



<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>ONE NATION. ONE TAX. ONE MARKET</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/15-76/OA/2021

DIN- 20221164WT0000611648
आदेश की तारीख/Date of Order :- 22.11.2022
जारी करने की तारीख/Date of Issue :- 22.11.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor
संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 69/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, अंबावाडी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रू. 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।

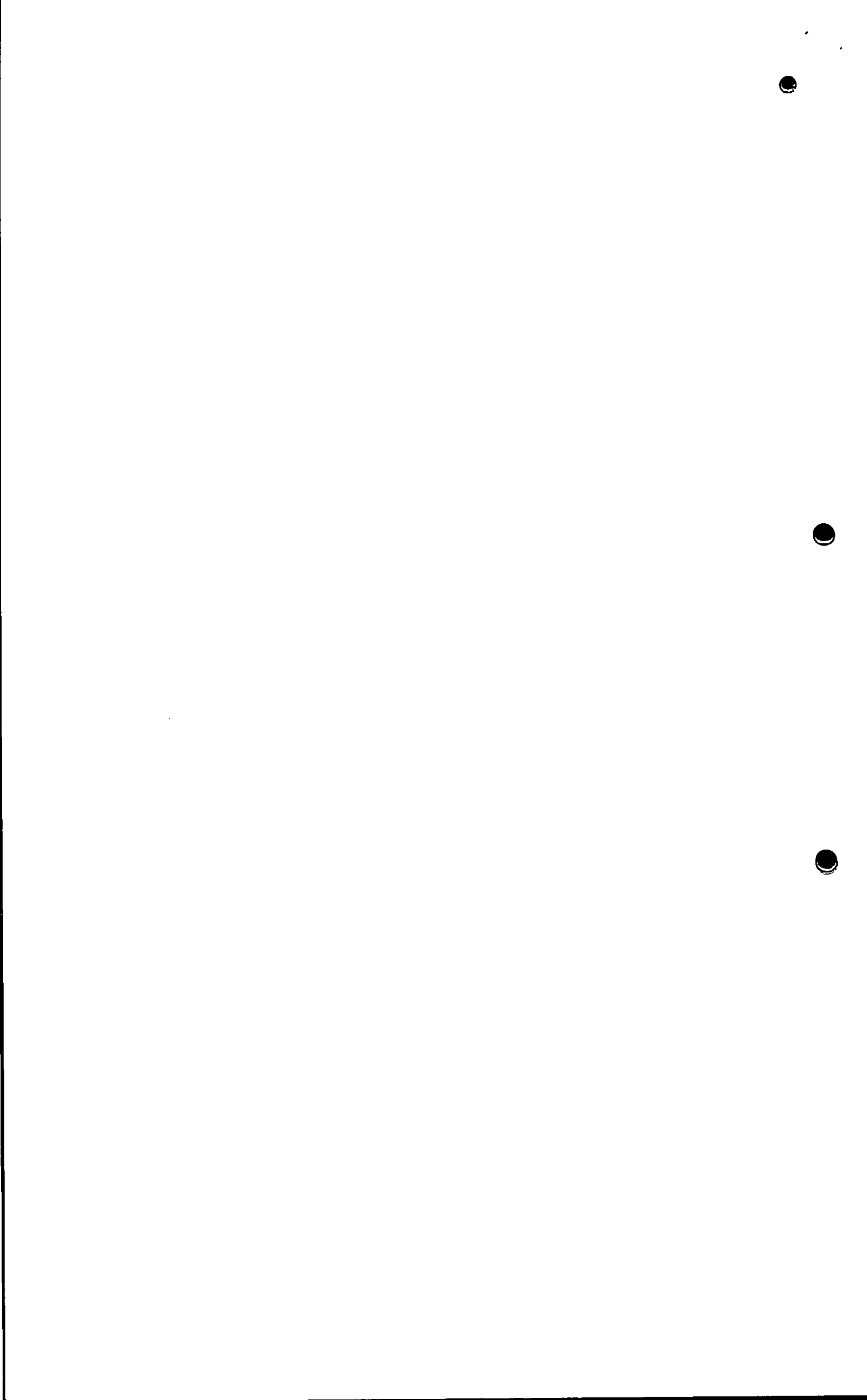
- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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/15-76/OA/21-22 dated 23.04.2021 issued to M/s Anita Enerprise, F-14, Unique City Home, R.C. Technical Road, B/s Prasang Party Plot, Ahmedabad, Gujarat-382481.





BRIEF FACTS OF THE CASE:-

M/s. Anita Enterprise, F-14, Unique City Home, R.C.Technical Road, B/s Prasang Party Plot, Ahmedabad Gujarat-382481 (hereinafter referred to as the 'assessee') was registered under Service Tax having Registration No.AGIPC7350DST001 and was engaged in providing 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 had declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

Sr. No.	F.Y.	Taxable Value as per ST-3 returns (In Rs.)	Gross Receipts Services (Value from ITR/26AS) (In Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax short paid (in Rs.)
1	2015-16	0	27083214	27083214	3927066
2	2016-17	0	25892855	25892855	3883928
TOTAL					78,10,994/-

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-3returns). 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. 78,10,994/-, 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. 78,10,994/-. 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.

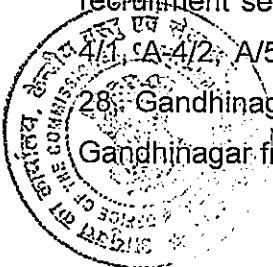
9. The said assessee was given an opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 22.04.2021 but the said assessee did not appear for the same.

10. Therefore, a Show Cause Notice bearing F.No.STC/15-76/OA/2021 dated 23.04.2021 was issued to M/s. Anita Enterprise, F-14, Unique City Home, R.C.Technical Road, B/s Prasang Party Plot, Ahmedabad Gujarat-382481 to show cause to the Additional/Joint Commissioner, CGST & CX, Ahmedabad North having office at 1 Floor, Custom House,. Navrangpura, Ahmedabad as to why:

- (i) The demand for Service tax to the extent of Rs. 78,10,994/- 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. In response to Show Cause Notice dated 23.04.2021, the assessee vide letter dated 09.11.2022 submitted that they were into the business of labour supplier (manpower recruitment service) and providing labours to M/s Kalpataru Power Transmission Ltd., a-4/1, A-4/2, A/5, Sector 25 Gandhinagar, M/s Shreenath Enterprise, Plot No.305, Sector 28, Gandhinagar from August-2015 and M/s Solar Industries, Plot NO.310, Sector 28, Gandhinagar from January-2017.



12. They further submitted that as per Notification No.30/2012-ST dated 20.06.2012, the service tax was liable to be paid under RCM by the service recipient; they have not charged service tax for the said period; they submitted invoices for the said period and requested to drop the proceedings. They submitted copies of Profit & Loss Account, Balance sheet, Form 26AS and copy of agreement with M/s Kalpataru Power Transmission Ltd.

PERSONEL HEARING :-

13. Personal Hearing in this case has been granted to the assessee on 10.05.2022, 22.06.2022 and 09.11.2022. Shri B.S.Chauhan authorised representative appeared for personnel hearing on 09.11.2022 on behalf of the assessee. He submitted written submission dated 09.11.2022. Further, he requested to decide the SCN on merits.

DISCUSSION AND FINDINGS :-

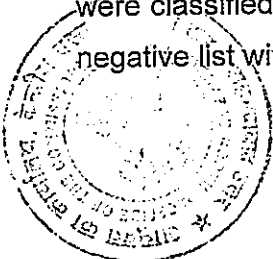
14. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding further.

15. I have carefully gone through the records of the case, SCN, defence replies, audited Balance sheet and form 26AS for the FY 2015-16 and 2016-17, as well as oral submissions made by the said assessee during the course of personal hearing.

16. I find that the issue to be decided is to whether the said assessee is liable to pay service tax amounting to Rs.78,10,994/- for the financial year 2015-16 and 2016-17 on account of difference between taxable value shown in ST-3 returns vis-à-vis value they had declared in their Income Tax Return (ITR)/ Form 26AS or not.

17. On the basis of records available, I find that the said assessee is registered with Service Tax Department and holding Service Tax Registration bearing No. AGIPC7350DST001. They have stated that they are engaged in providing supply of manpower to M/s Kalpataru Power Transmission Ltd. Gandhinagar, M/s Shreenath Enterprise Gandhinagar and M/s Solar Industries Gandhinagar. They have not submitted ST-3 returns for the period from 2015-16 and 2016-17 and have claimed benefit of Notification No.30/2012-ST dated 20.06.2012.

18. 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:



"service" means any activity carried out by a person for another for consideration, and includes a declared service. 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.,

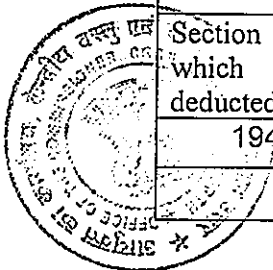
- (a) Service by the Government/Local Authority
- (b) Service by RBI
- (c) Service by Foreign Diplomatic Mission located in India
- (d) Service in relation to agriculture
- (e) Trading of goods
- (f) Manufacture of goods
- (g) Selling of space/time for advertisement
- (h) Services by access to road or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

19. In view of the above, I find that the activities carried out by the assessee falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List. The Works Contract Service provided by the assessee does not fall under the category of negative list of services under the provisions of Section 66D of the Finance Act. Therefore, I find that the said service provider is liable to pay Service Tax on income earned from provision of various taxable services provided for the period 2015-16 & 2016-17.

20. On perusing Form 26AS for FY 2015-16 and 2016-17, the following details of Amount Paid/ Credited and the name of TDS deductor are noticed.

Details of FORM 26AS for FY 2015-16			
Section under which deducted	TDS	Name of TDS Deductor	Amount paid/credited
194C		Kalpataru Power Transmission Ltd.	2,70,83,214/-
		TOTAL	2,70,83,214/-

Details of FORM 26AS for FY 2016-17			
Section under which deducted	TDS	Name of TDS Deductor	Amount paid/credited
194C		Kalpataru Power Transmission Ltd.	2,58,92,855/-
		TOTAL	2,58,92,855/-

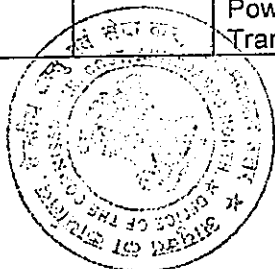


21. As per the 26AS, the income has been shown under Section 194C of Income Tax Act 1961 which is for Contract Income. Further, the value difference as worked out in the SCN for FY 2015-16 and 2016-17 is found to be tallying with the total amount credited/paid as per Form 26AS. Therefore, it is evident that the entire amount credited/paid as per Form 26AS has been considered as differential value of taxable service provided by the assessee. I would like to discuss the issue year wise.

FINANCIAL YEAR 2015-16 :-

22. I find that total income as per the SCN and Form No. 26AS is Rs. 2,70,83,214/- whereas the income shown in the audited books of the said assessee is Rs.2,73,58,727/- As the income shown in their audited books is on the higher side, I take Rs. 2,73,58,727/- as their income for the year 2015-16 for determining the taxability of the income. I find that the Profit and Loss Accounts for FY 2015-16 recognize revenue as "Service charges". I further find that the said assessee has received the following amounts during 2015-16 and they have submitted its corresponding invoices. The details are as under :-

2015-16				
Bill No.	Date	NAME OF PARTY	DESCRIPTION	AMOUNT
1	30.04.15	M/s Kalpataru Power Transmission Ltd.	Total wages & Ex wages bill for labour supplied for the month of April-15	1968326
2	31.05.15	M/s Kalpataru Power Transmission Ltd.	Total wages & Ex wages bill for labour supplied for the month of May-15	2148261
3	30.06.15	M/s Kalpataru Power Transmission Ltd.	Total wages & Ex wages bill for labour supplied for the month of June-15	1985818
4	31.07.15	M/s Kalpataru Power Transmission Ltd.	Total wages & Ex wages bill for labour supplied for the month of July-15	1904841
5	31.08.15	M/s Kalpataru Power Transmission Ltd.	Total wages & Ex wages bill for labour supplied for the month of August-15	2548242
6	30.09.15	M/s Kalpataru Power Transmission Ltd.	Total wages & Ex wages bill for labour supplied for the month of Sept-15	2872961
7	15.10.15	M/s Kalpataru Power Transmission Ltd.	Reimburse Bonus payment for the financial year 2014-15	518743
8	31.10.15	M/s Kalpataru Power Transmission Ltd.	Total wages & Ex wages bill for labour supplied for the month of Oct-15	2652207
9	14.11.15	M/s Kalpataru Power Transmission Ltd.	Total wages & Ex wages bill for labour supplied for the month of Nov-15	1145429
10	30.11.15	M/s Kalpataru Power Transmission Ltd.	Total wages & Ex wages bill for labour supplied for the month of Nov-15	1059539
11	31.12.15	M/s Kalpataru Power Transmission Ltd.	Total wages & Ex wages bill for labour supplied for the month of Dec-15	2006476



- (II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :-

TABLE

Sl. No.	Description of Service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving service
08	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	25%	75%

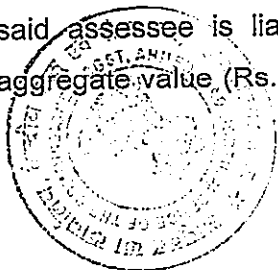
Further, Notification No.30/2012-ST dated 20.06.2012 has been amended vide Notification No.7/2015-ST dated 01.03.2015 namely :-

"against Sl. No.8 in column (3) and column (4), for the existing entries, the entries "Nil" and "100%" shall respectively be substituted"

25. As per provisions contained in Notification No. 30/2012-ST dated 20.06.2012 read with Notification No.7/2015-ST dated 01.03.2015 as amended, service tax on taxable services provided or agreed to be provided by way of **Supply of Manpower for any purpose** by any individual, Hindu Undivided Family or partnership firm to a business entity registered as body corporate is payable in Reverse Charge Mechanism by the service recipient. In other cases, service provider is liable to pay service tax on 100% value.

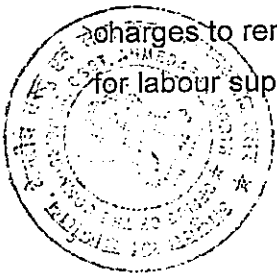
26. On the basis of documents submitted by the said assessee viz. agreement, invoices, I find that the said assessee (a Proprietorship firm) has provided services of Supply of Manpower to M/s Kalpataru Power Transmission Ltd . I find that the said assessee in their defence reply has claimed that service tax is payable under Reverse Charge Mechanism as per Notification No.30/2012-ST dated 20.06.2012. Since, M/s Kalpataru Power Transmission Ltd is a body corporate, they are liable to pay service tax under Reverse Charge mechanism on the Supply of Manpower service provided by the said assessee. Hence, the said assessee is not required to pay service tax on the income of Rs.2,70,83,214/- received from M/s Kalpataru Power Transmission Ltd and the same is liable to be dropped.

27. As regards, the remaining income of Rs. 2,75,513/- received from M/s Shrinath Enterprise, I find that the said assessee has not produced any documents to prove the legal status of M/s Shrinath Enterprise. Hence, in absence of documents, the income of Rs. 2,75,513/- cannot be treated as income received from a body corporate and the said assessee is liable to pay service tax on the said amount. However, since the aggregate value (Rs.2,73,58,727/- - Rs. 2,70,83,214/- = Rs.2,75,513/-) does not exceed



14	31.01.17	M/s Kalpataru Power Transmission Ltd.	Total wages & Ex wages bill for labour supplied for the month of Jan-17	1989175
15	28.02.17	M/s Kalpataru Power Transmission Ltd.	Total wages & Ex wages bill for labour supplied for the month of Feb-17	1819019
16	31.03.17	M/s Kalpataru Power Transmission Ltd.	Total wages & Ex wages bill for labour supplied for the month of Mar-17	2074303
			TOTAL	25893309
1	30.04.16	Shrinath Enterprise	Total wages bill for labour supplied for the month of April-16	31922
2	31.05.16	Shrinath Enterprise	Total wages bill for labour supplied for the month of May-16	32713
3	30.06.16	Shrinath Enterprise	Total wages bill for labour supplied for the month of June-16	22615
4	31.07.16	Shrinath Enterprise	Total wages bill for labour supplied for the month of July-16	32495
5	31.07.16	Shrinath Enterprise	Total wages bill for labour supplied for the month of Aug-16	34323
6	30.09.16	Shrinath Enterprise	Total wages bill for labour supplied for the month of Sept-16	35687
7	31.10.16	Shrinath Enterprise	Total wages bill for labour supplied for the month of Oct-16	36305
8	30.11.16	Shrinath Enterprise	Total wages bill for labour supplied for the month of Nov-16	28957
9	31.12.16	Shrinath Enterprise	Total wages bill for labour supplied for the month of Dec-16	34859
10	31.01.17	Shrinath Enterprise	Total wages bill for labour supplied for the month of Jan-17	18093
11	28.02.17	Shrinath Enterprise	Total wages bill for labour supplied for the month of Feb-17	21987
12	31.03.17	Shrinath Enterprise	Total wages bill for labour supplied for the month of Mar-17	23895
				353851
1	31.01.17	Solar Eindustries	Total wages bill for labour supplied for the month of Jan-17	14334
2	28.02.17	Solar Eindustries	Total wages bill for labour supplied for the month of Feb-17	27728
3	31.03.17	Solar Eindustries	Total wages bill for labour supplied for the month of Mar-17	27332
			TOTAL	69394
			GRAND TOTAL	26316554

29. I find that Rs. 2,58,93,309/- has been received from M/s Kalpataru Power Transmission Limited, Rs.3,53,851/- from M/s Shrinath Enterprise and Rs.69,394/- from M/s Solar Findustries towards labour supplied during the period 2016-17. The said assessee has submitted agreement dated 02.08.2013 entered between them and M/s Kalpataru Power Transmission Ltd. They have also submitted copies of extensions of the agreement upto Dec-17. I find that as per the agreement, the said assessee will provide manpower services (skilled and semi-skilled) to M/s Kalpataru Power Transmission Ltd and against same M/s Kalpataru Power Transmission Ltd would pay them professional charges to render the services. I also find that the details mentioned in the invoices as "Bill for labour supplied for the month". In view of the above, I find that the services provided by



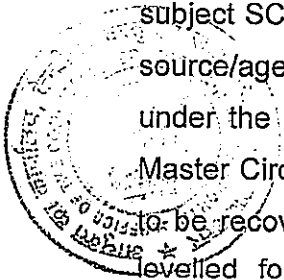
the said assessee falls under the category of Supply of Manpower. Now, I would like to discuss the applicability of service tax on the services provided by the said assessee.

30. As per provisions contained in Notification No. 30/2012-ST dated 20.06.2012 read with Notification No.7/2015-ST dated 01.03.2015 as amended, service tax on taxable services provided or agreed to be provided by way of **Supply of Manpower for any purpose** by any individual, Hindu Undivided Family or partnership firm to a business entity registered as body corporate is payable in Reverse Charge Mechanism by the service recipient. In other cases, service provider is liable to pay service tax on 100% value.

31. On the basis of documents submitted by the said assessee viz. agreement, invoices, I find that the said assessee (a Proprietorship firm) has provided services of Supply of Manpower to M/s Kalpataru Power Transmission Ltd . I find that the said assessee in their defence reply has claimed that service tax is payable under Reverse Charge Mechanism as per Notification No.30/2012-ST dated 20.06.2012. Since, M/s Kalpataru Power Transmission Ltd is a body corporate, they are liable to pay service tax under Reverse Charge mechanism on the Supply of Manpower service provided by the said assessee. Hence, the said assessee is not required to pay service tax on the income of Rs. 2,58,93,309/- received from M/s Kalpataru Power Transmission Ltd and the same is liable to be dropped.

32. As regards, the remaining income of Rs.3,53,851/- received from M/s Shrinath Enterprise and Rs.69,394/- received from M/s Solar Findustries, I find that the said assessee has not produced any documents to prove the legal status of M/s Shrinath Enterprise and M/s Solar Findustries. Hence, in absence of documents, the income of Rs. Rs.3,53,851/- and Rs.69,394/- (Rs.4,23,245/-) cannot be treated as income received from a body corporate and the said assessee is liable to pay service tax on the said amount. However, since the aggregate value (Rs.2,63,16,554/- - Rs.2,58,93,309/- = Rs.4,23,245/-) does not exceed ten lakh rupees in the said financial year, they are eligible for exemption from payment of service tax under Notification No.33/2012-ST dated 20.06.2012.

33. On perusal of para 4 & 5 of the SCN, I find that the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the 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 the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. I, however, do not find any charges levelled for demand for FY 2017-18 (upto June 2017) in charging part 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 shown in 26AS. I therefore refrain from discussing the taxability on other income other than the income shown in 26AS.

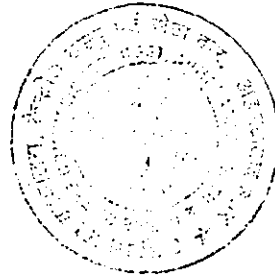
34. In view of the above facts and findings, I pass the following order:-

ORDER

I hereby drop the proceedings initiated against M/s. Anita Enterprise, F-14, Unique City Home, R.C.Technical Road, B/s Prasang Party Plot, Ahmedabad Gujarat-382481 vide Show Cause Notice F.No. STC/15-76/OA/2021 dated 23.04.2021.


(Lokesh Damor)
Joint Commissioner
Central GST & Central Excise
Ahmedabad North

BY RPAD
F.No. STC/15-76/OA/2021



Dt. 22.11.2022

To,
M/s. Anita Enterprise,
F-14, Unique City Home,
R.C.Technical Road,
B/s Prasang Party Plot,
Ahmedabad Gujarat-382481

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Division-VII Ahmedabad North.
3. The Superintendent, Range-III, Division-VII, Central GST & Central Excise, Ahmedabad North
4. The Superintendent (System), Central GST & Central Excise Ahmedabad North for uploading the order on website.
5. Guard File.