



<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, 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/15-100/OA/2021

DIN- 20221164WT0000217264

आदेश की तारीख/Date of Order :- 17.11.2022
जारी करने की तारीख/Date of Issue :- 17.11.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor
सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 64/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।

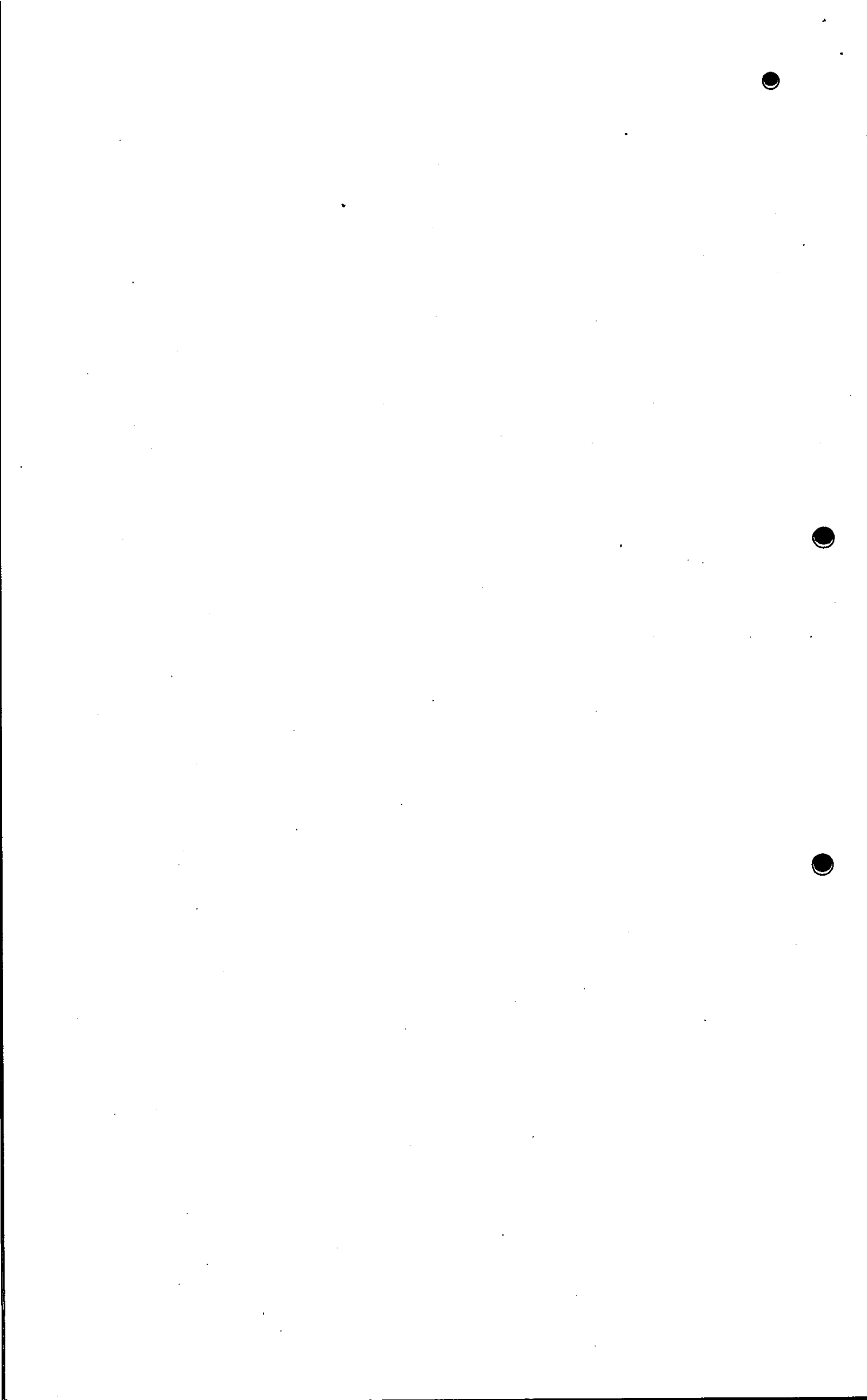
- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-100/OA/2021 dated 23.04.2021 issued to M/s Sunil Mahipatrai Trivedi, E-408, Devam Apartment, Opp. Ratnam 2, B/H Balaji Residency, Motera, Sabarmati, Ahmedabad, Gujarat-





BRIEF FACTS OF THE CASE :

M/s. Sunil Mahipatrai Trivedi, E-408, Devam Apartment, Opp.Ratnam 2, B/H.Balaji Residency, Motera, Sabarmati, Ahmedabad -380 005 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. ACNPT3412ASD001 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:

Sr. No.	F.Y.	Taxable as per ST-3 returns (In Rs.)	Gross Receipts Services (Value from ITR/26AS) (In Rs.)	Difference Between Value of Services ITR/26AS and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax short paid (in Rs.)
1	2015-16	0	0	0	0
2	2016-17	0	79306000	79306000	11895900
TOTAL					11895900

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."

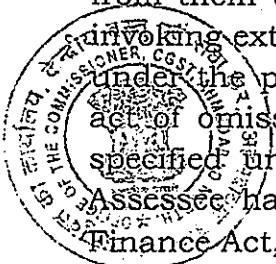


5. As per Section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in 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. 1,18,95,900/-, 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. 1,18,95,900/-. 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.



9. 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/15-100/OA/2021 dated 23.04.2021 was issued to M/s.Sunil Mahipatrai Trivedi to show cause as to why:

- (i) The demand for Service tax to the extent of Rs 1,18,95,900/- 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 letter dated 10.08.2022 submitted their reply to SCN wherein they stated that the amount mentioned in notice is f Rs.7,93,06,000/- as reflecting in Form 26AS. However, the correct amount is Rs.7,29,56,000/- which is reflecting in Form 26AS, Profit & Loss account as well as ITR for the year 2016-17. Further the difference between ITR and STR as mentioned in the notice is only because of the fact that the assessee has provided services to SEZ unit named Gujarat Credo Alumina Chemicals P. Ltd _GCAPL and hence service tax is not leviable on the same as per the exemption provided via Notification No.12/2012 dated 01.07.2013 under service tax. The above has already been disclosed properly in service tax return as well. In that regard, they are also enclosed Copy of work order, Work completion certificate, copy of invoice raised to GCACPL, Form A-1, Form A-2, ITR and Copy of ST 3 Return for the FY. 2016-17. In view of the above, they requested to drop the notice for non payment of service tax for the FY 2016-17.

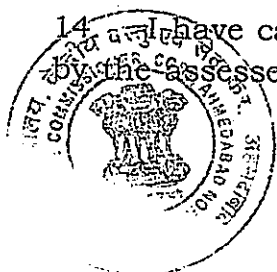
PERSONAL HEARING

12. Personal Hearing in this case was held on 09.11.2022. Shri Sandeep Gupta, CA, authroised representative, appeared on behalf of the assessee. He reiterated their written submissions dated 10.08.2022 and requested to drop the SCN on merits.

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 further.

14. I have carefully gone through the records of the case, submission made by the assessee, copy of Audited Balance Sheet, Form 26AS and copy of ITR



for the Financial Year 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.1,18,95,900/- for the Financial Year 2016-17 on the basis of data received from Income Tax authorities. The Show Cause Notice alleged non-payment of Service Tax, interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. Accordingly to which the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 1,18,95,900/ on the differential taxable value of Rs.7,93,06,000/- for the Financial Year 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

15. 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.

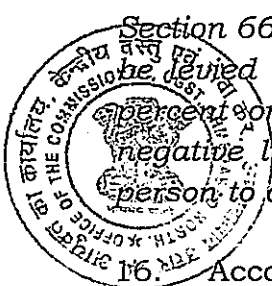
Further the term "taxable service" is defined under Section 66B(51) of the Finance act, 194 as under:

(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"

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
 - (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—



3. This exemption shall be given effect to in the following manner: (I) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax. (II) The ab-initio exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely:-

(a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I);

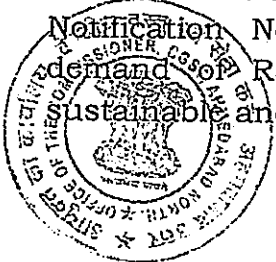
(b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;

(c) the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;

.....

19. In this connection, the assessee contended that the service tax of Rs.1,18,95,900/- is demanded on gross receipt of Rs.7,93,06,000/- i.e. the value taken from ITR/26AS) as per Show Cause Notice. They stated that the figure of gross receipt mentioned in the SCN is not correct and correct gross revenue is Rs.7,29,56,000/-. They have also furnished copy of 26AS, copy of ITR and copy of audited balance sheet in support of their claim. I have gone through the Form 26 AS wherein it was mentioned that the total amount credited /paid by M/s.Gujarat Credo Aluminium Chemicals Ltd is Rs.7,29,56,000/-. I have also gone through the ITR 3 filed by the assessee for the FY 2016-17 wherein also the amount of Rs.7,29,56,000/- is mentioned as revenue from sale of services. I have also gone through the audited balance sheet of the assessee and find that the gross receipt from civil contract income is Rs.7,29,56,000/-. In view of the above, I accept the contention of the assessee that the gross income of the assessee for the FY 2016-17 is Rs.7,29,56,000/- instead of Rs.7,93,06,000/- as mentioned in the SCN.

20. Further I find that the assessee submitted copy of Form A-1 wherein the SEZ unit M/s.Gujarat Credo Alumina Chemicals P. Ltd filed declaration for availing ab initio exemption under Notification 12/2013-Service Tax dated 01.07.2013 duly verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I)of the said Notification for the services of site formation & clearance, excavation earth moving. Further the assessee has also submitted Form A -2 dated 12.01.2017 issued on the basis of declaration made in Form A-1 and duly signed by the jurisdictional Assistant Commissioner of Central Excise to the SEZ Unit as required under Notification 12/2013-Service Tax dated 01.07.2013. In view of the above, I find that the conditions for exemption from service tax are fulfilled by the assessee and therefore they are eligible for exemption from payment of service tax under Notification No.13/2012 dated 01.07.2012. Accordingly the service tax demand of Rs.1,18,95,900/- demanded vide above referred SCN is not sustainable and therefore required to be dropped.

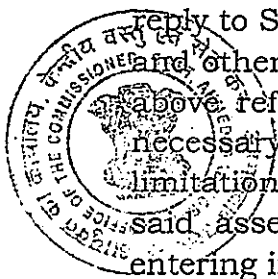


21. Further, I find that the assessee has also filed ST 3 return for the period October 2016 to March 2017 declaring the total of Rs.7,29,56,000/- claiming exemption under Notification No.012/2013-ST. The value of Rs.7,29,56,000/- declared in the ST3 has also not been considered in the SCN. Hence, I find that the amount of Rs.7,29,56,000/- declared in the STR for October 2016 to March 2017 is required to be considered. As the assessee has filed ST 3 Return claiming exemption of Rs. 7,29,56,000/- under Notification No.12/2013, the service tax demand of Rs. Rs.1,18,95,900/- demanded vide above referred SCN is not sustainable and therefore on this ground also the said demand is required to be dropped.

22. The Balance sheet and profit and loss account of an assessee is vital statutory records. Such records are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for evincing true financial position. Assessee was legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in unorganized method. The statute provides mechanism for supervision and monitoring of financial records. It is also onus upon assessee to verify and make a report on profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs. The assessee have given declaration that the balance sheet and profit and loss accounts of the noticee reflect true and correct picture of the transaction and therefore, I have no option other than to accept the classification of incomes under profit and loss account as true nature of the business and to proceed to conclude instant proceedings accordingly.

23. 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 the 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, 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 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). On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the sales/gross receipts from services (value from 26AS/ITR). I therefore refrain from discussing the taxability on other income other than the sales/gross receipts from services (value from 26AS/ ITR).

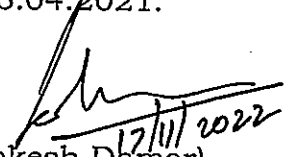
24. In view of the above discussion and findings and also on perusal of SCN, reply to SCN, Form 26AS, ST3 returns, reconciliation statement, For. A-1 & A-2 and other documents, I find that demand of Rs.1,18,95,900/- demanded vide above referred SCN is not tenable in law. Accordingly, I do not consider 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.



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

ORDER

24. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 1,18,95,900/- along with interest and penalties against M/s. Sunil Mahipatral Trivedi vide SCN No.STC/15-100/OA/2021-22 dated 23.04.2021.


(Lokesh Damor)

Joint Commissioner
Central GST & Central Excise
Ahmedabad North

F.No. STC/15-100/OA/2021

Date:

To,
M/s. Sunil Mahipatral Trivedi,
E-408, Devam Apartment,
Opp.Ratnam 2, B/H.Balaji Residency,
Motera, Sabarmati , Ahmedabad -380 005

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.



