 aggregating Rs.6,57,421/- by Electronic and Quality Development Centre. Further no TDS is made on Invoice No.SC/16-17/221 of Rs.1,67,670/- issued to Electronic and Quality Development Centre. Hence the customer has made excess TDS on Rs.4,89,751/- (Rs.6,57,421/- - Rs.1,67,670/-). Copy of ledger account of the customer and copy of invoices are placed in support of their claim. Further an amount of Rs.2,33,547/- is shown as sale of earlier year in which TDS is deducted during the current year by their customer Industrial Extension Bureau. Service tax on sale of service amounting to Rs.57,16,131/- is also eligible for deduction as well as VAT of Rs.6,49,875/- paid during the year is also deductible from the total income.

On perusal of income ledger and other submissions of the assessee, I find that the assessee are preparing electoral lists on behalf of Election Commission of India and also printed and supplied OMR sheets/question papers as per direction of the clients. These contracts involves supply of printed and bound electoral lists and OMR

sheets/question papers, they fall under the definition of goods as per provisions of Gujarat Value Added Tax Act, 2003 and are liable to VAT and which also falls under Negative List under Section 66D(f) of Finance Act, 1994. Therefore the income of Rs.2,37,61,509/- shown as the income from sale of goods is not a taxable service and therefore the same is deductible from the total income. On perusal of the reconciliation statement and as discussed above, I find that there is no shortfall on which service tax is required to be recovered during the year. For the sake of clarity the reconciliation is explained in the tabulated form as under:

1	Financial Year	2016-17
2	Income as per FORM 26 AS and as mentioned in SCN	6,30,76,600
3	Taxable Value of services provided as per ST 3	3,91,18,943
4	Difference on which service tax demanded	<b>2,39,57,657</b>
5	Amount on which TDS is not deducted by customers	75,871
6	Amount on which TDS is deducted by customers in next financial year	15,97,433
7	Taxes on which the customers have not deducted TDS	52,19,892
9	<b>Total ( 4 to 9)</b>	<b>3,08,50,853</b>
10	Deductions	
11	No invoices issued for entry no. 8 Rs. 303532 and entry no. 11 of Rs. 353889 in Form 26AS aggregating to Rs. 657421 while no TDS is made on invoice no. SC/16-17/221 of Rs. 167670. Net difference is Rs. 489751 (657421- 167670)	4,89,750
12	Sale of earlier year on which TDS is deducted in current year	2,33,547
13	Service tax on sale of services during the year	57,16,131
14	VAT on sale of goods during the year	6,49,875
15	Sale of goods as per books	2,37,61,509
16	Rounding off	41
16	<b>Total deductions (12 to 16)</b>	<b>3,08,50,853</b>
18	<b>Difference</b>	<b>0</b>

29. On perusal of reconciliation statement and records of the case, SCN, defence replies, reconciliation statement, duly audited Balance sheet, copies of Income Tax Returns , I find that the service tax demanded in the SCN is due to various reason as discussed above. The assessee has explained and reconciled the difference of Rs.35,93,649/- and accordingly I find that the demand of Service Tax of Rs. Rs.35,93,649/- on differential amount of Rs. 2,39,57,657/- proposed in the SCN for the year 2015-16 is not sustainable and liable to be dropped

30. 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. 50,93,082/- for the period 2014-15, 2015-16 and 2016-17 is not sustainable and accordingly Show Cause Notice dated 28.09.2021 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.

31. Accordingly, I pass the following order;

ORDER

32. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 50,93,082/- along with interest and penalties vide SCN No. STC/15-71/OA/2020 dated 28.09.2020.

R. Gulzar Begum  
22/11/20

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

F.No. STC/15-71/OA/2020

To

M/s Sunrise Computer & Management Consultancy Private Limited,  
Manmohan Complex, 1, Navrangpura Police Station,  
Ahmedabad-380009

Copy for information to:

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