



<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</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
फा.सं./F.No. STC/15-92/OA/2021

DIN- 20221164WT000000CC95

आदेश की तारीख/Date of Order :- 16.11.2022

जारी करने की तारीख/Date of Issue :- 16.11.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 63/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 जाएंगे।

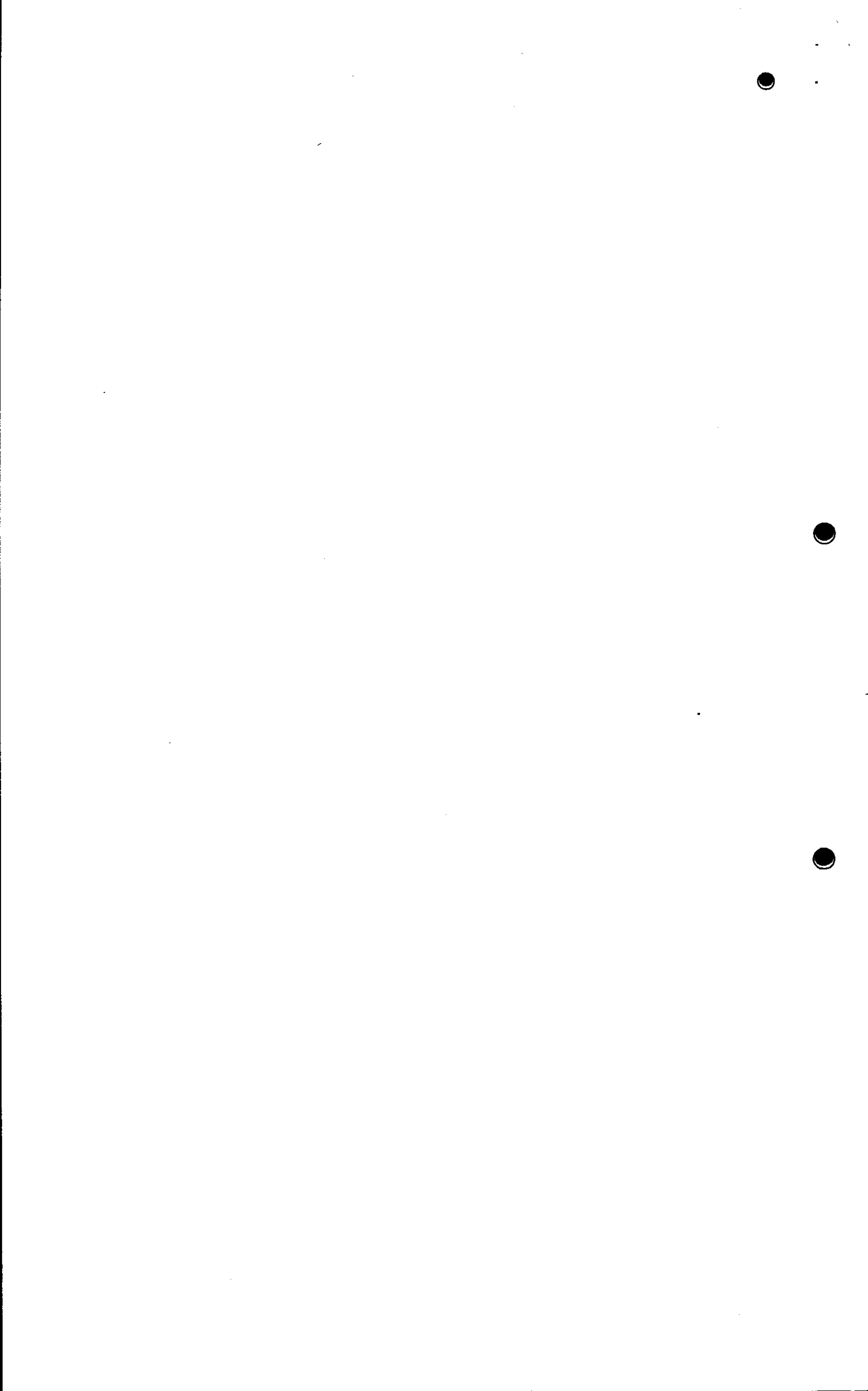
- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-92/OA/2021 dated 23.04.2021 issued to M/s Crystal Infrastructure, 26/27, Gauri Puja Society, Nr. Mangaldeep School, Opp. Viswakarma Temple, Ahmedabad, Gujarat-380013.





BRIEF FACTS OF THE CASE :

M/s. Crystal Infrastructure, 26/27, Gauri Puja Society, Nr. Mangaldeep School, Opp.Viswakarma Temple, Ahmedabad, Gujarat -380013 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. AAJFC9812HSD001 and was engaged in Taxable Services.

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

Amt. in Rupees

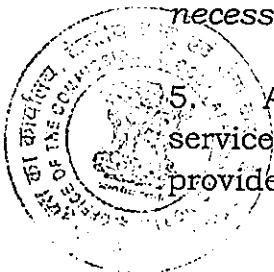
Sr. No.	F.Y.	Taxable as per ST-3 returns	Gross Receipts Services (Value from ITR/26AS)	Diff. Between Value of Services from ITR/26AS and Gross Value in Service Tax Provided	Resultant Service Tax short paid
1	2015-16	0	36500000	36500000	5292500
2	2016-17	0	45929867	45929867	6889480
TOTAL					12181980

3. 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 assessee had not paid service tax as worked out as above in Table for Financial Year 2015-16 and 2016-17.

4. No data was forwarded by CBDT, for the period 2017-18 (upto June-2017) and the assessee had also failed to provide any information regarding rendering of taxable service for this period. Therefore, at the time of issue of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017). With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies 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 noticee 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. 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



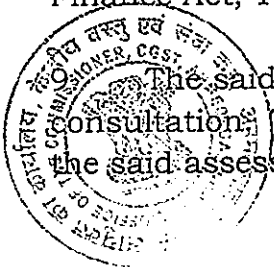
Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appeared that the said service provider had not assessed the tax dues properly, on the services provided 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.

6. 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 had 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.

7. In view of above, it appeared that the Assessee had 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. 1,21,81,980/-, by declaring less value in their ST-3 Returns vis-a-vis their ITR / Form 26AS, in such manner and within such period prescribed in respect of taxable services received / provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(l)(d) of Service Tax Rules, 1994.

8. It has been noticed that at no point of time, the Assessee had 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 2015-16 and 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it appeared that the said assessee had 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. 1,21,81,980/-. It appeared that the above act of omission on the part of the Assessee resulted into nonpayment 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 appeared to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 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 appeared that the Assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

The said assessee was given an opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 22.04.2021 but the said assessee did not appear for the same.



○ 10. Therefore, a Show Cause Notice bearing F.No.STC/15-92/OA/2021 dated 23.04.2021 was issued to M/s.Crystal Infrastructure asking them to show cause as to why:

- (i) The demand for Service tax to the extent of Rs 1,21,81,980/- short paid /not paid by them in F.Y. 2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) 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.

DEFENCE REPLY

○ 11. The assessee vide letters dated 11.05.2021 & 10.05.2022 submitted their reply to SCN wherein they stated that they received SCN and as per SCN, the figures of ST 3 is shown as NIL, but on verification, it was found that they have shown the turnover properly in their ST 3 Returns. They have also furnished copies of ST 3 Returns for the FY 2015-16 & 2016-17 along with copies of challan as proof of payment. They further stated that in Service Tax Return filed for the period October 2015 to March 2016, the taxable service turnover was erroneously mentioned at Rs.33,50,000/- instead of the correct value of Rs.3,35,00,000/-. The error occurred due to typing error while filing return. But actual service tax was paid on Rs.3,35,00,000/- which was the actual turnover instead of Rs.35,00,000/-. Total service tax on Rs.3,35,00,000/- comes to Rs.47,95,000/- which was actually deposited and same has been mentioned in their ST 3 Return for Oct.2015 to March 2016. The copy of challans are also enclosed by them and requested to do the needful.

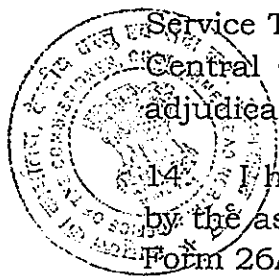
PERSONNEL HEARING

12. In the instant case, Personal Hearing was held on 09.11.2022. Shri Dilip Kuril, CA, authorised representative attended the P.H and reiterated their written submission filed on 11.05.2021 & 10.05.2022 and requested to decide the SCN on merit.

DISCUSSION AND FINDINGS

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

14. I have carefully gone through the Show Cause Notice, submission made by the assessee, ST 3 Returns, copies of challan, reconciliation statement and Form 26AS for the F.Y. 2015-16 & 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.1,21,81,980/-



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. 1,21,81,980/- for the financial years 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

15. On perusal of the reply to SCN and other related documents, I find that the assessee has receipt from providing services related to construction of residential complex service and works contract service. Here I would like to go the definition of service on which service tax is payable. 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.*

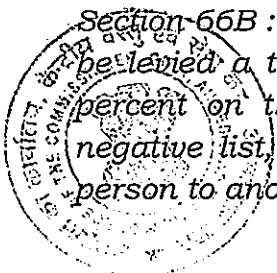
From the definition it is evident that any activity carried out by any person to another person for any consideration is covered under the above definition of service.

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"



16. According to which service tax is levied on all services other than those specified in negative list (Section 66 D 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.,

SECTION 66D. Negative list of services.— The negative list shall comprise of the following services, namely :—

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) transport of goods or passengers; or 9
- (iv) Any service, other than services covered under clauses (i) to (iii) above, provided to business entities;

(b) services by the Reserve Bank of India;

(c) services by a foreign diplomatic mission located in India;

(d) services relating to agriculture or agricultural produce by way of—

- (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or [* * *] testing;
- (ii) supply of farm labour;
- (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
- (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
- (v) loading, unloading, packing, storage or warehousing of agricultural produce;
- (vi) agricultural extension services;
- (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

(e) trading of goods;

(f) [****].;

(g) selling of space for advertisements in print media;

(h) service by way of access to a road or a bridge on payment of toll charges;

(i) betting, gambling or lottery; Explanation. - For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in Explanation2 to clause (44) of section 65B;

(j) [* * * *]

(k) transmission or distribution of electricity by an electricity transmission or distribution utility; 10

(l) [* * * *]

(m) services by way of renting of residential dwelling for use as residence;

(n) services by way of—

- (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
- (ii) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;

(o) service of transportation of passengers, with or without accompanied belongings, by—

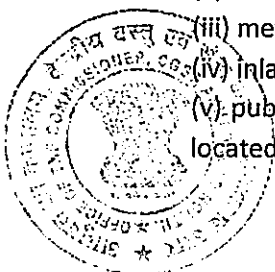
(i) [* * * *]

(ii) railways in a class other than— (A) first class; or (B) an air-conditioned coach;

(iii) metro, monorail or tramway ,

(iv) inland waterways;

(v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

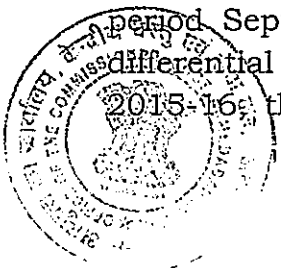


- (vi) metered cabs or auto rickshaws
- (p) services by way of transportation of goods—
 - (i) by road except the services of— (A) a goods transportation agency; or (B) a courier agency;
 - (ii) [* * *]
 - (iii) by inland waterways;
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

17. 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.

18. I have gone through the SCN and other records and find that the said assessee is engaged in construction services of residential complex, and works contract service. They have registered with Department under Registration No.AAJFC9812HSD001 and have paid service tax and also filed ST 3 Returns for the FY 2015-16 & 2016-17 accordingly. The Service tax payable is arrived at on the basis of value of "gross receipts from services (value from ITR/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.

19. Further, the assessee have also presented that the entire SCN has been issued directly based on value reflected in Form 26 AS 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. In this connection, I have gone through the SCN and find that taxable value as per ST 3 return is shown as "0" in the relevant column of Show Cause Notice. On perusal of the ST 3 returns for the FY 2015-16, I find that they have declared Rs.30,00,000/- in their ST 3 Return for the period April 2015 to September 2015 and paid service tax accordingly. Further I have gone through the ST 3 return for the period September 2015 to March 2016 and find that they have declared Rs.33,50,000/- as their taxable income. The assessee claimed that their actual income is Rs.3,35,00,000/- and the declared figure of Rs.33,50,000/- is erroneously mentioned due to typing error. They have also paid service tax of Rs.47,95,000/- and declared the same in their ST3 return also. On perusal of the ST 3 Return and relevant copies of Challans, I find that they have declared RS.33,50,000/- as their income, however they have paid service tax of Rs.47,95,000/- vide various challan and also declared the same in their ST 3 return. On perusal of the ST 3 return and copies of challan, I find that an amount of service tax of Rs.47,95,000/- is correctly paid on taxable value of Rs.3,33,50,000/- and was declared in their ST 3 Return, Hence, I accept the contention of the assessee that the said amount of Rs.3,33,50,00/- as their taxable income instead of Rs.33,50,000/- declared in their ST 3 return for the period Sept.2015 to March 216. As the assessee have declared the entire differential value of Rs.3,65,00,000/- in their Service Tax Return for the FY 2015-16, the question of recovery of service tax demand of Rs.52,92,500/-



demande vide instant SCN for the FY 2015-16 is not sustainable and therefore the same is required to be dropped.

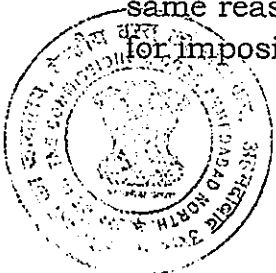
20. Further the assessee contended that they have filed ST 3 Return declaring Rs.4,65,36,958/- as their income and paid appropriate service tax thereon for the FY 2016-17. I have gone through the copy of ST 3 Return filed by the assessee and find that they have filed the ST 3 Return for the period April 2016- to September 2016 declaring Rs.1,20,00,000/- as their gross income and for the period October 2016 to March 2017 declaring Rs.3,45,36,958/- as their gross income which comes to Rs.4,65,36,958/- for the FY 2016-17 and paid appropriate service tax on the same. As the assessee have declared the gross value of Rs.4,65,36,958/- in their Service Tax Return for the FY 2016-17 is more than the differential value of Rs.4,59,29,867/- on which service tax demand of Rs.68,89,480/- is proposed in the SCN, the question of recovery of service tax demand of Rs.68,89,480/- for the FY 2015-16 is not sustainable and therefore the same is also required to be dropped. 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 as per SCN	36500000	45929867
02	Less: Value declared in ST3 as discussed	36500000	46536958
03	Difference	0	(-)607091

In view of the above reconciliation, I find that the entire service tax demand of Rs.1,21,81,980/- demanded vide SCN dated 23.04.2021 is not sustainable and therefore required to be dropped.

21. Further, as mentioned in the SCN, I find that the levy of Service Tax for the financial year 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 2017-18 (Up to June 2017), in charging para of the SCN, hence I refrain from discussing the taxability of any income for the period 2017-18(upto June 2017).

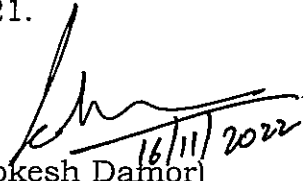
22. In view of the above discussion and findings and also on perusal of SCN, reply to SCN, Form 26AS, ST3 returns, reconciliation statement and submissions made by the said assessee and other documents, I find that demand of Rs.1,21,81,980/- demanded vide above referred SCN is not tenable in law. Accordingly, 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 or interest.



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. 1,21,81,980/- along with interest and penalties against M/s. Crystal Infrastructure vide SCN No.STC/15-92/OA/2021 dated 23.04.2021.


(Lokesh Damor)

Joint Commissioner
Central GST & Central Excise
Ahmedabad North

F.No. STC/15-92/OA/2021

Date:

To,
M/s. Crystal Infrastructure,
26/27, Gauri Puja Society, Nr.Mangaldeep School,
Opp.Viswakarma Temple, Ahmedabad, Gujarat -380013

Copy to:

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

