



<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 &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D  
फा.सं./F.No. STC/15-56/OA/2021

DIN- 20221164WT000027782A

आदेश की तारीख/Date of Order :- 25.11.2022

जारी करने की तारीख/Date of Issue :- 25.11.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

**मूल आदेश संख्या / Order-In-Original No. 74/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 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।

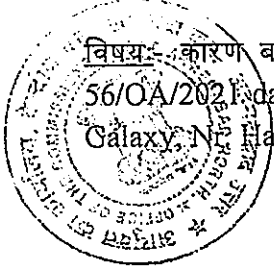
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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/15-56/OA/2021 dated 23.04.2021 issued to M/s Sanjeevkumar Nilkanth Subudhi, E 403, Shubham Galaxy, Nr. Haridarshan Char Rasta, Nikol Road, Ahmedabad, Gujarat-382350.





## BRIEF FACTS OF THE CASE

M/s Sanjeevkumar Nilkanth Subudhi, E 403, Shubham Galaxy, Nr.Haridarshan Char Rasta, Nikol Road, Ahmedabad, Gujarat 382350 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. BFCPS2023FSD001 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 has been observed that the Assessee has 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:

( in Rupees)

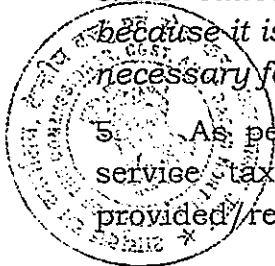
Sr. No.	F.Y.	Taxable Value as per ST-3 returns (In Rs.)	Gross Receipts From Services (Value from ITR/26AS) (In Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax short paid (in Rs.)
1	2015-16	0/-	12349915/-	12349915/-	1790738/-
2	2016-17	0/-	39142190/-	39142190/-	5871329/-
TOTAL					7662067/-

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 notice 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 has also failed to provide any information regarding rendering of taxable service for this period. Therefore, at this stage, at the time of issue of SCN, it is 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 was noticed that the said service provider has not assessed the tax dues properly, on the services received 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. 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 has 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 noticee along with interest under Section 75 of the Finance Act, 1994.

7. In view of above, it was noticed that the Assessee has 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.76,62,067/-, 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(1)(d) of Service Tax Rules, 1994.

8. It was further noticed that at no point of time, the Assessee has 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 was noticed that 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.76,62,067/-. The above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same is 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, thereby the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994. The said assessee was given 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.

9. Therefore Show Cause Notices bearing No.STC/15-56/OA/2021 dated 23.04.2022 was issued to M/s Sanjeevkumar Nilkanth Subudhi, called upon to show cause as to why:

- (i) The demand for Service tax to the extent of Rs.76,62,607/- 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

10. The assessee vide letter dated 02.05.2022 submitted their reply to SCN wherein they stated that they are in business of laying irrigation pipeline Projects, drinking water projects which are exempted in service tax under works contract business in the name of M/s. Shubham Enterprises having ST Registration No. BFCPS2023FSD001 under the proprietorship of Shri Sanjeevkumar Nilkanth Subudhi. They further stated that the Gross payment receipt in FY 2015-16 & 2016-17 is amounting to Rs.1,23,49,915/- & Rs.3,91,42,290/- respectively. But service tax return is filed in 2015-16 & 2016-17 declaring gross receipts as Rs.69,50,120/- and Rs.3,82,95,583/- respectively. Such discrepancy is shown in ST is due to their consultant filed ST return. They acknowledge the mistake towards filing service tax return and requested to waive the charges in the SCN. They have furnished copies of Form 26AS, ST3 Returns for the relevant period, audited accounts, copies of work order and all the invoices, ledger account etc.

#### PERSONEL HEARING

11. Personel Hearing in the instant case was granted to the assessee on 09.11.2022. Shri Kaushik Sukhadiya, authorised representative appeared for P.H on behalf of the assessee. He reiterated their written submissions dated 02.05.2022 and requested to decide the issue on merits.

#### DISCUSSION AND FINDINGS

12. 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.

13. I have carefully gone through SCNs, Reply to the show cause notices, Form 26AS, Ledger copy, copies of work orders, reconciliation statement, copies of invoices and copies of ST3 returns for the F.Y 2015-16 and 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs. 76,62,067/- for the financial years 2015-16 & 2016-17 on the basis of Form 26AS received from Income Tax authorities. On perusal of the above referred records, I find that the assessee is registered under Service

Tax under Registration No.BFCPS2023FSD001 and also filed STR for the period FY 2015-16 & 2016-17. The Show Cause Notice alleged non-payment of Service Tax of Rs.76,62,067/-, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77(2) and 78 of the Finance Act, 1994.

14. On perusal of the reply to SCN and other documents available on record, I find that the assessee is claimed that they are engaged in providing Works Contract Service of laying irrigation pipeline Projects, drinking water projects which are exempted in service tax under works contract business in the name of M/s. Shubham Enterprises having ST Registration No. BFCPS2023FSD001 under the proprietorship of Shri Sanjeevkumar Nilkanth Subudhi for the FY 2015-16 & 2016-17.

15. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified and defined 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, 1994 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 or 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 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.,

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;

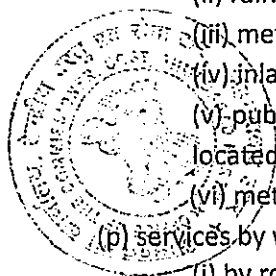
(v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

(vi) metered cabs or auto rickshaws

(p) services by way of transportation of goods—

(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. The assessee in their reply to SCN are not contending that the taxable nature of service provided by them however they are contending that the services provided by them are exempted by Mega Notification No.25/2012 dated 20.06.2012 as amended, as they are providing services to departments of state government and other government agencies.

18. In view of the above, I find that the services provided by the assessee falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List as the services provided by the assessee does not fall under category of negative list of services under the provisions of Section 66D of the Finance Act.

19. Further, the assessee vide their submissions stated that during the financial year 2015-16 & 2016-17, their contract income or contract receipt is in respect of services works contract of Siriculla Water Grid (pedhapally & Ramagundum), given by M/s.Megha Engineering and Infrastrucrure limited, Main Contractor, works order of external guniting work of MS Pipes for Telengana Drinking Water Supply Project, KJD Segment, Jagtial, Karimnagar, Telungala given by Om Tecnocon P. Ltd, water supply project under Public Health Engineering Department, Jodhpur, Rajasthan by M/s.Pratham Construction, works related to drinking water project i.e.SAUNI Yogana (Saurasthra Narmada Avtaran Yogana), Gujarat given by M/s.Pratham EPC, Projects P.Ltd, . i.e.SAUNI Yogana (Saurasthra Narmada Avtaran Yogana), Gujarat allotted by M/s.Yash EPC Projecets P.Ltd as a sub contractor. The said service provider claimed that these service are exempted from levy of whole of service tax leviabale thereon under of Notification No. 25/2012-ST, dated 20-06-2012 with effect from 01-07-2012.

20. Further, the assessee vide their submissions stated that during the financial year 2015-16 & 2016-17, their contract income or contract receipt is in respect of services provided in relation to water supply works under various projects. The said assessee claimed that these service are exempted from levy of whole of service tax leviabale thereon under Sl. No.12(d) and they are also exempted from service tax under 29(h) of Notification No. 25/2012-ST, dated 20-06-2012 with effect from 01-07-2012 being a sub contractor of the main contractor who is providing exempted services. In this connection, I would like to reproduce herewith the relevant portion of the said Notification :

12. *Services provided to Government, a local authority or a governmental authority by way of erection, construction, maintenance, repair, alteration renovation or restoration of -*

(d) canal, dam or other irrigation works

(e) pipeline, conduit or plant for (i) drinking water supply (ii) water treatment (iii) sewerage treatment or disposal of



According to which the services provided to Government, a local authority or a governmental authority by way of erection, construction, maintenance, repair, alteration renovation or restoration of canal, dam or other irrigation works and pipeline, conduit or plant for (i) drinking water supply (ii) water treatment (iii) sewerage treatment or disposal of is exempted from the ambit of service tax. Further, the assessee being a sub contractor providing exempted services is exempted from payment of service tax under Sl.No.29(h) of the said Notification. The relevant portion of the Notification is also referred as under:

*29. Services by the following persons in respective capacities –*

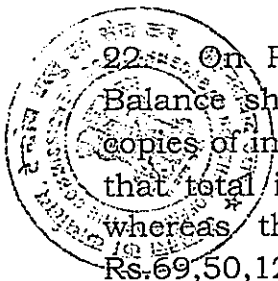
*(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;*

According to which the exempted works contract services provided by a sub contractor to a main contractor is also exempted from payment of service tax

21. The assessee has furnished copies of various work orders in relation to the works contract of Siriculla Water Grid (pedhapally & Ramagundum), given by M/s.Megha Engineering and Infrastrucrure limited, Main Contractor, works order of external guniting work of MS Pipes for Telengana Drinking Water Supply Project, KJD Segment, Jagtial, Karimnagar, Telungala given by Om Tecnocon P. Ltd, water supply project under Public Health Engineering Department, Jodhpur, Rajasthan by M/s.Pratham Construction, works related to drinking water project i.e.SAUNI Yogana (Saurasthra Narmada Avtaran Yogana), Gujarat given by M/s.Pratham EPC, Projects P.Ltd, . i.e.SAUNI Yogana (Saurasthra Narmada Avtaran Yogana), Gujarat allotted by M/s.Yash EPC Projecets P.Ltd. The assessee has produced copy of Form 26AS. They have also produced ledger account of various main contractors and also produced copies of all the invoices issued during the 2015-16 & 2016-17 wherein the TDS deducted and reflected in the Form 26AS. I have gone through the copies of invoices, copies of works order allotted by various main contractors, and copies of ledger accounts furnished by the assessee and find that the assessee has provided works contract services related to various drinking water projects. On perusal of Form 26 AS also, I find that the income credited into the account of the assessee is from various main contractors as mentioned above. I have also gone through the notification Sr. No. 12 (d) & (e) of Notification No. 25/2012-ST wherein I find that the assessee has rightly claimed the benefit of the said notification as they have provided the services of drinking water supply and also exemption Sl.No.29(h) related to sub contractor. Accordingly they fall under the exemption Notification No.25/2012 dated 20.06.2012. For the sake of clarity, I would like to discuss the taxability of the assessee Financial Year wise.

FIANCIAL YEAR 2015-16

22. On Perusal of SCN, Reply to the show cause notice, Form 26AS, Balance sheet, Ledger copy, copies of work orders, reconciliation statement, copies of invoices and copies of ST3 returns for the for the year 2015-16, I find that total income as per the SCN and Form No. 26AS is Rs.1,23,49,915/- whereas the assessee filed ST 3 returns for the year by declaring of Rs.69,50,120/- and claiming exemption under Sl.No.12(d) & (e) of Noti



No.25/2012 dated 20.06.2012 in accordance with their income derived as per their books of accounts. The assessee in their reply stated that they have an income of Rs.1,23,49,915/- for the year 2015-16 from the works contract services related to canal and other irrigation works and also for irrigation works. On perusal of the above documents, I find that the assessee have got works order from Siriculla Water Grid (pedhapally & Ramagundum), given by M/s.Megha Engineering and Infrastrucrure limited, Main Contractor, works related to drinking water project i.e.SAUNI Yogana (Saurasthra Narmada Avtaran Yogana), Gujarat allotted by M/s.Pratham EPC, Projects P.Ltd, . i.e.SAUNI Yogana (Saurasthra Narmada Avtaran Yogana), Gujarat allotted by M/s.Yash EPC Projecets P.Ltd. From which they have got an income of Rs.1,23,49,915/- which was reflected in their ledger account and Form 26AS. I have also gone through the works order of the said Works Contract services allotted by the above main contractors and find that the works are related to supply of drinking water in the name of various projects and therefore the works are rightly fall under the Sl.No.12(d) & (e) of Notification No.25/2012 as claimed by the assessee. As the total income earned by the assessee is from the works order for construction/maintenance of related to canal, dam and other irrigation works, the income accrued from these services are exempted from the purview of service tax as per Sl.No.12(d)& (e) of 25 of Notification No.25/2012 dated 20.06.2012 and therefore I find that the service tax demand of Rs.17,90,738/- on differential value of Rs.1,23,49,915/- is not sustainable and therefore liable to be dropped.

#### FINANCIAL YEAR 2016-17

23. On Perusal of SCN, Reply to the show cause notice, Form 26AS, Balance sheet, Ledger copy, copies of work orders, reconciliation statement, copies of invoices and copies of ST3 returns for the for the year 2016-17, I find that total income as per the SCN and Form No. 26AS is Rs.3,91,42,190/- whereas the assessee filed ST 3 returns for the year by declaring of Rs.3,82,95,583/- and claiming exemption under Sl.No.12(d) & (e) of Noti No.25/2012 dated 20.06.2012 in accordance with their income derived as per their books of accounts. The assessee in their reply stated that they have an income of Rs.3,91,42,290/- for the year 2016-17 from the works contract services related to drinking water projects. On perusal of the above documents, I find that the assessee have got works order of Siriculla Water Grid (pedhapally & Ramagundum), given by M/s.MeghaEngineering and Infrastrucrure limited, Main Contractor, works order of external guniting work of MS Pipes for Telengana Drinking Water Supply Project, KJD Segment, Jagtiah, Karimnagar, Telungala givem by Om Tecnhocon P. Ltd, From which they have got an income of Rs.3,91,42,290/- which was reflected in their ledger account and Form 26AS. I have also gone through the works order of the said Works Contract services allotted by the above main contractors and find that the works are related to supply of drinking water & irrigation in the name of various projects and therefore the works are rightly fall under the Sl.No.12 (d) & (e) of Notification No.25/2012 as claimed by the assessee. As the total income earned by the assessee is from the works order related to supply of drinking water, canal, dam and other irrigation works, the income accrued from these services are exempted from the purview of service tax as per Sl.No.12 (d) & (e) of and 29(h) of 25 of Notification No.25/2012 dated 20.06.2012 and therefore I find that the service tax demand of Rs.58,71,329/-

on differential value of Rs.3,91,42,190/- is not sustainable and therefore liable to be dropped.

25. On perusal of the above reconciliation, I find that the assessee has an income of Rs. 1,23,49,915/- for the year 2015-16 and an income of Rs. 3,91,42,190/- for the year 2016-17, I, find that the entire income is covered under the exempted Notification No.25/2012 dated 20.06.2012 as claimed by the assessee as discussed above. In view of the above facts, I find that the service tax of Rs.76,62,067/- demanded vide above referred said Show Cause Notices is not sustainable and therefore required to be dropped.

26. 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).

27. In view of the above discussion and findings and also on perusal of SCN, reply to SCN, Form 26AS, ST3 returns, reconciliation statement, submissions made by the said assessee and other documents, I find that the service provided by the assessee is rightly eligible for exemption under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 and therefore the assessee is not liable to pay service tax of Rs.76,62,067/- demanded vide above referred SCN. Accordingly they are also not liable to pay Penalty under Section 77 and 78 and interest under Section 75 of Finance Act, 1994.

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

### ORDER

29. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 76,62,067/- along with interest and penalties against M/s. Sanjeevkumar Nilkanth Subudhi, vide SCN No.STC/15-56/OA/2021 Dated 23.04.2021.



(Lokesh Damor)

Joint Commissioner  
Central GST & Central Excise  
Ahmedabad North  
Date:

F.No. STC/15-56/OA/2021

To,

M/s Sanjeevkumar Nilkanth Subudhi,  
E 403, Shubham Galaxy,  
Nr.Haridarshan Char Rasta, Nikol Road,  
Ahmedabad, Gujarat 382350

Copy to:

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

