


<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क,अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा ,अहमदाबाद- 380009</p>		<p>GST</p> <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20221164WT000000ABB5

फा.सं./F.No. STC/15-160/OA/21-22

आदेश की तारीख/Date of Order :- 14.11.2022

जारी करने की तारीख/Date of Issue :- 14.11.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 60/JC/ LD /2022-23

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

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच 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. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है ।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) 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 रु .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

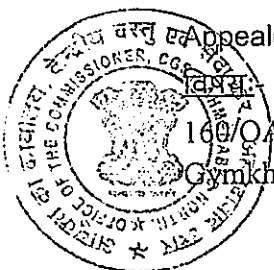
The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

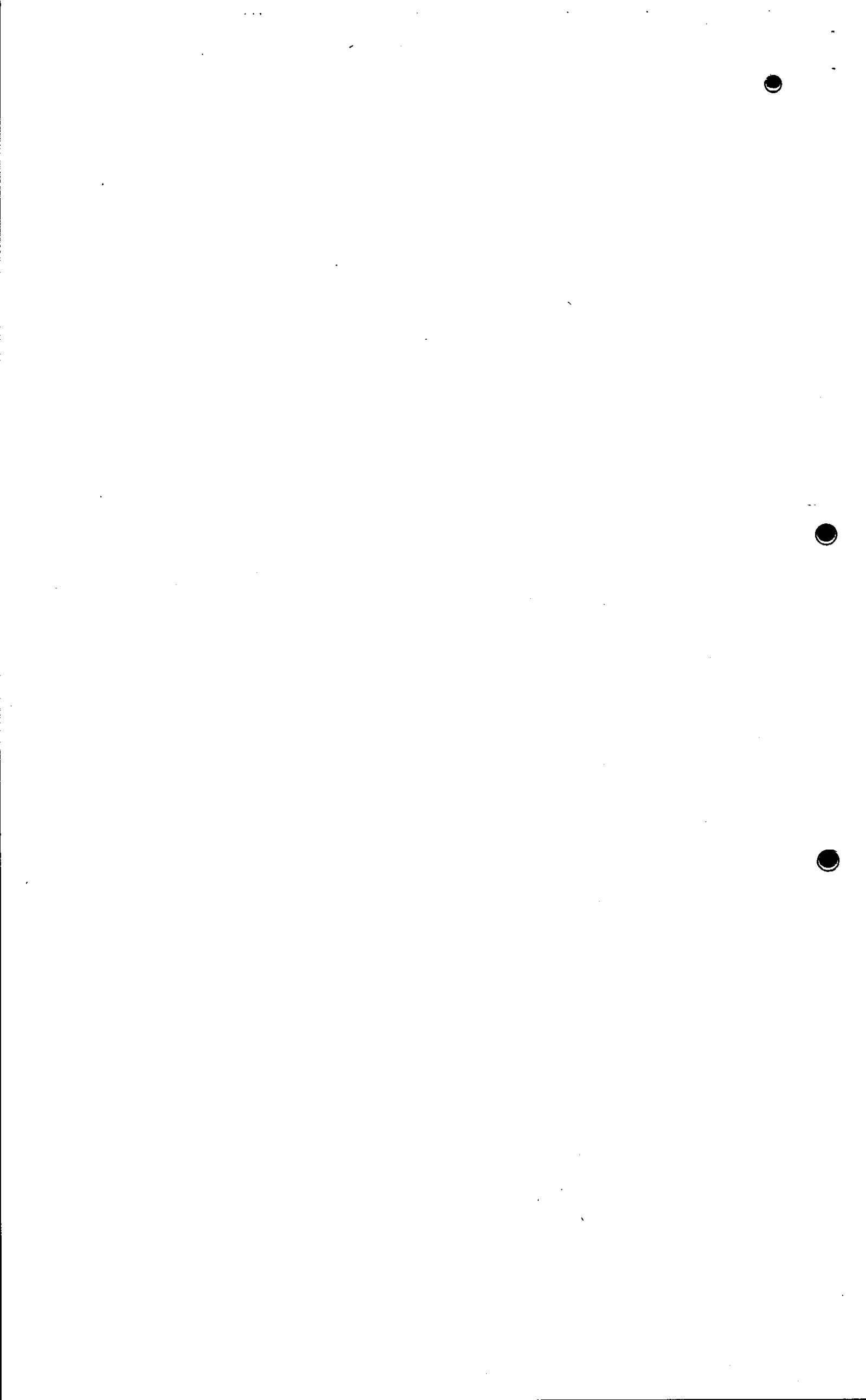
(1) Copy of accompanied Appeal.

(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.5.00.

कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-160/OA/2021-22 dated 23.04.2021 issued to M/s Mahir Buildcon, 451, Sobo Centre, Gala Gymkhana Road, South Bopal, Ahmedabad, Gujarat-380058.





BRIEF FACTS OF THE CASE

M/s Mahir Buildcon, 451, Sobo Centre, Gala Gymkhana Road, South Bopal, Ahmedabad, Gujarat- 380058 (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. ABAFM1153BSD001.

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).

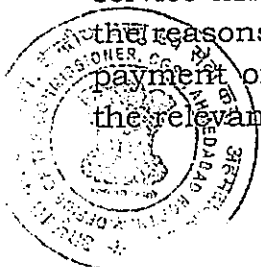
3. On going through the Third party Data received from CBDT of the said assessee for the F.Y. 2015-16 to 2016-17, the Sales/Gross Receipt from Services (Value from ITR) are not tallied with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16 to 2016-17. It was noticed that 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	57976184	8088805
2.	2016-17	76434672	11401330
	TOTAL	134410856	19490136

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.19490136/- on the differential value amounting to Rs. 134410856/- 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.

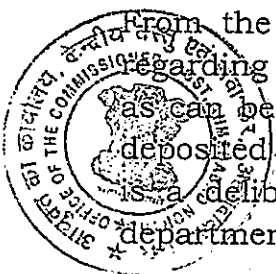
7. From the foregoing paras, it was noticed that the said assessee have failed to pay/short paid/deposit service tax to the extent of Rs. 1,94,90,136 /- on the difference of taxable value during the period 2015-16 to 2016-17 by declaring less value in their ST-3 Returns vis-a-s their ITR/Form 26AS, in 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 the said assessee have failed to discharge the service tax liability of Rs. 1,94,90,136/- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) worked out on value of Rs. 13,44,10,856/- 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, 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, 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. 1,94,90,136/-. Thus, there is a deliberate withholding of essential and material information from the department about service provided and value realized by them. 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 appears that the said assessee has short paid/non-payment of Service Tax of 1,94,90,136/- on the actual value received towards taxable services provided which appears 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 in as much 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.1,94,90,136 /- (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 Show Cause Notice No.STC/15-160/OA/2021-22 dated 23.04.2021 was issued to M/s Mahir Buildcon called upon to show cause as to why;

(i) Differential amount of Service Tax amounting to Rs.1,94,90,136/- (Rupees One Crore Ninety Four Lakh Ninety Thousand One Hundred Thirty Six 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.

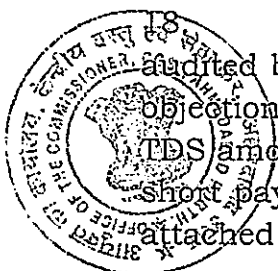
DEFENCE REPLY

15. The assessee vide letter dated 14.06.2022 submitted their reply to SCN wherein they stated that they are engaged in providing construction services other than residential complex, including commercial/industrial buildings or civil structures, construction of residential complex services and duly registered under Service Tax holding ST Registration No.ABAFM1153BSD001. They further stated that the said SCN has been issued asking for payment of amount of service tax of Rs.1,94,90,136/ along with interest and penalty for the FY 2015-16 and 2016-17.

16. They further stated that they are already registered with service tax department and has filed their returns and have paid due service tax. Surprisingly, SCN has been issued as if they have never filed any ST 3 returns or paid any service tax. SCN has preferred to assume that they have not paid any service tax without any basic investigation. From the copies of ST 3 returns attached, it is clear that they have paid service tax and filed ST 3 but the same is not considered in the SCN.

17. They have also presented that the amount disclosed in ITR, reflected in form 26AS, declared in ST3 returns and amount mentioned in SCN shown that the entire SCN has been issued directly based on value reflected in Form 26AS without considering amounts declared in ST 3. They have also reconciled value declared in ST 3 with P&L and ITR for the year 2015-16 and 2016-17 from which it is clear that the difference between income tax records and ST 3 returns is because of TDS deducted by recipient of service on gross amount hence, no service tax liability is pending. Thus no liability for payment of service tax as given in SCN. Hence after going through the above facts it is very clear that no liability of service tax arise and the SCN is liable to be dropped.

Further it was also stated that the books of accounts has been audited by department for the period upto June 2017 and in such audit such objections raised regarding difference in value as per ITR and ST 3 because TDS amount deducted is inclusive of service tax, which suggest that there is no short payment of tax and no question of suppression of value. They have also attached copy of FAR dated 25.02.2021.



19. They further stated that the SCN is issued without investigation/without asking for any information/clarification from the noticee is totally unjustified and unwarranted. If department would have taken pain to go through the records, this SCN would never been issued. They have relied upon the following case laws in their favour:

Amrish Rameshchandra Shah Vs UIO(TS-77-HC-2021 Bom ST)
Sharma Fabricators & Erectors P. Ltd Vs UOI (2017(5)GSTL96(Tri-All)
Kush Construction Vs CGST NACIN 2019 (24) GSTL 606 (Tri-All
Alpha Management Consultants P.Ltd Vs CST 2007 (6) STR 181

20. They further submitted that SCN has been issued by invoking extended period under section 73(1) of Finance Act, 1994. Since recipient of services had deducted TDS on gross amount (inclusive of service tax amount) there will be difference in values between ST 3 and Form 26AS. Hence charging suppression and invoking extended period and levying service tax is not valid. Considering the above facts, clarification and provision of law, the SCN itself is issued without taking into consideration relevant facts and hence requested to set aside the same.

PERSONEL HEARING

21. Personal Hearing in this case was held on 27.09.2022. Shri Keyur Kamdar, CA, authorised representative attended personal hearing and reiterated in their written submissions dated 14.06.2022 and requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

22. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding further.

23. In this connection, I have carefully gone through the records of the case, reply to SCN, submission made by the assessee, Audited Balance Sheet, copies of ST 3 Returns, copies of invoices, copy of FAR No.CE/ST-890/2020-21 dated 25.02.2021, Form No.26AS for the Financial Years, 2015-16 & 2016-17. On perusal of SCN and other records, I find that the said assessee is engaged in construction services other than residential complex, commercial/industrial buildings or civil structures, construction of residential complex. For which they have registered with Department under Registration No.ABAFM1153BSD001 and have paid service tax and also filed ST 3 Returns accordingly. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.1,94,90,136/- for the financial years 2015-16 & 2016-17 on the basis of data received from Income Tax authorities. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 1,94,90,136/ on the differential taxable value for the financial year 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1994 or not.



24. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified according to the different category of services. Further after introduction of negative list with effect from 01.07.2012, service has been defined as:

(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*
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the constitution or*
 - (iii) a transaction in money or actionable claim.*
- (b) A provision of service by an employee to the employer in the course of or in relation to his employment.*
- (c) fees taken in any court or tribunal established under any law for the time being in force.*

From the definition it is evident that any activity carried out by any person to another person for any consideration is covered under the above definition of service.

Further the term "taxable service" is defined under Section 66B(51) of the Finance act, 194 as under:

(51) taxable service means any service on which service tax is leviable under Section 66B.

It is clear that the service tax is levied under Section 66B of the Finance Act, 1994 which reads as under:

Section 66B : Charge of service tax on and after Finance Act, 2012- There shall be levied a tax (hereinafter referred to as the service tax) at the rate fourteen percent on the value of all services other than those services specified in negative list, provided r agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed"

25. According to which service tax is levied on all services other than those specified in negative list (Section 66D of Finance act, 1994) in the taxable territory by one person to another. In this context the services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,

- (a) Service by the Government/Local Authority*
- (b) Service by RBI*
- (c) Service by Foreign Diplomatic Mission located in India*
- (d) Service in relation to agriculture*
- (e) Trading of goods*
- (f) Manufacture of goods*
- (g) Selling of space/time for advertisement*



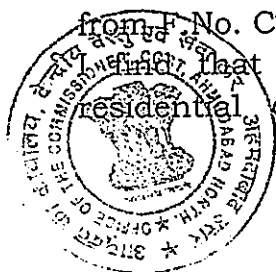
- (h) *Services by access to road or bridge on a payment of Toll charges*
- (i) *Betting, gambling or lottery*
- (j) *Admission to Entertainment Events & Amusement Facilities*
- (k) *Transmission or distribution of electricity*
- (l) *Educational Services*
- (m) *Renting of Residential dwelling for use as residence*
- (n) *Financial services by way of extending deposits, loans or advances and inter se sale or purchase of foreign currency*
- (o) *Transportation of Passenger with or without accompanied belongings*
- (p) *Transportation of goods.*
- (q) *Mortuary/Funeral services*

26. Thus 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. It is not disputed that the assessee has provided taxable service and the service provided by them are not mentioned in the negative list given under Section 66D of the Finance Act, 1994. In view of the above the services provided by the assessee are covered under service tax and they are also liable to pay service tax on the said services.

27. I have gone through the SCN and other records and find that the said assessee is engaged in construction services other than residential complex, commercial/industrial buildings or civil structures, construction of residential complex. For which they have registered with Department under Registration No.ABAFM1153BSD001 and have paid service tax and also filed ST 3 Returns accordingly. The Service tax payable is arrived at on the basis of value of "sales of services" shown in the 26AS for the Financial year 2015-16 and 2016-17. By considering the said amount as taxable income, the service tax liability is calculated as tabulated in Table-A supra.

28. I have carefully gone through the reply to SCN filed by the assessee and other documents and find that the assessee has mentioned that their firm was audited by the Audit Commissionerate, CGST, Ahmedabad for the period from F.Y 2015-16 to June 2017 and on reconciliation of the figures a revenue shortfall of Rs.7,011/- has been detected and the assessee have agreed and paid the same. They have also produced copy of Final Audit Report No. CE/ST-890/2020-21 dated 25.02.2021 issued by Assistant Commissioner, Circle VII, CGST Audit Commissionerate, Ahmedabad.

29. On perusal of reply to SCN and other related documents, I find that the Final Audit Report issued by the department must be looked at. On perusing the Final Audit Report No.CE/ST-890/2020-21 dated 25.02.2021, I find that the audit was conducted by the audit party of Circle VII, CGST, Audit Commissionerate, Ahmedabad for FY 2015-16 to June 2017. The Audit Report was issued by the Assistant Commissioner(Audit), CGST Audit, Ahmedabad from F.No. CTA/04-674/Cir - VII/AP-46/2020-21. On perusal of the said FAR, I find that the assessee is engaged in construction services other than residential complex, commercial/industrial buildings or civil structures,



construction of residential complex. During the course of audit proceedings, I find that the audit party who audited the records of the assessee has raised certain objection on reconciliation of income in financial accounts with the income shown in ST 3 for the FY 2015-16 & 2016-17. The summary of major audit objections is reproduced herein under for ease of reference:

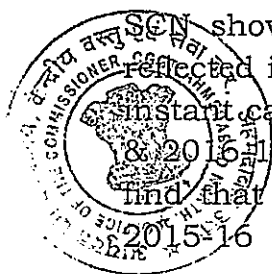
1. Summary of major audit objections from the working paper.

Sr. No	Gist of objections	Audit objection code	Revenue implication, if any(Rs)	Assessee in agreement Yes/No	Department's decision
01	Non/Short payment of S.Tax under the category of GTA Service RCM	ST CSR070	S.Tax Rs.3774/- Penalty Rs.2621/- Interest Rs. 566/- Total Rs.7011/-	Yes	Approved & settled in MCM on 11.02.2021
Total Detection			Rs.7011/-		
Spot Recovery			Rs.7011/-		

30. On perusal of audit report, I find that the assessee has agreed with the audit objections raised by the Audit Party and paid the entire amount of Rs.7011/- and accordingly audit para has been settled and Final Audit Report No.CE/ST-890/2020-21 dated 25.02.2021 was issued by the Assistant Commissioner of Audit, Circle VII, Audit Commissionerate, Ahmedabad from file F.No. CTA/04-674/Cir - VII/AP-46/2020-21.

31. Therefore, it is apparent from the Final Audit Report that the reconciliation of Income booked/ shown in the books of accounts of the assessee, for the period 2015-16, 2016-17 & 2017-18 (upto June 2017) was carried out with taxable value disclosed in their ST-3 Returns filed by the assessee. It is also seen that the assessee had already paid the service tax on the differential value of service as observed by the audit. It is also evident that the audit of records of assessee had already been conducted by the department before the issuance of the subject SCN i.e.23.04.2021. On perusal of the records and submissions, I find that apart from the differences noticed in the figures reported in ST-3 returns and in ITR/Form 26AS, the department had not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non payment of service tax. Having considered these factual and documentary evidences available on records, and relying on the Final Audit Report, I find that there is no short payment on the part of the assessee. Further it was also noticed that the SCN dated 23.04.2021 was issued to the assessee after issuance of Final Audit Report was issued on 25.02.2021. As the Department has already audited the records of the assessee and necessary reconciliation has been done for the relevant period by the Audit Department and FAR issued subsequently, I find that the Show Cause Notice is not sustainable.

32. Further, the assessee have also presented that the amount disclosed in ITR, reflected in form 26AS, declared in ST3 returns and amount mentioned in SCN shown that the entire SCN has been issued directly based on value reflected in Form 26AS without considering amounts declared in ST 3. In the instant case the assessee submitted copies of ST 3 returns for the FY 2015-16 & 2016-17. I have gone through the ST 3 returns for the relevant period and find that they have paid the service tax and filed ST 3 Returns for the FY 2015-16 & 2016-17 accordingly. Therefore, I consider the value of



Rs.5,07,79,650/- for the FY 2015-16 and Rs.6,65,21,745/- for the FY 2016-17 declared in their relevant ST 3 returns from the value difference shown in the SCN on which the differential service tax has been demanded.

33. The assessee further contended that the value shown in Form 26AS is taken as the differential value in the Show Cause Notice. However the value shown in 26AS is gross value i.e. inclusive of service tax and TDS has been deducted on the gross value therefore there is a difference in the value shown in 26AS and ST 3 Returns. They have submitted the copy of ledger account and all the invoices of the service receiver i.e. M/s.Gala Projects LLP and M/s. Manav Builders for the FY 2015-16 & 2016-17. I have gone through the Form 26AS, ledger account of both the service recipients, all the invoices reflected in the 26AS and find that the value shown in the Form 26AS is inclusive of service tax of Rs.71,96,534/- for the FY 2015-16 and Rs.99,12,928/- for the FY 2016-17. In view of the above facts, I consider the above figures from the total differential value on which the service tax demanded for both the years. For the sake of clarity, I reconcile the value as under:

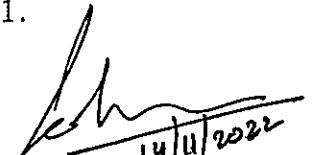
Sl.No.	Particulars	2015-16	2016-17
01	Differential value on which tax demanded	57976184	76434672
02	Less: Value declared in ST3	50779650	66521745
03	Difference	7196534	9912928
04	Less: Amt. of service tax included as discussed	7196534	9912928
05	Difference	0	0

34. In view of the above discussion and findings and also on perusal of SCN, reply to SCN, Form 26AS, ST3 returns, reconciliation statement, FAR dated 25.02.2021 submissions made by the said assessee and other documents, I find that demand of Rs.1,94,90,136/- demanded vide above referred SCN is not tenable in law. Accordingly, I do not consider it necessary to delve on the merits of the case by 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 for imposing any penalty.

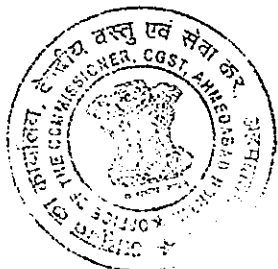
33. In view of the above discussion and findings, I pass the following orders:-

ORDER

34. I hereby order to drop proceedings initiated for recovery of service tax of Rs.1,94,90,136/- along with interest and penalties against M/s. Mahir Buildcon vide SCN No.STC/15-160/OA/2021-22 dated 23.04.2021.


(Lokesh Damor)
14/11/2022

Joint Commissioner
Central GST & Central Excise
Ahmedabad North



F.No. STC/15-160/OA/2021

Date:

To,
M/s Mahir Buildcon,
451, Sobo Centre, Gala Gymkhana Road,
South Bopal, Ahmedabad, Gujarat- 380058

Copy to:

- 1) The Commissioner Central GST & Central Excise, Ahmedabad North.
- 2) The DC/A.C, Central GST & Central Excise, Division-VI, Ahmedabad North.
- 3) The Supdt., CGST & Central Excise, Range-I , Division-VI, Ahmedabad North
- 4) The Supdt. Systems ,CGST& CX, Ahmedabad North for uploading the order
- 5) Guard File.

