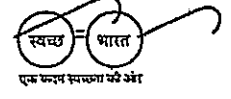




आयुक्त का कार्यालय



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: ofadjhq-cgstamdnorth@gov.in, oaahmedabad2@gmail.com

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

निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-189/OA/21-22

आदेश की तारीख/Date of Order:- 14.06.2022

जारी करने की तारीख/Date of Issue :- 14.06.2022

DIN NO: 20220664WT00001151BE

द्वारा पारित/Passed by:-

आर गुलजार बेगम /R. GULZAR BEGUM

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 26/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-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/15-189/OA/2021-22** dated **23.04.2021** issued to **M/s Ibiza Inframech Private Limited**, situated at C/801, Ganesh Meridian, Amiraj Farms, Nr. Guj New High Court, SG Highway, Ahmedabad-380061.

BRIEF FACTS OF THE CASE :

M/s IBIZA INFRAMECH PRIVATE LIMITED, C/801,, Ganesh Meridian, Opp. Amiraj Farms, Nr Guj. New High Court,, S G Highway,, Ahmedabad, Gujarat-380061 (hereinafter referred to as "the said assessee" for the sake of brevity) are engaged in providing services and for the same was registered with Service Tax Department having Service Tax Registration No. AACCI8586NSD001.

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

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

Sr. No.	Financial Year	VALUE DIFFERENCE in ITR & STR / TDS & STR) (Whichever is higher) (in Rs.)	Service Tax (in Rs.)
1.	2015-16	125395974	17495177
2.	2016-17	0	0
	TOTAL	125395974	17495177

Therefore, the said assessee has less discharged their Service Tax liability and thus is liable to pay Service tax including Cess [@ 12.36% for F.Y. 2015-16 & from 01-04-2015 to 31-05-2015] ; [@ 14% from 01-06-2015 to 14-11-2015] ; [@ 14.50% from 15-11-2015 to 31-05-2016] and [@15% from 01-06-2016 to 31-03-2017] for amounting to Rs.17495177/- on the differential value amounting to Rs. 125395974/- along with applicable interest and penalty for the F.Y. 2015-16 to 2016-17.

4. 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.

5. 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.

6. 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.

7. From the foregoing paras, it appears that the said assessee have failed to pay/short paid/deposit service tax to the extent of Rs. 17495177 /- on the difference of taxable value during the period 2015-16 to 2016-17 by declaring less value in their

ST-3 Returns vis-a-s their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services received/provided by them with an intent to evade payment of service tax. Thus, it appears that the said assessee have failed to discharge the service tax liability of Rs. 17495177/- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) worked out on value of Rs. 125395974/- 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.

8. In view of above, it was 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.

9. It has been noticed that at no point of time, the said assessee has disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Service of the differential value that has come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 to 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc., based on mutual trust and confidence are in place. From the evidences, it observed 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. 17495177 /-. Thus, it was observed that there is a deliberate withholding of essential and material information from the department about service provided and value realized by them. It observed that all these material information have been concealed from the department deliberately, consciously and purposefully to evade payment of service tax.

10. As per Section 75 *ibid* every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (as such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It observed that the said assessee has short paid/non-payment of Service Tax of 17495177/- on the actual value received towards taxable services provided which observed to be recoverable under proviso to Section 73(1) of the Finance Act alongwith interest under Section 75 *ibid* not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee has suppressed the facts to the department and contravened the provisions with an intent to evade payment of Service Tax. The said assessee has not discharged their Service tax liability and hence is liable to pay interest under Section 75 of the Finance Act.

11. 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. 17495177 /- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) not paid is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994

alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

12. 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 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 76 & Section 77 of the Finance Act.

13. 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.

14. Therefore, M/s IBIZA INFRAMECH PRIVATE LIMITED, C/801,, Ganesh Meridian, Opp. Amiraj Farms, Nr Guj. New High Court,, S G Highway,, Ahmedabad, Gujarat- 380061 called upon to show cause as to why;

(i) Differential amount of Service Tax amounting to Rs.17495177/- (Rupees One Crore Seventy Four Lakh Ninety Five Thousand One Hundred Seventy Seven 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.

DEFENCE REPLY :

15. The assessee in his defence reply stated that they are engaged in activities to render works contract services on contract basis to M/s. Larsen & Turbo Limited, Construction which is the main contractor for the transactions executed. The assessee is duly registered under Service Tax law bearing registration no. AACCI8586NSD001 & possess centralized registration; that they submitted the activities conducted by assessee in the capacity of sub-contractor:

Project	Nature or Work	Work Order Type	WO No.	Site
Link 3 Package 3, Sauni Yojna Rajkot	Excavation Work Near Railway Crossing	Regular Labour with Materials	EA962W OD60000 02	Paliyad - Akadiya Village, Rajkot
Link 4 Package 3, Sauni Yojna Rajkot	Earth Work Excavation & RCC Encasement work for Pipeline	Regular Labour with Materials	EA961W OD40000 08	Paliyad - Akadiya Village, Rajkot
Link 4 Package 3,	Earth Work Excavation	Regular	EA961W	Paliyad -

SauniYojnaRajkot	& RCC Encasement work for Pipeline	Labour with Materials	OD50000 16	Akadiya Village, Rajkot
Mohanpura Lift Irrigation Scheme – Rajgarh	Excavation of Approach Channel and Pump House along with construction of thrust blocks	Regular Labour with Materials	EC310W OD50000 21	Mohanpura LIS – Rajgarh, Madhya Pradesh

that they attached List of Work Order/s awarded by the Main Contractor i.e M/s. Larsen & Tourbo Limited, Construction for various nature of work for different location in Gujarat & Madhya Pradesh; that they filed the Service Tax returns by furnishing the turnover / values of works contract services by claiming exemption vide Entry No. 29(h) of Mega Exemption Notification No. 25/2012-ST; that, the assessee has neither failed in filing the appropriate required form ST-3 according to Rule 7 of Service Tax Rules 1994 nor failed in payment of Service tax as its services provided stands exempted; that the demand is arbitrary, illegal and bad in law; that they have not contravened any of the provisions; that the assessee in the capacity of sub-contractor is engaged in providing works contract services on contract basis to M/s Larsen & Tourbo Limited, Construction which is the main contractor for the transactions executed ; that the nature of work such as Excavation Work Near Railway Crossing and Earth Work Excavation & RCC Encasement work for Pipeline for their different sites located in Gujarat under the scheme of Sauni Yojna introduced by Narmada, Water Resources, Water Supply and Kalpsar Department of State Government of Gujarat; that Saurashtra-Narmada Avatara Irrigation Yojana (SauniYojana) has been launched to divert one MAFT excess over flowing flood water of Narmada allocated to Saurashtra Region;

16. The assessee further submitted that the main Contractor was awarded the work in respect of SauniYojna Scheme & Mohanpura Lift Irrigation Scheme for the tender issued by Department of State Government of Gujarat i.e Narmada, Water Resources, Water Supply and Kalpsar Department and Government of Madhya Pradesh Water Resources Department respectively. Subsequently for the particular scope of work it was sub-contractor to the assessee that it becomes crucial to determine the nature of service provided by the assessee thus, the service rendered i.e as per Section 65B (54) of Finance Act 1994, "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property; that the assessee is involved in Earth Work Excavation & RCC Encasement work and Excavation of Approach Channel and Pump House along with construction of thrust blocks and therefore, the assessee fulfills that service rendered in form of works contract service; that they attached copies of work contract and TDS Certificate issued under Gujarat Value Added Tax Act, 2003 by our main contractor M/s Larsen & Tourbo Limited in FORM 703 for the work undertaken in Gujarat. Similarly, we produce copies of WCT TDS Certificate issued under Madhya Pradesh Vat Act, 2002 by our main contractor M/s Larsen & Tourbo Limited in FORM 32 for the work undertaken in Madhya Pradesh. Copies Enclosed herewith in ; that these issuance of WCT TDS Certificate's takes place only when nature of work performed happens to be "works contract services". These certificates are issued under respective State Laws of Gujarat & Madhya Pradesh recognizing as works contract services ; that the services provided by them are covered under the Notification No. 25/2012-Service Tax dated 20th June 2012, 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:-

Entry 29. Services by the following persons in respective capacities:

(a) to (g)

(h) *sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;*

17. In the instant case, the assessee happens to be sub-contractor for work assigned by the main contractor & nature of work as mentioned in the Work Order/s shared is "works contract services" that the matter to be satisfied for the purpose of Entry 29(h) is to confirm whether services provided by the main contractor i.e M/s Larsen & Tourbo Limited, Construction are in terms of works contract services & same shall be exempted ; that they refer to Entry 12 of Exemption Notification:

Entry 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) *canal, dam or other irrigation works;*

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

that their main contractor has offered these services to State Government & show cased their submission towards the assignment / work allocated to us in the capacity of sub-contractor stating that such services are in nature of works contract service as it involves material & labour in the email conversation. Further, they submitted their performance of service as main contractor in nature of works contract are exempted according to Entry 12 (d) & (e) of exemption notification in the email conversation.

In this respect they submitted an executive summary for exemption claim:

Project	Nature or Work	Work Order Type	By L&T	By IBIZA
Link 3 Package 3, SauniYojna Rajkot	Excavation Work Near Railway Crossing	Regular Labour with Materials	12(e)	29(h)
Link 4 Package 3, SauniYojna Rajkot	Earth Work Excavation & RCC Encasement work for Pipeline	Regular Labour with Materials	12(e)	29(h)
Link 4 Package 3, SauniYojna Rajkot	Earth Work Excavation & RCC Encasement work for Pipeline	Regular Labour with Materials	12(e)	29(h)
Mohanpura Lift Irrigation Scheme - Rajgarh	Excavation of Approach Channel and Pump House along with construction of thrust blocks	Regular Labour with Materials	12(d)	29(h)

That they rightfully claimed exemption under Entry 29(h) of exemption notification; that from the above, it is undisputed that services performed are in nature of works contract service undertaken by sub-contractor i.e assessee for another contractor i.e M/s Larsen & Tourbo Limited, Construction for whom such services stand exempt under Entry 12 (d) & (e) of Notification No. 25/2012-ST & thereby this scenario be squarely fall under Entry 29(h) of Notification No. 25/2012-ST and be beneficial for the assessee ; that we submit copies of invoice raised by assessee to M/s Larsen & Tourbo Limited, Construction for the nature of work assigned.

18. The assessee further added that it equally important to reconcile the values reflected in Form 26AS& turnover declared in Annual Financial Statement for period under Show cause notice for which we humbly share the copy of Financial Statements, Revenue Details along with Revenue Reco between 26AS & Annual Financial Statement. Enclosed herewith ; therefore , considering the facts, legal notifications and submission from the assessee is clearly evident that show cause notice shall be quashed and set aside; there is no question of tax, interest and penalty to be levied thereon.

PERSONNEL HEARING :

19. Personnel Hearing was granted to the assessee on 09.06.2022 wherein Shri Devang S. Shah, Chartered Accountant and Shri Yogesh Brahmakshatriya, authorized representative appeared before me for personnel hearing. They have submitted written reply and has stated that they are subcontractors for L & T and L & T has undertaken project work of government of Gujarat and requested to consider the case on merits.

DISCUSSION AND FINDING :

20. 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.

20.1 I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply, written submission made during Personal Hearing, and additional reply/documents submitted by the assessee after Personal Hearing on the subject matter alongwith the financial records and reconciliation statement.

20.2 In the present case, Show Cause Notice has been issued to the assessee demanding Service Tax of Rs. 1,74,95,177/- for the financial year 2015-16 and 2016-17 on the basis of data received from Income Tax authorities. In the present case said Service Tax demand has been issued on the basis of higher difference of Rs. 12,53,95,974/- with regards to total value for TDS and gross value provided in STR for the year 2015-16 and 2016-17. 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 77 and 78 of the Finance Act, 1994. I find that the issue which requires determination as of now is whether the Service Provider liable to pay service tax on the differential value of Rs. 12,53,95,974/- under proviso to section 73(1) of Finance Act, 1944 or not.

20.3 I also find from the written submission that the assessee has submit an executive summary for exemption claim:

Project	Nature or Work	Work Order Type	By L&T	By IBIZA
Link 3 Package 3, SauniYojna Rajkot	Excavation Work Near Railway Crossing	Regular Labour with Materials	12(e)	29(h)
Link 4 Package 3, SauniYojna Rajkot	Earth Work Excavation & RCC Encasement work for Pipeline	Regular Labour with Materials	12(e)	29(h)
Link 4 Package 3, SauniYojna Rajkot	Earth Work Excavation & RCC Encasement work for Pipeline	Regular Labour with Materials	12(e)	29(h)
Mohanpura Lift Irrigation Scheme - Rajgarh	Excavation of Approach Channel and Pump House along with construction of thrust blocks	Regular Labour with Materials	12(d)	29(h)

20.4 I have gone through the contract and subcontract furnished by assessee as detailed above. I find that the M/s. Larson and Turbo Ltd has got the main contract as detailed above and sub-contracted to the assessee. The assessee has claimed exemption under Sr. No. 29(h) of the notification No. 25/2012 as subcontract work. I find from the written submission of the assessee that the services provided by them are covered under the *Notification No. 25/2012-Service Tax dated 20th June 2012, which I reproduce herein under ;*

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 servicesleviable thereon under section 66B of the said Act, namely:-

Entry 29. Services by the following persons in respective capacities:

(b) to (g)

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt; and

Entry 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-

(c) canal, dam or other irrigation works;

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

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

20.5 I have also gone through their invoices, main contract and sub contract between the assessee which I find them in order. I also find that the Show Cause Notice has been issued to the assessee as per Contract Income received under the head 194C in form 26As filed alongwith the Income Tax Returns. I find that services performed are in nature of works contract service undertaken by sub-contractor i.e assessee for another contractor carried out by the assessee and is rightly covered under Sr. No. 29(h) of the notification No. 25/2012 and therefore the assessee is not liable to pay the demand raised vide the aforesaid Show Cause Notice.

20.6. In order to comprehend the nature of service, I take support of the ITR, form 26AS and Audited balance sheet and profit and loss account for the FY 2015-16 and 2016-17 alongwith the ST-3 returns filed by the assessee. I find that the show cause notice has been issued on the income reflected under heading no. 194C in form 26AS. The assessee has also filed the Service Tax returns for the relevant period claiming total exemption under Sr. No. 29h of the notification No. 25/2012.

20.7 I find that the Exemption Notification No. 25/2012-Service Tax dated 20th June, 2012 issued under Section 93(1) of the Act, grants exemption to the taxable services enlisted therein from whole of Service Tax leviable under section 66B of the Act. I find that the Service Provider had contested the demand of service tax on services rendered by them being Civil Contractor carried out contract works of construction/ civil work as sub-contact for Government & Semi Government Organisation and covered by entry no. 29(h) of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. The main work allocated to main contract by authority is also covered under Sr. No. 12 (d) and (e) of the Notification as stated above.

20.8 Having considered above facts and discussion, I am of the view that the service provider was engaged in providing the works contract services on subcontract basis for FY 2015-16 and 2016-17 and claiming the benefit of Mega Exemption Notification NO.25/2012-ST dated 20.06.2012, under Sr. No. 29(h). Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. I am, therefore, of the view that the assessee has established their case quite clearly and therefore I hold that no service tax is payable by the assessee as demanded in the subject SCN.

20.9 I find that the SCN had not questioned the taxability on any income other than the income from sale of services shown in ITR/Form 26AS. I therefore refrain myself from to enter in to the taxability on other income other than the sale of service.

20.10 In the instant SCN penalties under section 76 and 78 have been proposed. However, penalty under Section 76 and Section 78 of the Finance Act, 1994 cannot be imposed simultaneously. The Finance Act, 2008 (18 of 2008) which came into force from 10-5-2008, the Parliament has made the legal position clear by introducing a proviso to Section 78. It reads as under:

"Provided also that if the penalty is payable under this section, the provision of Section 76 shall not be attracted."

21. In view of the facts and circumstances pertaining to the case as aforementioned, 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 imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

22. I drop the proceedings for recovery of Rs. 1,74,95,177/- initiated against M/s IBIZA INFRAMECH PRIVATE LIMITED, C/801,, Ganesh Meridian, Opp. Amiraj Farms, Nr Guj. New High Court,, S G Highway,, Ahmedabad, Gujarat- 380061 vide Show Cause Notice F.No. STC/15-189/OA/2021-22 dated 23.04.2021.

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

F. No. STC/15-189/OA/2021-22

Date: 14 /06/2022

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

To,

M/s IBIZA INFRAMECH PRIVATE LIMITED
C/801,, Ganesh Meridian, Opp. Amiraj Farms, Nr Guj. New High Court,, S G Highway,, Ahmedabad, Gujarat- 380061

Copy to:

- 1) The Commissioner, Central GST & Central Excise, Ahmedabad North.
- 2) The Asstt. Commr. Central GST & Central Excise, Division-VI, Ahmedabad North.
- 3) The Supdt. Central GST & Central Excise, Range-IV, Division-VI, Ahmedabad North
- 4) The Superintendent (Systems), Central GST & Central Excise, Ahmedabad North
- 5) Guard File.