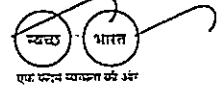




आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH
पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद - 380009
FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD - 380009
ई-मेल/E-Mail : ofadjhq-cgstamdnorth@gov.in, oaahmedabad2@gmail.com
फ़ोन/Phone : 079-27544599 फ़ैक्स/Fax : 079-27544463



निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-33/OA/2020

आदेश की तारीख/Date of Order:- 27.01.2022

जारी करने की तारीख/Date of Issue :- 27.01.2022

DIN NO: 20220164WT0000041259

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

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 52/ADC/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/15-33/O&A/2020 dated 30.09.2020 issued to M/s. Aakar Infra, situated at 8, Bhagirath Society, Naranpura Memnagar Road, Naranpura, Ahmedabad-380013.

BRIEF FACTS OF THE CASE

M/s AKAR INFRA, 8 BHAGIRATH SOCIETY NARANPURA MEMNAGAR ROAD NARANPURA AHMEDABAD-380013 having PAN NO: ABAFA0839N (hereinafter referred to as the 'noticee') was providing services related to Sector: Contractors - Civil contractors

2. The information received regarding third party CBDT data for the Financial Year 2014-2015 to 2015-16, the said noticee had earned substantial service income but has neither obtained service tax registration nor paid service tax thereon.

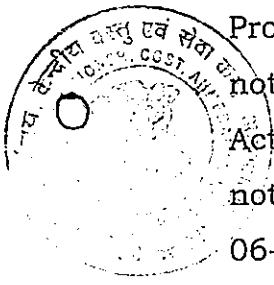
3. Letter dated 25.07.2020 & Summons dated 18.08.2020 were issued to party by jurisdiction office with a request to produce the documents mentioned therein to this office within a week time from the date of receipt of that letter/Summons. However, the noticee has failed to submit the required details / documents.

4. With effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the negative list are exempted.

5. The nature of activities carried out by the noticee as Service Provider appears to be covered under the definition of service and appears to be not covered under the Negative List as given in the Section 66D of the Finance Act, 1994, as amended from time to time. These services also appears to be not exempted under mega exemption notification No. 25/ 2012-S.T. dated 20-06-2012, as amended from time to time, and hence the aforesaid services provided by the noticee appears to be subjected to Service Tax.

6. Since the noticee has not submitted the required details of services provided during the Financial Year 2014-15 to 2015-16, the service tax liability of the service tax noticee was required to be ascertained on the basis of income mentioned in the ITR returns and Form 26AS filed by the noticee with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.

7. The Service tax payable is calculated on the basis value of "sales of services under Sales/Gross Receipts From Services (Value from ITR)" or "Total Amount Paid/Credited Under Section 194C, 194I, 194H, 194J" as provided by the Income Tax Department for the financial year 2014-15 to 2015-16. By



considering the said amount as taxable income, the service tax liability is calculated as detailed below:-

(Rs in Actuals)				
Sr No		FY-2014-15	FY-2015-16	Total
1	Taxable Value as per Income Tax Data i.e. Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)	3,45,49,270	6,12,19,386	9,57,68,656
2	Service Tax rate	12.36%	14.5%	
3	Service Tax	42,70,290	88,76,811	1,31,47,101

8. It is observed that the noticee has neither obtained the Service Tax registration from the Department for the services provided by them for the period of F.Y.2014-15 to 2015-16, nor responded to correspondence made by the department in order to ascertain the actual taxable service income. Therefore, it appears that the noticee had not paid actual service tax by way of willful suppression of facts and in contravention of provision of the Finance Act, 1994 relating to levy and collection of service tax and the rules made there under, with intent to evade payment of service tax. The service tax amounting to Rs.1,31,47,101/- is therefore recoverable from them by invoking extended period of five years as per first proviso to sub-section(1) of Section 73 of finance Act, 1994 along with interest under Section 75 of the Finance Act,1994 and penalty under Section 78 of Finance Act, 1994

Further, the said noticee (a) failed to take registration in accordance with the provisions of section 69; (b) failed to keep, maintain or retain books of account and other documents as required in accordance with the provisions of Finance Act, 1994 & (c) failed to furnish information / documents called for from them (d) failed to pay the tax electronically, accordingly the said noticee is liable to penalty under the provisions of Section 77(1) & 77(2) of Finance Act, 1994.

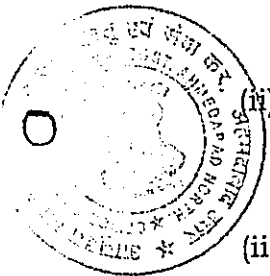
10. In this regard, the noticee was offered an opportunity to give explanation/clarification as Pre-SCN Consultancy on 28.09.2020. Vide their letter dated 26.09.2020, they stated that their case is covered under Notification No.25/2012-ST dated 20.06.2012 and no Service Tax is payable by them.

11. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appear to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In

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

12. Moreover, in addition to the contravention, omission and commission on the part of the said the said service provider as stated in the foregoing paras, it is observed that the said service provider has willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of service tax rendering themselves liable for penalty under Section 78 of the Finance Act, 1994.

13. Therefore, M/s. AKAR INFRA, 8 BHAGIRATH SOCIETY NARANPURA MEMNAGAR ROAD NARANPURA AHMEDABAD- 380013 vide the Show Cause Notice issued from F.No. STC/15-33/OA/2020 dated 29.09.2020 called upon to show cause before the Additional Commissioner, Central Excise & Central Goods and Service Tax, Ahmedabad North having his office situated at 2nd FLOOR, Customs House, Opposite Old High Court, Income Tax Cross Road, Navrangpura-380009 as to why:

- 
- (i) Service Tax of Rs. 1,31,47,101/- which was not paid for the financial year 2014-15 to 2015-16 as per above Table, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
 - (ii) Interest at the appropriate rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;
 - (iii) Penalty under the provisions of Section 77(1) & 77(2) of the Finance Act, 1994, as amended, should not be imposed on them.
 - (iv) Penalty under Section 78 of the Finance Act, 1994, as amended, should not be imposed on them for suppressing the full value of taxable services and material facts from the department resulting into non-payment of Service Tax as explained herein above.

14. The proceedings propose and that may be taken against the said noticee, under the aforementioned provisions of the Finance Act 1994 read with the Service Tax Rules, 1994 framed there under, are saved by the Section 174(2) of the CGST Act, 2017.

DEFENCE REPLY

15. The noticee has submitted their written submission vide letter dated 07.10.2020; that they were engaged in providing services of

Construction to government on sub contract basis in FY 2014-15, filed return after disclosing service Income which was received from providing service of construction of LIG-7 TP-44 which was the scheme of affordable housing under Pradhan Mantri Awas Yojna on sub contract basis; that as per Notification No. 25/2012-Service Tax exempts the service provided by them from whole of service tax leviable thereon under Section 66B of Service Tax act, 1994.; that they attached IT returns, Audited Balance Sheet and Profit and Loss account from 26As for the year 2014-15.

PERSONNEL HEARING

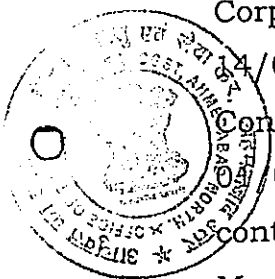
16. Personnel Hearing was granted to the noticee on 29.09.2021 wherein Shri Hitarthi Shah, from H.A. Shah & Co, Chartered accountant appeared for personnel hearing on behalf of the noticee; she stated that they will submit written submission alongwith reconciliation statement in 10 days time.

ADDITIONAL SUBMISSION

17. The noticee vide letter dated 27.10.2021 has additionally submitted that they were providing construction services to Siddhi Developers & Builders, Samridhi Contech Pvt. Ltd., Gopinath Buildcon & Ananya Corporation for construction of LIG-7 Flats, TP-4 at Chandkheda from 04/06/2014 for Sidhi Devlopers & Builders, from 10/10/2014 for Samridhi Contech Pvt. Ltd., from 01/06/2015 for Gopinath Buildcon and from 07/2014 for Anaya Corporation. Sidhi Devlopers & Builders received the contract for construction of LIG-7 flats TP-4 at Chandkheda from Ahmedabad Municipal Corporation. Moreover, Samriddhi Contech Pvt Limited, gopinath Buildcon and Ananya Corporation were sister concern of Sidhhi Devlopers & Builders.

17.1. The noticee further submitted that the LIG-7, TP-44 is the scheme of construction of affordable housing framed by the Ministry of Housing which falls under the category of Mega exemption Notification No. 25/2012-ST dated 20.06.2012. The noticee submitted that they are providing services as sub-contractor to main contractor who were providing services which are exempt and thus, they also fall under Mega exemption Notification and are not liable to pay Service Tax.

17.2 The noticee vide mail dated 30.12.2021 has stated that there is no contract documents received by Samriddhi Contech Pvt. Ltd, Gopinath Buildcon & Ananya Corporation from housing department as they are sub



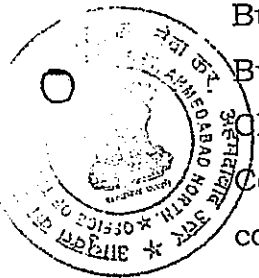
contractor and provide services to Siddhi Developers & Builders and stated that all the three firms are sister concerns of Siddhi Developers and builders and vide mail dated 05.01.2022 has forwarded bank statement for the period 01.04.2016 to 31.03.2018.

DISCUSSIONS AND FINDINGS

18. I have carefully gone through the records of the case, submission made by the noticee in reply to the show cause notice, Form 26AS, Balance sheet for the year 2014-15 and 2015-16. The quotation and ledger of the noticee (unsigned) for the year 2014-15 and 2015-16 in respect of the customers to whom they are providing services. In the present case, Show Cause Notice was issued to the noticee demanding Service Tax of Rs.1,31,47,101/- for the financial year 2014-15 & 2015-16 on the basis of data received from Income Tax authorities. I find that the noticee has not obtained Service Tax registration and thereby not filing returns. 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(1), 77(2) and 78 of the Finance Act, 1994. The noticee submitted that they are providing construction services to Siddhi Developers & Builders, Samridhi Contech Pvt. Ltd., Gopinath Buildcon & Ananya Corporation for construction of LIG-7 Flats, TP-4 at Chandkheda from 14/06/2014 for Sidhi Developers & Builders, from 10/10/2014 for Samridhi Contech Pvt. Ltd., from 01/06/2015 for Gopinath Buildcon and from 01/07/2014 for Anaya Corporation. Sidhi Developers & Builders received the contract for construction of LIG-7 flats TP-4 at Chandkheda from Ahmedabad Municipal Corporation. Moreover, Samriddhi Contech Pvt Limited, gopinath Buildcon and Ananya Corporation were sister concern of Sidhhi Developers & Builders.

19.1 The noticee further submitted that the LIG-7, TP-44 is the scheme of construction of affordable housing framed by the Ministry of Housing which falls under the category of Mega exemption Notification No. 25/2012-ST dated 20.06.2012. The noticee submitted that they are providing services as sub-contractor to main contractor who were providing services which are exempt and thus, they also fall under Mega exemption Notification and are not liable to pay Service Tax.

19.2. The noticee vide mail dated 30.12.2021 has also stated that that there is no contract documents received by Samriddhi Contech Pvt. Ltd, Gopinath Buildcon & Ananya Corporation from housing department as they are sub contractor and provide services to Siddhi Developers & Builders and



stated that all the three firms are sister concern of Siddhi Developers and builders.

19.3 Further, while going through the submission dated 27.10.2021 by the noticee, I observe that the noticee has provided the quotation and contract with Siddhi Developers & Builders, Samruddhi Contech Pvt. Ltd, Gopinath Buildcon and Ananya Corporation as sub contract carried out by them on behalf of main contractors. However, the contract allotted by competent authority to main contractors i.e. Samruddhi Contech Pvt. Ltd, Gopinath Buildcon and Ananya Corporation have not been provided. **Only the contract allotted by competent authority i.e M/s. Ahmedabad Municipal corporation to Siddhi Developers has been attached.** Further, the ledger in respect of subcontract work provided to their main contractors are also unsigned. **In nutshell**, contract allotted by competent authority to main contractors i.e. M/s. Samruddhi Contech Pvt. Ltd, M/s. Gopinath Buildcon and M/s. Ananya Corporation have not been provided.

19.4 As the noticee has in defence reply stated that the scheme of construction of affordable housing framed by the Ministry of Housing which falls under the category of Mega exemption Notification No. 25/2012-ST dated 20.06.2012, I reproduce the said notification herein under;

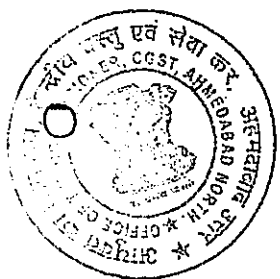
Notification No. 25/2012-Service Tax dated- 20th June, 2012, as amended. Incorporating changes made till issuance of notification no 10/2017-Service Tax dated 8-3-2017 G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

- (a) an airport, port or railways, including monorail or metro;
- (b) a single residential unit otherwise than as a part of a residential complex;
- (c) **low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;**
- (d)
- (e)

29. Services by the following persons in respective capacities -

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



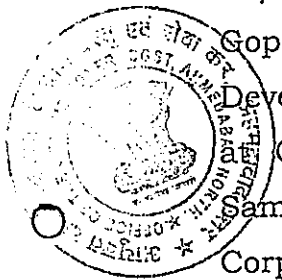
19.5 I find that the Exemption Notification No. 25/2012-Service Tax dated 20th June, 2012 issued under Section 93(1) of the Act, grants exemption to the taxable services enlisted therein from whole of Service Tax leviable under section 66B of the Act. The noticee has submitted their written submission vide letter dated 07.10.2020; that they were engaged in providing the services of Construction to government on sub contract basis in FY 2014-15 providing service of construction of LIG-7 TP-44 which was the scheme of affordable housing under Pradhan Mantri Awas Yojna on sub contract basis

19.6 Thus, first and foremost I feel it necessary to understand the activities being carried out by the Service Provider. I find that after introduction of new system of taxation of services in negative list regime, any services for a consideration was taxable except those services specified in the negative or exempt list by virtue of mega exemption notification.

19.7 I find that the noticee have submitted that, they are providing construction services as a sub contractor to main contractors M/s. Siddhi Developers & Builders, M/s. Samridhi Contech Pvt. Ltd., M/s. Gopinath Buildcon & M/s. Ananya Corporation for construction of LIG-7 Flats, TP-4 at Chandkheda from 14/06/2014 for M/s. Sidhi Developers & Builders, from 10/10/2014 for M/s. Samridhi Contech Pvt. Ltd., from 01/06/2015 for M/s. Gopinath Buildcon and from 01/07/2014 for Anaya Corporation. Sidhi Developers & Builders received the contract for construction of LIG-7 flats TP-4 Chandkheda from Ahmedabad Municipal Corporation. Moreover, M/s. Samriddhi Contech Pvt Limited, M/s. Gopinath Buildcon and M/s. Ananya Corporation were sister concern of M/s. Sidhhi Developers & Builders.

19.8 The noticee further submitted that the LIG-7, TP-44 is the scheme of construction of affordable housing framed by the Ministry of Housing which falls under the category of Mega exemption Notification No. 25/2012-ST dated 20.06.2012. The noticee submitted that they are providing services as sub-contractor to main contractor who were providing services which are exempt and thus, they also fall under Mega exemption Notification and are not liable to pay Service Tax.

19.9 I find that the submission dated 7.10.2020 and 27.10.2021 wherein the Service Provider has attached IT returns, Audited Balance Sheet and Profit and Loss account form 26AS for the year 2014-15, 2015-16. The quotation cum contract issued by M/s. Aakar Infra to their various contractor and unsigned ledger of the noticee in respect of the customers to whom they are providing services.

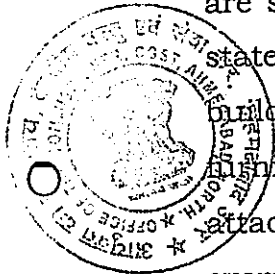


19.10 I find that the Profit and Loss Accounts for FY 2014-15 & 2015-16 recognize main Revenue as "Contractor Receipt". Hence, I find that the activities being carried out by the noticee for a consideration are squarely covered under the definition of "Service" as defined under Section 65B (44) of the Act and I also find that there is no dispute in this regard.

19.11 Further, I also find that LIG-7, TP-44 is the scheme of construction of affordable housing framed by the Ministry of Housing which falls under the category of Mega exemption Notification No. 25/2012-ST dated 20.06.2012. The noticee submitted that they are providing services as sub-contractor to main contractor. **However, the noticee has provided the copy of the work order dated 11.02.2014 issued by Ahmedabad Municipal Corporation to M/s. Siddhi Developers & Builders, Ahmedabad for construction of 1000 LIG Residential Flats + 96 shops including internal infrastructure & development work within the plot at various locations in Ahmedabad and the partial contract allotted to M/s. Aakar Infra by M/s. Siddhi Developers.**

19.12 However, as stated by the noticee vide mail dated 30.12.2021 that there is no contract documents received by Samridhi Contech Pvt. Ltd, Gopinath Buildcon & Ananya Corporation from housing department as they are sub contractor and provide services to Siddhi Developers & Builders and stated that all the three firms are sister concern of Siddhi Developers and Builders. The statement of invoice generated and amount received are also furnished unsigned. The copy of Bills issued by M/s. Aakar Infra have been attached. In the absence of relied upon documents for claiming of benefit of exemption notification, I am not in a position to ascertain whether noticee can avail the benefit of exemption notification No. 25/2012, in absence of certified copy of the agreement of work allocated to main contractors i.e. M/s. Samridhi Contech Pvt. Ltd., M/s. Gopinath Buildcon and M/s. Anaya Corporation.

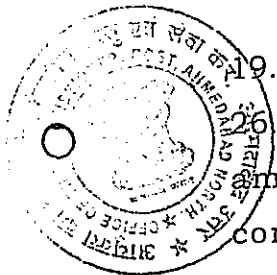
19.13 Further, I find that the noticee in his written submission stated that as per Sr. No. 14(ca) & Sr. No. 29(h) of Notification No. 25/2012-ST dated 20.06.2012. They are exempted from the whole of Service Tax leviable thereon under Section 66B of the Financial Act,1994 as stated above. I find that the Notification No. 25/2012 -ST dated 20.06.2012 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 noticee has contested the demand of service tax on services rendered by them being construction Service and has claimed the exemption from levy of service tax



under Sr. No. 14(ca) & Sr No. 29(h) of Notification No. 25/2012-ST dated 20.06.2012.

19.14 However, as discussed in Para 19.12 , I find the service provider failed to prove that they were eligible for availment of exemption benefit for Service Tax under Sr. No. 14(ca) & Sr No. 29(h) of Notification No. 25/2012-ST dated 20.06.2012 in respect of "Works Contract Service" provided to following recipient i.e. M/s.Samruddhi Contech Pvt Ltd, 2. M/s.Gopinath Buildcon and 3. M/s. Ananya Corporation which are taxable service on which the noticee has not paid the service tax during the year 2014-15 and 2015-16 and thereby violated the provision of Section 68 read with Rule 6 of the Service Tax Rules. It was also noticed that the same had come to know the department, after issuance of Show Cause Notice and subsequently submission of documents by the noticee. It proves malafide intention of the noticee. In the circumstances, I find that the said service tax not paid was required to be demanded and recovered along with interest from them under the proviso to Section 73(1) of the Finance Act,1994 by invoking extended period of five years and the demand was sustainable on above ground, interest shall be recovered under Section 75 of the Finance Act,1994 for the delayed payment of Service Tax.

19.15 Further, I have carefully gone through the submission dated 09.09.2020, 27.10.2021 and 30.12.2021 wherein the noticee furnished the amount of total services provided to main contractor to whom the construction services were provided during the period from 2014-15 to 2015-16. I also find that entry no. 14 (ca) of Notification Number 25/2012 dated 20.06.2012 exempts the Services provided by the way of construction of affordable housing framed by the Ministry of Housing and entry no. 29 (h) of Notification Number 25/2012 dated 20.06.2012 exempts the Services provided by the sub contractor to the main contractor who were providing services which are exempt. Having considered above facts and discussion, I am of the view that the service provided by the noticee is appropriately classifiable under the "Construction Service". However, as stated in para NO. 19.12 above, I am not in position to ascertain whether noticee can avail the benefit of exemption notification No. 25/2012, in absence of certified copy of the agreement of work allocated to main contractors i.e. Samridhi Contech Pvt. Ltd., Gopinath Buildcon and Anaya Corporation.



19.16. Further, on perusal of paras 8 of SCN, I find that the levy of Service Tax for the financial year 2016-17 & 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of subject SCN, if he same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under proviso to Section 73(1) read with master Circular No. 1053/02/2017-CX dated 10.03.2017, the service tax liability was to be recovered from the assessee accordingly. I however, do not find any charges leveled for the demand for the year 2016-17 & 2017-18 (Up to June 2017), in charging para of the SCN. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income from GTA . I therefore refrain from discussing the taxability on other income other than GTA income.

20. Keeping in view the aforementioned detailed discussions, I find that the services rendered by the noticee to M/s. Siddhi Developers & Builders, Bopal, Ahmedabad are squarely covered under the Sr.No. 14(ca) & Sr No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012 and find that the exemption is quite clearly available to the noticee as claimed by them. As stated in para No.19.12 service provided to 1. Samruddhi Contech Pvt Ltd, (2) Gopinath Buildcon and (3) Ananya Corporation are covered under Works Contract Service and are taxable as stated above.

Based on the above, I have narrated the Service Tax liability as detailed below :

year.	Total amount Service provided	Amount of Services Provided to M/s. Siddhi Developers & Builders ((exemption allowed)	Service Tax (demand to be dropped)	Services provided to others (which is taxable)	Service Tax liability
1	2	3	4	5	6 (on amt of column 5)
2014-15	3,45,49,270	2,06,00,750	25,46,253	1,39,48,520	17,24,037
2015-16	6,12,19,386	1,70,96,344	24,78,970	4,41,23,042	63,97,841
TOTAL	9,57,68,656	3,76,97,904	50,25,223	5,80,71,562	81,21,878

22 I find that **noticee** had contravened the provisions of Section 67 of the Finance Act, 1994 read with Rule 2A(ii)(B)(ii) of Service Tax (Determination of Value) Rules, 2006, in as much as they have failed to determine the net taxable value of taxable service and declared the same to the department; Section 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they did not pay the appropriate Service Tax on

the taxable services provided by them; Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they, as a service provider, have failed to furnish proper periodical returns in form ST-3 mentioning the particulars of the aforesaid taxable service provided by them, the value of taxable service determinable and other particulars in the manner as provided therein and incorporating the required information to the jurisdictional Superintendent of Service Tax; Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intended to evade payment of Service Tax in respect of "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994, provided by them to their various service receivers during the period for F.Y.2014-15,2015-16.

23 I find that the out of total taxable service of Rs. 9,57,68,656/- as mentioned in Show Cause Notice for the year 2014-15 and 2015-16 provided to their customers, the noticee are eligible for exemption from levy of service tax on taxable service of Rs. 2,06,00,750/- for the year 2014-15, Rs. 1,70,96,344/- for the year 2015-16 for the service provided to Siddhi Developers and Builders. However the Service to the amount of Rs. 5,80,71,562/- for the year 2014-15 to 2015-16 Provided to 1. Samruddhi Contech Pvt Ltd (2) Gopinath Buildcon and (3) Ananya Corporation (as detailed in column 5 of Para 21) are covered under Works contract Service and are taxable as stated above as the noticee failed to provide supporting documents to claim the benefit of exemption notification from levy of Service Tax on taxable amount and the service provider had not paid the service tax on the same during the year 2014-15 and 2015-16 required to be demanded and recovered from them as discussed hereinabove.



24. In view of the above discussions and findings, the invoking of extended period of limitation under Section 73 of the Finance Act, 1994 is sustainable.

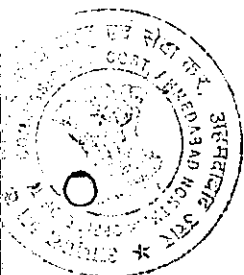
25. Further, it is observed that the noticee was fully aware about the fact that they were receiving such income which was chargeable under the Service Tax. However, in spite of knowing the facts; they chose not to pay the said applicable dues related to Service Tax by not providing documents. This has been done to escape from the eyes of the department with intent to evade the payment of dues related to Service Tax under the Finance Act, 1994. This fact of non-payment of dues related to Service Tax would have remained unnoticed, if the third party data not received from CBDT. These acts on the part of the noticee are tantamount to willful suppression, concealment and mis-statement of facts, with intent to evade the payment of dues related to Service Tax. In view of the above discussions and findings, the invoking of

extended period of limitation under Section 73 of the Finance Act, 1994 is sustainable

26. I find that at no point of time, the noticee have disclosed or intimated to the Department regarding providing/ receipt of Service of the value, the same has come to the notice of the Department only after received the CBDT data for the Financial Year 2014-2015. The Government has right from the very beginning placed full trust on the Service Tax providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it appeared that the noticee had knowingly suppressed the facts regarding providing/ receipt of services by them worth the differential value as mentioned hereinabove and thereby had not paid / short paid/ not deposited Service Tax thereof to the extent of Rs. 81,21,878/- (Rs. 17,24,037 for the year 2014-15, Rs. 63,97,841/- for the year 2015-16), the above act of omission on the part of the noticee 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 the payment of Service tax to the extent mentioned hereinabove.

27. I find that even on the opportunities arising during the adjudication process, they have not been able to prove their contentions and thus the suppression with an intent to evade payment, on part of the noticee, is proved beyond doubt and proviso to Section 73(1) of the Finance Act, 1994 has rightly been applied in the instant case and therefore, by their such act of omission and commission, the noticee have rendered themselves liable for penalty.

28. I rely upon the judgment in the case involving Aircel Digilink India Ltd. v/s Commissioner of Central Excise, Jaipur, reported in 2006 (3) STR 386 (Tri.-Del) and the case involving Bharti Cellular Ltd. v/s Commissioner of Central Excise, Delhi, reported in 2006 (3) S.T.R. 423 (Tri.-Del). In both cases, the Hon. Tribunal upheld invocation of extended period after taking note of the fact that appellants had not disclosed certain details and mode of computation in their ST-3 details and that there was nothing on record to suggest that appellants ever approached the office of the Service Tax authorities to ascertain the details of their liability to pay the service tax. Similarly, in case of Insurance & Provident Fund Department v/s. Commissioner of Central Excise, Jaipur-I, 2006 (2) S.T.R. 369 (Tri.-Del.), Hon. Tribunal held that non-disclosure of full amount of premium collected would attract invocation of extended period. The ratio of the above judgments can be applied to the present case also as the noticee had not only suppressed the material facts from the department but also failed to comply with law and procedures, including payment of service tax. In view of the above, I hold that in the facts and



circumstances of the present case, proviso to section 73 (1) of Finance Act, 1994, is rightly invoked for raising the demand for service tax against the noticee. In view of the above, I find that extended period for recovery of Service Tax short paid/not paid by the noticee on rendering of said taxable services, under the proviso to section 73(1) of the Finance Act, 1994 was rightly invoked and the SCN is sustainable on limitation. Therefore, the Service Tax amount of Rs. 81,21,878/- is recoverable from the noticee along with Interest as provided in proviso to Section 73(1) of the Finance Act, 1994 read with Section 75 of the Act *ibid*.

29. Since in the instant case, suppression of material facts have been established beyond doubt after discussions in the paras *supra*, I consider this as a fit case for imposition of penalty under Section 78 of the Finance Act, 1994 which reads as under:

“SECTION 78. Penalty for failure to pay service tax for reasons of fraud, etc. —

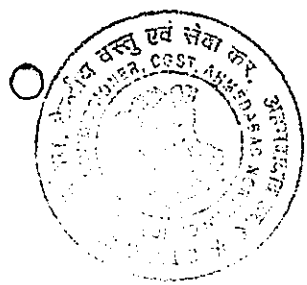
(1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the 24 date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined :

Provided further that where service tax and interest is paid within a period of thirty days of — the date of service of notice under the proviso to (i) sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded; (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period :

Explanation. — For the purposes of this sub-section, “specified records” means records including computerised data as are required to be maintained by an noticee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the noticee in the books of accounts shall be considered as the specified records.”



30 Thus penalty under Section 78, is attracted whenever any Service Tax has not been levied or not paid or has been short levied or short paid or erroneously refunded by the reasons of fraud, suppression of facts, willful misstatement or contravention of any provisions of Finance Act, 1994 or of the rules made there under with intent to evade the payment of service tax and this penalty shall not be less than the duty evaded. However, as per the second proviso to section 78, where such service tax along with interest is paid within 30 days from the date of communication of the order penalty would be further reduce to 25% of the service tax so determined. The benefit of reduced penalty shall be available only if such penalty is also paid within 30 days referred to be. Thus the noticee have rendered themselves liable to penalty under Section 78 of the Finance Act, 1994 as they were not paying service tax in spite of the facts that they were providing the taxable service.

31 Regarding penalty under Section 77, I find that the noticee has also contravened the provision of Section 67 of the Finance Act, 1994 in as much as they failed to determine the correct value of taxable services by not mentioning the same in ST3 returns; violated the provisions of Section 68 of the act read with Rule 6 of the Service Tax Rules, 1994 by not paying the Service Tax during the F.Y. 2014-15 to 2015-16. Further, the noticee has not assessed the tax due, property, on the services provided by them, as discussed above, and failed to file correct ST3 returns in time thereby violated the proviso of Section 70 of the act read with Rule 7 of the Service Tax Rules, 1994. In view of the above, they are liable for imposition of appropriate penalty under Section 77 of the Finance Act, 1994.

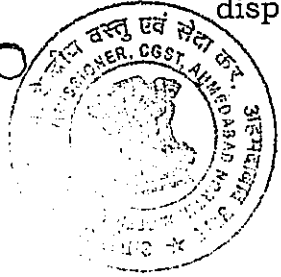
32. Further, in view of the discussion made in the forgoing paras, I hold that the noticee has failed to pay the service tax on the income received for works contract service by suppressing the facts from the department by contravening the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and Section 67(1) of the Finance Act, 1994 read with Rule 5(1) of the Service Tax Rules, 1994. The Service Tax totally amounting to Rs. 81,21,878/ is recoverable from the noticee under the provisions of Section 73(1) of the Finance Act, 1994 and they have also rendered themselves liable to pay interest under section 75 of the Finance Act, 1994. They have further rendered themselves liable for penalty under the provisions of Section 78 of the Finance Act, 1994.

33. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

- (i) I confirm and demand of service tax of Rs. 81,21,878/- (Rs. 17,24,037/- for the year 2014-15, Rs. 63,97,841/-- for the year 2015-16) for the services provided to M/s. Samruddhi Contech Pvt Ltd, M/s.Gopinath Buildcon and M/s. Ananya Corporation under the category of works contract services under the proviso of Section 73(1) of the Finance Act, 1994.
- (ii) I drop the demand of service tax of Rs. 50,25,223/- (Rs. 25,46,253 for the year 2014-15 and Rs. 24,78,970/- for the year 2015-16) on the for the services provided to Siddhi Developers & Builders.
- (iii) I order for recovery of interest at appropriate rate from the notice under the provisions of Section 75 of the Finance Act, 1994 on the demand (ii) above.
- (iv) I impose penalty of Rs.10,000/- (Rs. Ten Thousand Only) upon them under Section 70 of Finance Act,1994.
- (v) I impose penalty of Rs. 81,21,878/- under section 78(1) of the Finance Act, 1994. If the service tax amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the Service Tax amount, provided if such penalty is also paid within such period of 30 days.

34. The Show Cause Notice F.No. STC/15-33/OA/2020 dated ^{29.}~~30.~~09.2020 is disposed herewith.



R. Gulzar Begum

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

Dated- 27/01/22

F.No. STC/15-33/OA/2020

To,
M/s AKAR INFRA,
8 BHAGIRATH SOCIETY,
NARANPURA MEMNAGAR ROAD, NARANPURA
AHMEDABAD-380013

Copy to:

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