

<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>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- aaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20221164WT0000921465

फा.सं./F.No. STC/15-175/OA/2021-22

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. 75/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 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/15-175/OA/2021-22 dated 23.04.2021 issued to M/s Jay Urban Devlopers, 207, Satva Complex, Opp. Bhavin School, Thaltej, Ahmedabad, Gujarat-380059.



BRIEF FACTS OF THE CASE

M/s Jay Urban Developers, 207, Satva Complex, Opp. Bhavin School, Thaltej, Ahmedabad, Gujarat- 380059 (hereinafter referred to as "the said assessee" for the sake of brevity) are engaged in providing taxable services and for the same they were registered with Service Tax Department having Service Tax Registration No. AAKFJ2643NSD001.

2. An analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 to 2016-17, and details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. On going through the Third party Data received from CBDT of the said assessee for the F.Y. 2015-16 to 2016-17, the Sales/Gross Receipt from Services (Value from ITR) are not tallied with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16 to 2016-17. It was noticed that the said assessee have declared less/not declared any taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 to 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16 to 2016-17. The details of difference as per CBDT data for the F.Y. 2015-16 to 2016-17 are as under :

Sr. No.	Financial Year	VALUE DIFFERENCE in ITR & STR / TDS & STR (Whichever is higher) (in Rs.)	Service Tax (in Rs.)
1.	2015-16	57899254	8078072
2.	2016-17	43618178	6506278
	TOTAL	101517432	14584350

Therefore, the said assessee has less discharged their Service Tax liability and thus is liable to pay Service tax including Cess [@ 12.36% for F.Y. 2015-16 & from 01-04-2015 to 31-05-2015] ; [@ 14% from 01-06-2015 to 14-11-2015] ; [@ 14.50% from 15-11-2015 to 31-05-2016] and [@15% from 01-06-2016 to 31-03-2017] for amounting to Rs.14584350/- on the differential value amounting to Rs. 101517432/- along with applicable interest and penalty for the F.Y. 2015-16 to 2016-17.

4. As per the provisions of Section 72 of the Finance Act, if any person, liable to pay service tax having made a return, fails to assess the tax, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

5. As per the provisions of Section 73(1) of the Finance Act where any service tax has not been levied or paid or has been short levied or short paid by the reasons of willful mis-statement or suppression of facts with intent to evade payment of service tax, the Central Excise Officer may within five years from

the relevant date, serve notice on the person chargeable with service tax which has not been levied or paid of which has been short levied or short paid requiring him to show cause why he should not pay amount specified in the notice.

6. As per Rule 6 of the Service tax Rules, 1994, the service tax shall be paid to the credit of the Central Government by 5th day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that assessee shall submit their service tax returns in the form of ST-3 within the prescribed time.

7. From the foregoing paras, it appeared that the said assessee have failed to pay/short paid/deposit service tax to the extent of Rs.1,45,84,350/- on the difference of taxable value during the period 2015-16 to 2016-17 by declaring less value in their ST-3 Returns vis-a-s their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services received/provided by them with an intent to evade payment of service tax. Thus, it was noticed that the said assessee have failed to discharge the service tax liability of Rs. 1,45,84,350/- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) worked out on value of Rs.10,15,17,432/- and therefore, service tax is required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

8. In view of above, it appeared that the said assessee have contravened the provisions of :

- (a) Section 66 of the Finance Act, 1994 in as much as they have failed to collect and pay the service tax as detailed above, to the credit of Central Government.
- (b) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they have not paid the service tax as mentioned above to the credit of the Government of India within the stipulated time limit;
- (c) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, as amended, in as much as they had failed to properly assess their Service Tax liability under Rule 2(1)(d) of Service Tax Rules, 1994 and failed to declare correct value of taxable services as well as exempted services to the department in the prescribed return in Form ST-3.

9. It has also been noticed that at no point of time, the said assessee has disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Service of the differential value that has come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 to 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc., based on mutual trust and confidence are in place. From the evidences, it appears 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. 1,45,84,350/-. It appeared that all these material information have been

concealed from the department deliberately, consciously and purposefully to evade payment of service tax.

10. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (as such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appears that the said assessee has short paid/non-payment of Service Tax of Rs.1,45,84,350/- on the actual value received towards taxable services provided which appears to be recoverable under proviso to Section 73(1) of the Finance Act along with interest under Section 75 ibid not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee has suppressed the facts to the department and contravened the provisions with an intent to evade payment of Service Tax. The said assessee has not discharged their Service tax liability and hence is liable to pay interest under Section 75 of the Finance Act.

11. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax appears to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of service tax as discussed in the foregoing paras and therefore, the said amount of service tax amounting to Rs. 1,45,84,350/- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) not paid is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

12. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appear to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it appears that the said assessee have contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee appear to have rendered themselves liable to penalty under Section 76 & Section 77 of the Finance Act.

13. Moreover, in addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appears that the said assessee has willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of service tax rendering themselves liable for penalty under Section 78 of the Finance Act, 1994.

14. Therefore Show Cause Notice No.STC/15-175/OA/2021-22 dated 23.04.2022 to M/s JAY URBAN DEVELOPERS called upon to show cause as to why;

(i) Differential amount of Service Tax amounting to Rs.14584350/- (Rupees One Crore Forty Five Lakh Eighty Four Thousand Three Hundred Fifty only) (inclusive of Edu. Cess and S&H Edu. Cess) short paid/not paid by them, should not be confirmed/demanded under proviso to Section 73(1) of the Finance Act, 1994.

(ii) interest at the appropriate rates should not be recovered from them as prescribed under Section 75 of the Finance Act, 1994 from the due date on which the Service Tax was liable to be paid till the date on which the said Service Tax is paid.

(iii) penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for the failure to make payment of service tax payable by them within prescribed time-limit.

(iv) penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for the failure to assess the correct tax liability.

(vi) penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 as amended for suppressing and not disclosing the value of the said taxable service provided by them before the department with an intent to evade payment of service tax.

DEFENCE REPLY

15. The assessee vide letter dated 04.11.2022 submitted their reply to SCN wherein they stated that they are engaged in providing construction services other than residential complex, including commercial/industrial buildings or civil structures, construction of residential complex services and duly registered under Service Tax holding ST Registration No.AAKFJ2643NSD001. They further stated that the said SCN was issued demanding service tax of Rs.1,45,84,350/ along with interest and penalty for the FY 2015-16 and 2016-17.

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

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

18. They further contended that they have provided man power supply service during the FY 2015-16 & 2016-17. As per Sl.No.8 of Noti.No.30/2012 entire service tax (100%) on services provided by way of supply of man power were required to be paid by the recipient of service. Reverse Charge applicable on man power recruitment service with effect from 01.04.2015. During the FY 2015-16 & 2016-17 they have provided man power supply services of Rs.23,72,448/- & Rs.26,21,802/- respectively on that liability to pay service tax is of service recipient.

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

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

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

PERSONEL HEARING

21. Personal Hearing in this case was held on 04.11.2022. Shri Keyur Kamdar, CA, authorised representative attended personal hearing and reiterated in their written submissions submitted during the personal hearing and requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

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

23. In this connection, I have carefully gone through the records of the case, reply to SCN, submission made by the assessee, Audited Balance Sheet, copies of ST 3 Returns, copies of invoices, Form No.26AS for the Financial Years, 2015-16 & 2016-17. On perusal of SCN and other records, I find that the said assessee is engaged in construction services other than residential complex, commercial/industrial buildings or civil structures, construction of residential complex. For which they have registered with Department under Registration No.AAKFJ2643NSD001 and have paid service tax and also filed ST 3 Returns accordingly. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.1,45,84,350/- 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.1,45,84,350/ on the differential taxable value of Rs.10,15,17,432/- for the financial years 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

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

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

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

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

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

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

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

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

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

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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

26. Thus with effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the negative list are exempted. It is not disputed that the assessee has provided taxable service and the service provided by them are not mentioned in the negative list given under Section 66D of the Finance Act, 1994. In view of the above the services provided by the assessee are covered under service tax and they are also liable to pay service tax on the said services.

27. I have gone through the SCN and other records and find that the said assessee is engaged in construction services other than residential complex, commercial/industrial buildings or civil structures, construction of residential complex. For which they have registered with Department under Registration No.AAKFJ2643NSD001 and have paid service tax and also filed ST 3 Returns accordingly. The Service tax payable is arrived at on the basis of value of "value difference in ITR/STR/TDS/STR" shown in the 26AS/ITR/STR for the Financial year 2015-16 and 2016-17. By considering the said amount as taxable income, the service tax liability is calculated as tabulated in Table-A supra.

28. Further, the assessee have also presented that the amount disclosed in ITR, reflected in form 26AS, declared in ST3 returns and amount mentioned in SCN shown that the entire SCN has been issued directly based on value reflected in Form 26AS without considering amounts declared in ST 3. In the instant case the assessee submitted copies of ST 3 returns for the FY 2015-16 & 2016-17. I have gone through the ST 3 returns for the relevant period and find that they have paid the service tax and filed ST 3 Returns for the FY 2015-16 & 2016-17 accordingly. However while issuing the SCN, the value declared in their ST3 Return has not been considered. The assessee furnished copies of ST 3 Returns for the FY 2015-16 & 2016-17. Therefore, I consider the value of Rs.4,89,66,921/- for the FY 2015-16 and Rs.3,72,97,513/- for the FY 2016-17 declared by the assessee in their relevant ST 3 returns from the value difference shown in the SCN on which the service tax has been demanded.

29. The assessee further contended that the value shown in Form 26AS is taken as the differential value in the Show Cause Notice. However the value shown in 26AS is gross value i.e. inclusive of service tax and TDS has been deducted on the gross value therefore there is a difference in the value shown in 26AS and ST 3 Returns. They have submitted the copy of ledger account and sample copies of the invoices of the service receivers i.e. M/s.Gala Projects LLP, M/s.Shivalik Structure and M/s.Zion Buildcon etc for the FY 2015-16 & 2016-17. I have gone through the Form 26AS, ledger account of the service recipients, copies the invoices reflected in the 26AS and find that the value shown in the Form 26AS is inclusive of service tax of Rs. 65,59,885/- for the FY 2015-16 and Rs. 36,98,863/- for the FY 2016-17. In view of the above facts, I consider the above figures from the total differential value on which the service tax demanded for both the years.

30. The assessee further claimed that they are providing services of man power supply services during the FY 2015-16 amounting to Rs.23,72,448/- during the FY 2016-17 amounting to Rs.26,21,802/- and as per Sl.No.8 of Notification No.30/2012-ST service tax on services provided by way of supply of man power was required to be paid by recipient of service. Reverse Charge Mechanism is applicable on Man power recruitment services with effect from

01.04.2012. In this connection I would like to go thorough the relevant portion of the Notification:

The taxable services, -

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or security service or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory

31. Further the liability to pay service tax on Manpower Recruitment Services has been notified at Sr.No.8 of Noti.30/2012 dated 20.06.2012 as amended which provides that the extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable service specified in (I) shall be as specified in the following table.

Sl.No.	Description of Services	Percentage of service tax payable by the person providing service 01.04.2015 onwards	Percentage of service tax payable by the person receiving service 01.04.2015 onwards	Percentage of service tax payable by the person providing service .F.Y.2014-15	Percentage of service tax payable by the person receiving service F.Y.2014-15
8	In respect of services provided or agreed to be provided by way of supply of manpower for any purpose	NIL	100%	25%	75%

32. Further, I find that as per Noti.No.30/2012-ST dated 20.06.2012 vide Sr.No.8 Service Tax shall be payable in respect of service provided or agreed to be provided in the case of security service by service provider to the extent of service tax on 25% of value of taxable service and balance service tax on 75% of value of taxable service to be paid by the person receiving the service under partial reverse charge mechanism, if service are provided by any individual/HUF/proprietary concern/partnership firm to the business entity registered as Body corporate. Subsequently the said Noti. No. 30/2012-ST dated 20.06.2012 was amended through Noti.7/2015 dated 01.03.2015 and according to which if the service provider is individual/HUF/Proprietor/partnership Firm and service receiver is business entity registered as body corporate, entire (100%) service Tax is payable by service receiver with effect from 01.04.2015.

33. On perusal of the records, I find that in the instant case the service provider i.e. the assessee is a proprietary firm and the service recipient is a business entity registered as body corporate and therefore the service receiver is liable to pay entire service tax under Full RCM. Accordingly I find that the assessee is eligible for exemption of Rs.23,72,448/- for FY 2015-16 and Rs.26,21,802/- for the FY 2016-17 by virtue of Exemption Notification No.30/2012 dated 20.06.2012 as amended. 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	57899254	43618178
02	Less: Value declared in ST3	48966921	37297513
03	Less: Amt. of service tax included as discussed	6559885	3698863
05	Less: Value of services under RCM which is exempted vide Noti.30/2012 dt.20.06.2012	2372448	2621802
06	Difference	0	0

34. In view of the above, I find that the assessee is eligible for deduction of the value declared by them in their ST3 Return, the amount of service tax included in the figures shown in Form 26AS and value of services under RCM which is exempted under Noti.No.30/2012 dated 20.06.2012 and therefore the assessee is not required to pay any service tax as there is no difference in the value on which service tax is required to pay.

35. Further, on perusal of the SCN, I find that the levy of service tax for 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. Since the assessee has not provided any details/information/documents for the FY 2017-18 (upto June 2017) and the department has not also adduced any information/evidence and the reason for the non disclosure has also not been made known to the department, I refrain myself from entering into the said period to determine the liability as otherwise of assessee for service tax. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income from sale of services. I therefore refrain from discussing the taxability on other income other than the sale of service.

36. 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 mandate upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive fair conclusion in respect of the balance sheet and profit and loss accounts. It is also onus upon auditor to verify and make a report on balance sheet and 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 Chartered Accountant, who audited the accounts of the assessee, being qualified professional has given declaration that the balance

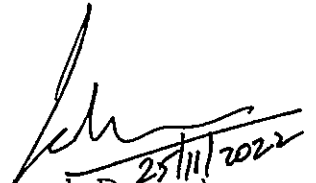
sheet and profit and loss accounts of the noticee reflect true and correct picture of the transaction and therefore, I have no option other than to accept the classification of incomes under profit and loss account as true nature of the business and to proceed to conclude instant proceedings accordingly

37. 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 demand of Rs.1,45,84,350/- 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.

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

ORDER

39. I hereby order to drop proceedings initiated for recovery of service tax of Rs.1,45,84,350/- along with interest and penalties against M/s. Jay Urban Developers vide SCN No.STC/15-175/OA/2021-22 dated 23.04.2021.


(Lokesh Damor)

Joint Commissioner
Central GST & Central Excise
Ahmedabad North

F.No. STC/15-175/OA/2021

Date:

To,
M/s. Jay Urban Developers,
207, Satva Complex, Opp. Bhavin School,
Thaltej, Ahmedabad, Gujarat- 380059

Copy to:

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

