



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

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

फा.सं./F.No. STC/15-47/OA/2020

आदेश की तारीख/Date of Order : -/6.12.2021

जारी करने की तारीख/Date of Issue :-/6.12.2021

DIN No: 20211264WT0000616261

द्वारा पारित/Passed by:-

आर गुलजार बेगम .R /GULZAR BEGUM

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 32/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 लगाना 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/15-47/OA/2020 dated 28.09.2020 issued to M/s. Shivam Developers situated at 16/17 Devgiri Society, B/H Mrudul Parki Sola Road, Ghatlodiya, Ahmedabad, Gujarat-380061.

BRIEF FACTS OF THE CASE

M/s. SHIVAM DEVELOPERS, registered at 16/17 DEVGIRI SOCIETY B/H MRUDUL PARKI SOLA ROAD, GHATLODIYA, AHMEDABAD, GUJARAT-380061- (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Service Tax Registration No.-**ACDFS5558ESD001** & engaged in the business of Providing Taxable Services under the category of Construction of residential complex service & Work Contract Service".

2. Ongoing through the third party CBDT data for the Financial Year 2014-2015. On scrutiny of data and the documents submitted by the assessee vide letter 10.06.2019 for the F.Y. 2014-15 and comparing the value declared in their Income tax return, P & L account/Balance sheet/Form 26 AS and ST-3 return filed the following observation were made and is tabulated below:-

TABLE-A

(Amount in Rs.)

F. Y.	Gross Value Service Provided (ST Value)	Sales/Gross Receipts From Services (Value from ITR)	Difference Between Value of Services from ITR and Gross Value in Service Tax Provided	Service Tax Payable (12.36% including cess)
1	2	3	4	5
2014-15	23,94,420	4,30,35,997	4,06,41,577	50,23,299/-

3. From the above it is observed that there is differential value of **Rs. 4,06,41,577/-** compared with amount received as per P & L Account/Balance Sheet (ITR) and ST-3 returns. The service tax amounting to **Rs. 50,23,299/-** on the differential is to be recovered. Since no data was forwarded by CBDT, for the period 2015-16 & 2016-17. Therefore, at the time of issue of SCN, it is not possible to quantify short payment of Service Tax, if any, for the period 2015-16 & 2016-17, 2017-18 (upto June-17).

4. 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 issue 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, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the assessee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) 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.'

5. From the facts, it is observed that the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2015-16, 2016-17 & 2017-18 (upto June-17) has

not been disclosed thereof by the Income Tax Department, nor the reason for the nondisclosure was made known to this department. Further, the assessee has also failed to provide the required information even after the issuance of letters and summons from the Department. Therefore, the assessable value for the year 2015-16 & 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 assessee, action will be initiated against the said assessee 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 2015-16, 2016-17 & 2017-18 (upto June-17) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

6. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B *ibid* in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said notice had not paid service tax as worked out as above in Table for Financial Year 2014-15.

7. As per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it observed that the said service provider has not assessed the tax dues properly, on the services received by him, as discussed above, and failed to file correct ST-3 Returns thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

8. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

9. 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. 50,23,299/-** (including Cess), by filing ST-3 Returns vis-a-vis their P & L Account, 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.

10. It has 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. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc., based on mutual trust and confidence are in place. From the evidences, it appears that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them

worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of **Rs. 50,23,299/-** (including Cess). 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(1) of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No. CBEC-20/06/08/2020-GST by invoking extended period of time, 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 the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994, and penalty under provisions of Rule 7C of the Service Tax Rules, 1994.

11. Accordingly Show Cause Notice was issued to M/s. SHIVAM DEVELOPERS, called upon to show cause as to why:

- i. The demand for Service tax to the extent of **Rs. 50,23,299/-** (Rupees Fifty lakh Twenty Three Thousand Two Hundred & Ninety Nine 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. Service Tax liability not paid during the financial year 2015-16 , 2016-17 & 2017-18 (Upto June-17) ascertained in future, as per Para no. 4 and 5 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994
- iii. Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- iv. Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- v. Penalty should not be imposed upon them for late filing ST-3 return for the period April'2014-September'2014 under the provisions of Rule 7C of the Service Tax Rules, 1994.
- vi. Penalty should not be imposed upon them under the provisions of Section 77(1) of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Service Tax Act,1994.
- vii. Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

Reply of the assessee:

12. The assessee vide their letter dated 10.06.2019, prior to issue of SCN, as stated in Para No.2 above, submitted that they are in the business of real estate and construction; that they have paid service tax on advance booking money received from members on regular basis as per the provisions of the Act; that the difference between advances received as shown in the ST-3 and as per 26AS is due to the advances received over a period of time; They also enclosed the audited balance sheet, Profit and Loss Account, Trial Balance, Ledgers, ITR and form 26As alongwith their reply. They also furnished the reconciliation statement between ST-3 and ITR.

Further Submissions :

13. The assessee vide letter dated 26.10.2021 has submitted the Reconciliation/ST-3 work sheet for the year 2015-16 and 2016-17 AND 2017-18 (Up to June 2017) along with the copy of ST-3 returns for the year 2015-16, and 2016-17. Further, the assessee vide letter dated 16.11.2021 has furnished the defence reply with regard to Show Cause Notice wherein they stated that they are registered with the Service Tax Department having Service Tax Registration Number ACDFS5558ESD001; that Assessee is engaged in the providing Taxable Services under the category of Works Contract Service & Construction of Residential Complex Service; that On-going through verification of third party CBDT data by Department for the Financial Year 2014-15, and scrutiny of data & documents submitted by assessee vide letter dated 10.6.2019, this notice has been issued for the period for the period FY 2014-2015; that they submitted the relevant reconciliation for FY 2014-15; that detailed reconciliation of income for FY 2015-16 and FY 2016-17 has been submitted on 26-10-2021;

14. Further, they contended that they have discharged the service tax on advance money against works contract services received from members on regular basis as per provisions of determination of point of taxation of Service Tax Rules; that the captioned SCN compares amount reported in Income Tax Returns and Service Tax Returns and find out differences for the financial year 2014-15; that they like to submit that amount disclosed in ITR and amount disclosed in Service Tax Returns are not comparable and such amounts cannot be compared for identifying difference in Service Tax liability; that they are engaged in works contract services and for Income Tax purposes they follow work completion method to book their revenue in books of account; that such amount as per work completion method is different from Point of Taxation (PoT) in Service Tax law, where service tax is required to be paid on advances received or services provided; that as per Finance Act, 1994 as amended from time to time, there is no service tax on constructed units sold after receipt of Completion Certificate. However, amount received on such are required to be disclosed in Income Tax returns; that they provided summary for the year 2014-15 as detailed below; In summary, the above-mentioned reasons for difference has been reconciled as under:

Particulars	Total
Works Contract Income	4,30,35,997
Amount as per Income Tax Returns	4,30,35,997
Less: Sale of Units after BU Receipt	2,27,48,095
Sales booked for units booked before BU	2,02,87,902
Less: Sale deed portion on which Service tax already paid at the time of receipt of Advances	1,63,21,256
Add: Advances Received on which Service Tax is paid in FY 2014-15	11,23,677
Add: Excess Advances Received above sale deed on which Service Tax is paid in FY 2014-15	4,00,000
Less: Advances Refunded in FY 2014-15	33,50,922
Amount on which Service Tax is required to be paid - (A)	21,39,401
Taxable amount as per Service Tax Returns (ST-3) - (B)	23,94,420
Difference – Excess Value shown in ST-03 [(C)=(A)-(B)]	-2,55,019

They further submitted that the following are the reasons for the said differences as reported in the notice issued:

- (i) The amount of exempt supply amounting to **Rs. 2,27,48,095/-** which is made after the issue of Completion Certificate i.e. the sales booked after the completion of work is not reported anywhere in the ST-3 return filed while the said amount is reflected in the ITR filed for the FY 2014-15.
- (ii) Also, the difference arises due to the **Point of Taxation Rules, 2011** wherein as per **Rule: 3** of the said Rules, unless otherwise provided, 'point of taxation' shall be, -
 (a) the time when the invoice for the service provided or agreed to be provided is issued;
 (b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.
- (iii) Further, an explanation is also added to the said rule specifying "For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance." Accordingly, the sale deeds which are booked on which tax has already been paid at the time of receipt of advance will not be taxed again and so excluded in the calculation of the Service Tax return while the gross amount of sale deed booked is considered in the Income Tax Return filed for the period 2014-15.

Further, for the financial year 2015-16, 2016-17 and FY 2017-18 upto June'17, the assessee has furnished the following details

Particulars	2015-16	2016-17	2017-18 (June'17)
Works Contract Income	1,94,40,032	24,69,355	20,50,000
Amount as per Income Tax Returns	1,94,40,032	24,69,355	20,50,000
Less: Sale of Units after BU Receipt	1,54,40,355	-	20,50,000
Sales booked for units booked before BU	39,99,677	24,69,355	-
Less: Sale deed portion on which Service tax already paid at the time of receipt of Advances	2,99,677	14,69,354	
Amount on which Service Tax is required to be paid	37,00,000	10,00,001	
Amount as per Service Tax Returns (ST-3)	37,00,000	-	
Service tax on above (A)	2,07,200	60,000	
Less: Rule 6(3) Adjustments:			
-Service tax on Advance refund of the period	2,67,057	-	
-Service tax on unadjusted Advance refund (4,00,000/-) of FY 2014-15 adjusted in FY 2015-16	19,776		
Service tax on unadjusted Advance refund of FY 2015-16 adjusted in FY 2016-17		79,633	
Total Rule 6(3) adjustment (B)	2,86,833	79,633	
Excess payment of Service Tax (A-B)	-79,633	-19,633	

15. In view of above explanation and clarification, assessee has discharged excess tax on advance receipt; that assessee has disclosed income as per work

completion method in ITR and disclosed income as per point of taxation in Service Tax Return; that income shown in ITR, and ST-3 are not comparable; that assessee has fully discharged tax on advances receipt in period prior-to FY 2014-15 on **sale deed executed** during FY 2014-15; that assessee has paid all service tax liability therefore no interest under section 75 and penalty under section 77 & 78 shall be payable ; that they **prayed to** Drop the proceedings sought to be initiated by the Show Cause Notice F. No. STC/15-47/OA/2020 dated 28-09-2020.

PERSONNEL HEARING :

16. Personnel Hearing was granted to the assessee on 06.10.2021 wherein the Authorised representative of M/s. Shivam Developer, Shri Dadhichi Thakkar, CA and Shri Vaibhav Mehta, Manager (Accounts) appeared. They have submitted the reconciliation statement for the financial year 2014-15, Further, they had requested 5 days time to submit the reconciliation statement for the year 2015-16 and 2016-17. They also reiterated the written reply submitted by them on 10.06.2019. The reconciliation statement was submitted on 16.11.2021.

DISCUSSION AND FINDINGS:

17. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the reply dated 10.06.2019 prior to issue of Show Cause Notice, reply submitted at the time of Personnel Hearing. Defence reply against the Show cause Notice dated 16.11.2021 alongwith documents submitted by the assessee. Now I would like to go through the legal aspects of the taxability of the services rendered by the said assessee.

18. The term "Services" has been defined in section 65(B)44 of the Finance Act, 1994, i.e . "*Service*" means any activity carried out by a person for another for consideration and **include declared services**"; that under Section 66 (E) of finance Act, they are exempted to pay Service Tax. I have gone through the definition of Services.....

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

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

a) -----

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

Explanation. — For the purposes of this clause, —

(I)

(II)

20. When the construction is completed and the "Completion Certificate" is obtained, what turns out is an immovable property. When such property is sold/transferred after 'Completion Certificate' is received, it is deemed to be sale of immovable property which is specifically excluded from the definition of service, in

terms of Section 65 (B) (44) of the Finance Act 1994, of which the relevant text reads as under:

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

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

21. From the above definition, it is clear that sale/transfer of title of immovable property, by way of sale, gift or in any other manner is excluded from the definition of service. Therefore, such a sale does not constitute 'Service'. A conjoint reading of the above provisions of law makes it explicit that, the activity of construction attracts Service Tax, if a part or whole of the consideration towards such construction is received prior to Completion Certificate is received. The activity of construction in which the entire consideration is received after completion has been kept out of the scope of 'declared services'.

22. Accordingly, the said assessee is liable to pay Service Tax only for those income received prior to **issuance of completion-certificate by the competent authority** as defined under Section 66 of the Finance Act, 1994 read with Service Tax Rules, 1994. In view of the above aspects, I would like to discuss the taxability year wise for the sake of clarity:

FINANICAL YEAR 2014-15

23. On going through the SCN, I find that data of Sales /Gross receipt from services as per ITR and provided by the assessee were shared by the CBDT with CBIC for FY 2014-15. The difference in value of service to the extent of Rs. 4,06,41,577/- was noticed and therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 50,23,299/- on the differential value of Rs. 4,06,41,577/- under proviso to section 73(1) of Finance Act, 1944 or not.

24. From the records available in file I find that the assessee is registered with the Service Tax department and filing ST-3 returns under category of Works contract Service & Construction of Residential Complex Services. They have filed ST-3 returns for the first half of financial year 2014-15, showing Service Value of Rs. 23,94,420/- under Works Contract Service availing benefit of 60% abatement under Sr. No. 1 of Notification No.24/2012 dated 06.06.2012 as detailed in the Show Cause Notice. I have gone through the reconciliation statement provided on 06.10.2021 for the year 2014-15 by the assessee and find that out of the total income from work contract for the year 2014-15, an amount of Rs. 2,27,48,095 /- are the income from sales received after issuance of completion-certificate dated 27.01.2014 by the competent authority which is exempted as defined under Section 66E of finance Act, 1994. I have gone through the ledger of the various customers of the said asseesse and find that the respective receipt has been entered in the ledger of the customers. I also find from the records that the said amount has been received after issuance of completion-certificate by the competent authority. For the sake of clarity the differential amount is reconciled as under :

	Particulars	Total
A	Sales as per ITR/SCN	4,30,35,997
B	Value on which service tax paid as per ST3 & SCN	23,94,420
C	Differential value demanded	4,06,41,577
D	Sales after issuance of Completion Certificate	2,27,48,095
E	Difference	1,78,93,482
F	<u>Add: Advances Received on which Service Tax is paid in FY 2014-15 (Rs.55554/- has been paid towards service Tax in the year 2014-15.)</u>	11,23,677
G	<u>Add: Excess Advances Received above sale deed on which Service Tax is paid in FY 2014-15 (Rs. 19976/- service tax paid in the year 2014-15)</u>	4,00,000
H	Add: Excess Value shown in ST-03	2,55,019
I	Total difference (E+F+G)	1,96,72,178
J	<u>Less: Sale deed portion on which Service tax already paid at the time of receipt of Advances (Prior to 2014-15)</u>	1,63,21,256
K	<u>Less: Advances Refunded in FY 2014-15 (Rs. 165670/- Tax adjusted against liability)</u>	33,50,922
L	Total(J+K)	1,96,72,178
M	Differential value (I - L)	0

25. On perusal of the above reconciliation, I find that the differential value of Rs. 4,06,41,577 has been explained and therefore I find that the said assessee has discharged all the obligations to pay service tax and therefore the demand of Service Tax of Rs.50,23,299/- on differential income of Rs.4,06,41,577/- for the year 2014-15 is not maintainable.

FINANCIAL YEAR 2015-16

26. On perusal of the reconciliation statement, I find that out of the total income of Rs. 1,94,40,032/- shown in their ITR, Rs.1,54,40,032 is the income received after issuance of completion-certificate by the competent authority as defined under Section 66E of finance Act, 1994 and the same is exempted from charging to Service Tax. Out of the remaining income portion of Rs. 39,99,677/-, service tax liability has already been paid on Rs. 2,99,677/- on advance receipt. Service tax on remaining value of Rs.37,00,000/- is arrived at Rs.2,07,200/- and they have paid Rs.2,86,833/- i.e Rs.79,633/- has been paid in excess for the period 2015-16. In view of the above facts, no service tax is required to be paid by the assessee for the year 2015-16.

FINANCIAL YEAR 2016-17

27. On perusal of the reconciliation statement, I find that out of the liability of Rs. 60,000/- on the income of Rs. 10,00,001/-, the assessee has adjusted the payment of Service Tax of Rs. 60,000/- against the balance of excess tax of Rs. 79,633/- paid during the year 2015-16. Therefore no service tax is required to be paid by the assessee for the year 2016-17 I have also gone through the ledger account of the receipt from each party for the year 2014-15 to 2016-17, wherein I find that proper entry in their ledger has been made.

28. From the SCN, I find that the SCN has not questioned the taxability on any income other than the income from sale of services. I therefore refrain from discussing the taxability on other income other than the sale of service. Since I am

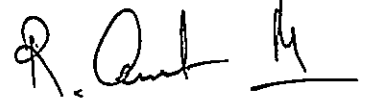
fully convinced with the arguments put forth by the assessee, I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

29. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. Accordingly, it is my considered view that the assessee has established their case quite unambiguously that the value of service as discerned by the department by comparing the value of services in ITR/TDS is basically on account of the exemption benefit of service rendered by the assesses and therefore they are not liable to pay Service Tax.

30. In view of the facts and circumstances pertaining to the case, the demand is not tenable in law, accordingly I do not consider it necessary to delve in the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise of imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

31. I drop the proceedings initiated against M/s. SHIVAM DEVELOPERS, registered at 16/17 DEVGIRI SOCIETY B/H MRUDUL PARKI SOLA ROAD, GHATLODIYA, AHMEDABAD, GUJARAT-380061 (Service Tax Registration No.- **ACDFS5558ESD001**) vide Show Cause Notice F.No. STC/15-47/OA/2020 dated 28.09.2020.



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

F.No. STC/15-47/OA/2020

Dated- 16/10/20

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

To,

M/s. SHIVAM DEVELOPERS,
16/17 DEVGIRI SOCIETY
B/H MRUDUL PARKI SOLA ROAD,
GHATLODIYA, AHMEDABAD, GUJARAT-380061

Copy to:

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