



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-185/OA/2020

आदेश की तारीख/Date of Order:-14.03.2022

जारी करने की तारीख/Date of Issue :- 14.03.2022

DIN NO: 20220364WT0000444C7B

द्वारा पारित/Passed by:-

आर गुलजार बेगम /R. GULZAR BEGUM

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 78/ADC/GB/2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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इस आदेश में अमन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्रामि से) 60 माठ (दिन के अन्दर आयुक्त) अपील, (केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015 को प्रारूप संख्या इ.ए (1-A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो 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. 2.00 only.

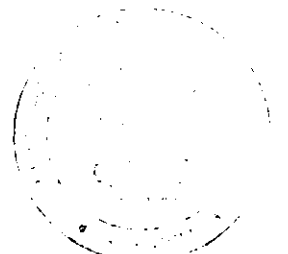
इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-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) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 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.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice No. GEXCOM/ADJN/ST/ADC/308/2020-ADJN-O/o COMMR-CGST-AHMEDABAD(N) dated 09.12.2020. issued to M/s. IRIS Products Pvt Ltd situated at Aksahay, st Floor, 53, Shrimali Society, Navrangpura, Ahmedabad-380009

BRIEF FACTS OF THE CASE

M/s. Iris Products Private Limited, 'Akshay', 1st Floor, 53, Shrimali Society, Navrangpura, Ahmedabd - 380009 (hereinafter referred to as the 'assessee' for the sake of brevity) is registered under Service Tax having Registration No.- AABCA5945JSD001 & are engaged in the business of providing taxable services.

2. On perusal of the data received from CBDT, it was noticed that the assessee had declared different values in Service Tax Return (ST-3) and Income Tax Return (ITR/Form 26AS) for the Financial year 2015-16 & 2016-17.

3. On scrutiny of the above data, it appears that the assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2015-16 & 2016-17 as compared to the Service related taxable value declared by them in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

(Amount in Rs.)

Sr No	F. Y.	Total Gross Value Provided (STR)	Sale Of Services (ITR)	Total Value for TDS(including 194C,194Ia,194Ib,194J,194H)	Higher Value (Value Difference in ITR & STR) OR (Value Difference in TDS & STR)	Resultant Service Tax short paid (including Cess)
1	2015-16	13976314	23871454	36550231	22573917	3273218
2	2016-17	15777386	18490951	28735205	12957819	1943673
Total						5216891

4. To explain the reasons for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns for the Financial Year 2015-16 & 2016-17, Letter dated 06.10.2020 was issued to the said assessee. However, the said assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner. For this reason, no further verification could be done in this regard by the department.

5. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16 & 2016-17, the service tax liability of the service tax assessee has been ascertained on the basis of income mentioned in the Income Tax returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the Service tax liability under Section 67 of the Finance Act, 1994.

6. 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."

7. From the data received from CBDT, it appears that the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the Financial year 2017-18 has not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. Further, the assessee has also failed to provide the required information even after the issuance of letter from the Department. Therefore, the assessable value for the year 2017-18 (upto June-2017) is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action will be initiated against the said 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, in as much as the Service Tax liability arising in future, for the period 2017-18 (upto-June 2017) under this Show Cause Notice, and due service tax will be recoverable from the assessee accordingly.

8. The government has from the very beginning placed full trust on the service provider so far as service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust by the service provider, no matter how innocently. From the evidence on record, it appears that the said assessee had not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider appears to have made deliberate efforts to suppress the value of taxable service to the department and appears to have not paid the liable service tax in utter disregard to the requirements of law and the trust deposited in them. Such outright act in defiance of law, appears to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

9. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the noticee, M/S. IRIS PRODUCTS PRIVATE LIMITED have committed the following contraventions of the provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004:

- (i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994;
- (ii) Failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994 as discussed above;
- (iii) Failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have not paid service tax as worked out in the Table for Financial Year 2015-16 to 2017-18 (upto June-2017).
- (iv) All the above acts of contravention on the part of the said assessee appear to have been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid is required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years.

- (v) All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appears to be publishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.
- (vi) The said assessee is also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.
- (vii) Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

10. the above said service tax liabilities of the assessee, M/S. IRIS PRODUCTS PRIVATE LIMITED., has been worked out on the basis of limited data/ information received from the Income tax department for the financial years 2015-16 & 2016-17. Thus, the present notice relates exclusively to the information received from the Income Tax Department. It has been 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 & 2016-17. From the evidences, it appeared 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. 52,16,891/- (including Cess). 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 read with Notification dated 30.09.2020 issued vide F.No.450/61/2020-Cus. IV(Part-1) by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

11. Accordingly Show Cause notice has been issued to M/s. Iris Products p.Ltd called upon to show cause as to why :

- (i) The Service Tax to the extent of Rs.52,16,891/- (including cess) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 30.09.2020 issued vide F.No.450/61/2020-Cus. IV(Part-1);
- (ii) Service Tax liability not paid during the financial year 2017-18 (upto June-2017), ascertained in future, as per paras no. 7 and 8 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iv) Penalty under the provisions of Section 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.
- (v) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

DEFENCE REPLY

12. The assessee vide letter dated 18.12.2020 submitted their reply to SCN wherein they stated that for the year 2014-15 they have mentioned in the ITR sale of services of Rs.2,38,71,454/- and in 26AS it is mentioned as Rs.3,65,50,231/-. For the same they clarified that out of the above income mentioned, they have provided GTA services to the tune of Rs.1,18,65,830/- on which as per RCM vide Noti.No.26/2012 dt.20.06.2012, the service receiver is liable to pay service tax. They have attached sample copy of Invoices. Moreover they have provided job wok service to Parle Biscuits Pvt Ltd for processing

torilla chips for their brand on which Parle pays excise duty and being intermediate processor they are exempt from service tax as per Noti.No.30/2012. In the same manner.

13. Further the assessee stated that for the year 2016-17 it is mentioned in the ITR sale of services of Rs.1,84,90,951/- and in 26AS it is mentioned as Rs.2,87,35,205/-. For the same they clarified that out of the above income mentioned, they have provided GTA services to the tune of Rs.1,15,73,180/- on which as per RCM vide Noti.No.26/2012 dt.20.06.2012, the service receiver is liable to pay service tax. They have attached sample copy of Invoices. Moreover they have provided job wok service to Parle Biscuits Pvt Ltd for processing torilla chips for their brand on which Parle pays excise duty and being intermediate processor they are exempt from service tax as per Noti.No.30/2012. In the same manner.

14. Further, they stated that they have provided services to the tune of Rs. 1,39,76,314/- the detailed summary of which is attached herewith as per Annexure A, which is also matching with the service tax returns filed by us. Further they have highlighted the income on which Service tax is made applicable on the income on which TDS is deducted. For the incomes on which either service tax is not made applicable or TDS is not deducted or Service tax is exempted is shown in the Table above. We hope that the above mentioned working shall be self-explanatory and shall clear all the queries. They have provided Services to the tune of Rs. 86,96,267/- which as per our Service tax Return is Rs 1,57,77,386/-. The reason for the same is there is an error in the service tax return filed by us whereby the figures of Services on which tax is to be paid on Reverse charge as service receiver was wrongly shown in the table of Service Provider. They have highlighted the income on which Service tax is made applicable on the income on which TDS is deducted. For the incomes on which either service tax is not made applicable or TDS is not deducted or Service tax is exempted is shown in the Table above. We hope that the above mentioned working shall be self-explanatory and shall clear all the queries.

PERSONNEL HEARING

15. Personnel Hearing was granted to the assessee on 28.02.2022 and Shri Nishit Parikh, CA, duly authorised representative attended the same on behalf of the assessee. He has submitted reconciliation statements and has stated that they have paid service tax, wherever they had service tax liability. He requested to drop all further proceedings.

DISCUSSION AND FINDINGS

14. I have carefully gone through the records of the case, submission made by the noticee, Audited Balance Sheet, ITR, STR and copies of invoices for the year 2015-16 to 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs. 52,16,891/- for the financial year 2015-16 to 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. 52,16,891/ on the differential taxable value for the financial year 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

15. On perusal of SCN and other records, I find that the assessee is providing Management or business consultant service, outdoor catering service and manpower Recruitment and supply service and are paying service tax and also filing ST 3 returns. Show Cause Notice was issued to recover service tax of Rs.52,16,891/- on differential value between the income shown in the Form 26 AS and ST 3 Returns. In their reply to SCN they stated that the difference is mainly due to non declaration of taxable value of services on which service tax is payable by the service receiver under RCM basis. As

they were not liable to pay service tax, they did not shown the same in their ST 3 returns. Further they stated that they have received income from job work which is exempted vide Noti.No.25/2012 Sr.No.30 which is reproduced as under:

G.S.R.:....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17 th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17 th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

30. Carrying out an intermediate production process as job work in relation to –

(a) agriculture, printing or textile processing;

(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);

(c) any goods on which appropriate duty is payable by the principal manufacturer; or

16. In the instant case, the assessee is carrying out intermediate production process as job work on behalf of M/s.Parle Biscuits Pvt Ltd by way of processing tortilla chips for their brand on which the principal manufacturer i.e. M/s.Parle Biscuits Pvt Ltd pays excise duty. On perusal of documents submitted by the assessee, I find that being intermediate processor they are exempted from paying service tax in view of the exemption granted vide Notification No.25/2012 dated 20.06.2012 at Sl.No.30. In view the above, the income earned by way of undertaking job work by the assessee is exempted from paying service tax as they are eligible for exemption under the said Notification.

17. Further, I also find that the assessee are also providing GTA services to M/s.Ultratech Cement Ltd for transportation of RMC. Being a corporate body the liability to pay service tax falls on the receiver under RCM as envisaged under Rule 2(d)(B)(V) of the Service Tax Rules, 1994 and Noti.No.30/2012 dated 20.06.2012:

Rule 2(d)(B)(V) of the Service Tax Rules, 1994 provided that;

(d) "person liable for paying service tax", -

(i) (B) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(III) any co-operative society established by or under any law;

(IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(V) any body corporate established, by or under any law; or

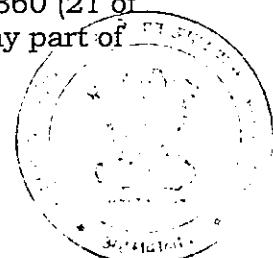
(VI) any partnership firm whether registered or not under any law including association of persons; any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage : Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

18. Para 1(A)(ii) and Para II of Notification No. 30/2012-ST dated 20.06.2012 as amended provided that service tax payable on services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;



- (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- (e) any body corporate established, by or under any law; or
- (f) any partnership firm whether registered or not under any law including association of persons;
- (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 :-

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
01	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	NIL	100%

19. As per provisions contained in Rule 2(d)(B) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, service tax on GTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) or a dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder is payable in RCM by the service recipient. The Noticee has claimed RCM tax liability under above categories in reconciliation statement. I find that the status of the service recipient as body corporate also supported by details in separate sheet indicating party wise service provided to the service receiver. Therefore, in the above backdrop I accept GTA service provided by the assessee to the body corporate and the GTA service provided by them to above extent are liable to be paid in RCM by the service recipients. For the purpose of clarity, I would like to discuss the taxability of the differential value year wise.

FINANCIAL YEAR 2015 - 16

20. On perusal of Show Cause Notice, I find that SCN states total income of noticee credited under Section 194C, 194Ia, 194Ib, 194j and 194H to Rs. 3,65,50,231/-. The noticee declared an income of Rs. 1,39,76,314/- in ST-3 returns and thereby the SCN proposed demand of service tax on differential income of Rs. 2,25,73,917/-. From the documents, I find that the assessee is carrying out intermediate production process as job work on behalf of M/s.Parle Biscuits Pvt Ltd. An income of Rs.1,16,01,491/- is shown in their books as job work income and the principal manufacturer M/s.Parle Biscuits P.Ltd cleared goods on payment of Excise duty. On perusal of the facts, I find that the assessee is entitled to get benefit of Notification No. No.25/2012 dated 20.06.2012 at Sl.No.30 and therefore they are not required to pay service tax on the said amount. Further during the year, the assessee has also earned income by providing GTA services to M/s.Ultratech Cemnt Ltd. Being a corporate body the liability to service on the said amount of Rs.1,10,14,959/-is on the service receiver i.e. M/s.Ultratech Cemnt Ltd under Reverse charge mechanism as provided under Noti. No. 30/2012-ST dated 20.06.2012 as amended and therefore on this income also the assessee is not required to pay service tax.

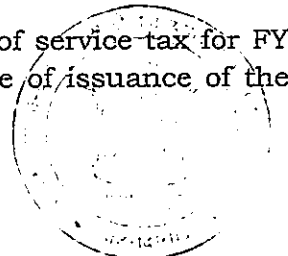
FINANCIAL YEAR 2016 - 17

21. I find that SCN states total income of noticee credited under Section 194C, 194Ia, 194Ib, 194j and 194H to Rs. 2,87,35,205/-. The noticee declared an income of Rs. 1,57,77,386/- in ST-3 returns and thereby the SCN proposed demand of service tax on differential income of Rs. 1,29,57,819/-. The assessee in their reply to SCN submitted that they have provided service tax amounting to Rs.86,96,267/- only during the year. However they have shown Rs.1,57,77,386/- as their taxable income in the STR. The mistake is due to error in mentioning Rs.70,81,119/- as income from service provided instead of income involved in service received wherein they have paid service tax under RCM. On perusal of documents and STR, I find that the actual income of Rs.86,96,267/- is to be considered as the taxable income as a provider of service and accordingly I take the said income of Rs.86,96,267/- as their taxable income instead of Rs.1,57,77,386/- in their ST 3 return for the year 2015-16. Further, on perusal of documents, I find that the assessee is carrying out intermediate production process as job work on behalf of M/s.Parle Biscuits Pvt Ltd and an income of Rs.96,13,974/- on which the principal manufacturer M/s.Parle Biscuits P.Ltd was cleared on payment of excise duty. On perusal of the above facts, I find that the assessee is entitled to get benefit of Notification No. No.25/2012 dated 20.06.2012 at Sl.No.30 and therefore they are not required to pay service tax on the said amount of Rs.96,13,974/-. Further during the year, the assessee has also earned freight income by providing GTA services to M/s.Ultratech Cemnt Ltd. Being a corporate body the liability to service on the said amount of Rs.1,11,89,171/- is on the service receiver i.e. M/s.Ultratech Cemnt Ltd under Reverse charge mechanism as provided under Noti. No. 30/2012-ST dated 20.06.2012 as amended. In view of the above facts, the assessee is not required to pay service tax on the said amount as the liability to pay the service tax on the said amount falls on the service receiver as per under Reverse charge mechanism as provided under Noti. No. 30/2012-ST dated 20.06.2012 as amended and therefore on this income also the assessee is not required to pay service tax. For the sake of clarity, I would like to reconcile the matter as under:

Description	2015-16	2016-17
Total income as per 26AS and SCN as discussed	36550231	28735205
Total income declared as per ST3 as discussed	13976314	8696267
Differential value on which service tax as per SCN	22573917	20038398
Exempted as per Noti. No.25/2012 dated 20.06.2012 at Sl.No.30	11601491	9613974
Difference	10972426	10424964
Freight Income to be paid under RCM vide Noti.No.30/2012 dated 20.06.2012:	11865830	11189171
Difference	(-)890404	(-)764207

22. On perusal of above reconciliation statement, I find the assessee is not having any taxable income wherein service tax is to demanded. On perusal of the Notifications, I also find that the assessee is eligible for exemption under Notification No.25/2012 dated 20.06.2012 and No.30/2012 dated 20.06.2012 as claimed by the them. In view of the above, the service tax demand Rs.52,16,891/- is not sustainable and therefore liable to be dropped.

23. On perusal of para 6 & 7 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 from sale of services. I therefore refrain from discussing the taxability on other income other than the sale of service.

24. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, ITR, reconciliation statement, I find that the service tax demand of Rs.52,16,891/- for the period 2015-16 & 2016-17 is not sustainable and accordingly Show Cause Notice dated 09.12.2020 is liable to be dropped. Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty upon noticee on this count.

Accordingly, I pass the following order;

ORDER

23. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 52,16,891/- along with interest and penalties vide SCN No. GEXCOM/ADJN/STC/ADC/308/2020-ADJN-o/O-COMMR-CGST-AHMEDABAD dated 09.12.2020.

R. Gulzar Begum
14/12/20

(R.GULZAR BEGUM)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North

Dated. 14/12/20

F.No.STC/15-185/OA/2020

To

M/s. Iris Products Private Limited,
"Akshay", 1st Floor, 53, Shrimali Society,
Navrangpura, Ahmedabd - 380009

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Deputy Commissioner Division-VII, Central Excise & CGST, Ahmedabad North.
3. The Superintendent, Range-III, Division-VII, Central Excise & CGST, Ahmedabad North
4. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
5. Guard File

