



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

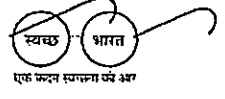
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद - 380009

FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD - 380009

ई-मेल/E-Mail: oladjhq-cgstamdnrh@gov.in, oaahmedabad2@gmail.com

फोन/Phone: 079-27544599 फैक्स/Fax: 079-27544463



निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-88/OA/2020

आदेश की तारीख/Date of Order:-15.03.2022

जारी करने की तारीख/Date of Issue :- 15.03.2022

DIN NO: 20220364WT000000EA4D

द्वारा पारित/Passed by:- आर गुलजार बेगम **IR. GULZAR BEGUM**

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 82/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 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-380015को 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।

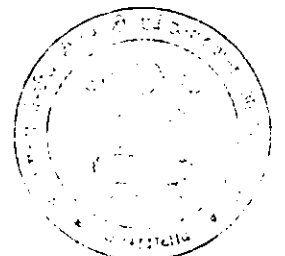
Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp 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 रू) 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. STC/15-88/OA/2020 dated 29.09.2020 issued to **M/s. Pal Enterprises**, Sakal Appartment W/8 Sakal Apartment Opp.Naranpura Post Office Naranpura Ahmedabad Naranpura Vistar Ahmedabad Gujarat.

BRIEF FACTS OF THE CASE

M/s. Pal Enterprises, Sakal Apartment W/8 Sakal Apartment Opp.Naranpura Post Office Naranpura Ahmedabad Naranpura Vistar Ahmedabad Gujarat (hereinafter referred to as the Assessee) holding Service Tax registration No.- ABTPS0245FST001.

2. Ongoing through the Third Party CBDT data for the Financial Year 2014-15 and 2016-17 it has been observed that the said Assessee has shown less amount of the 'Gross Value of Services Provided' in the Service Tax (ST-3) Returns filed with Service Tax Department than the 'Sales/Gross Receipts from Services (Value from ITR)', the 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' filed with the Income Tax Department. Therefore, it was observed that the said assessee had mis-declared / suppressed the 'Gross Value of Services Provided' in the Service Tax (ST-3) Returns filed by them for the F.Y. 2014-15 and 2016-17 and consequently short paid / not paid the applicable Service Tax on whole amount of services provided by them. As per the details shared with the CBIC, is as under-

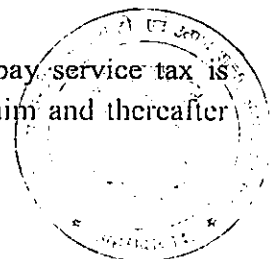
| F. Y. | Value of Services declared in ITR | Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' | Value of Services provided as per Service Tax Returns | Highest Difference | Service Tax (Including Cess) |
|---------|-----------------------------------|--|---|--------------------|------------------------------|
| 2014-15 | Rs.32372982/- | Rs.25660284/- | Rs.7281553/- | Rs.25091429/- | Rs.3101301/- |
| 2016-17 | Rs.24050810/- | Rs.23409655/- | 0/- | Rs.24050810/- | Rs.3607622/- |
| Total | Rs.56423792/- | Rs.49069939/- | Rs.7281553/- | Rs.49142239/- | Rs.6708923/- |

3 It was requested 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 vide letters dated 09.02.2018, 25.06.2019 and 17.07.2020 by the jurisdiction office. 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 can be done in this regard.

4. In view of facts stated hereinabove, that the total Value of Services declared in ITR filed by the noticee for Financial Year 2014-15 and 2016-17 was Rs.56423792/- and that the total Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' for Financial Year 2014-15 and 2016-17 was Rs.49069939/- and whereas the total Value of Services provided as per Service Tax Returns was Rs. 7281553/-. And since the said notice has not provided any details/data for such difference, the reasons for such difference cannot be ascertained and therefore, the exact Service Tax liability cannot be adjudged. Therefore, for calculation and demand of the Service Tax under this notice the maximum amount of difference between (i) Value of Services declared in ITR filed by the notice & Value of Services provided as per Service Tax Returns and (ii) Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' & Value of Services provided as per Service Tax Returns i.e. the highest difference of Rs.49142239/- between these two is considered and the highest applicable rate is applied for Non-Payment/Short-Payment of Service Tax of Rs.6708923/- (Including Cess) for Financial Year 2014-15 and 2016-17 is worked out.

5. 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-I.

6. 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 appears 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.

7. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider 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.

8. From the foregoing paras and discussion made herein above, it is observed that that the noticee has contravened the provisions of -

(i) Section 67 of the Finance Act, 1994 in as much as they have failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the period 2014-15;

(ii) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as-much-as they failed to make payment of service tax during the period 2014-15, to the credit of the Government account within the stipulated time limit;

(iii) Section 70 of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value and to file correct ST-3 returns during the period 2014-15.

(iv) Section 77 of the Finance Act, 1994 as much as they did not provide required data / documents, as called for from them.

9. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part the noticee has 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 the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years along with applicable interest. All these acts of contravention of the provisions of Section 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 on part of noticee appears to have rendered them for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time.

10. 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 2014-2015 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 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.6708923/-(including Cess). It appears that 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 appears to be recoverable from them under the provisions of Section 73(1) of the Finance

Act, 1994 by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appears that the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994, and penalty under provisions of Rule 7C of the Service Tax Rules, 1994;

11. Therefore, M/s. Pal Enterprises called upon to show cause to the Addl. Commissioner, CGST & CX, Ahmedabad North having office at 1stFloor, Custom House, Navrangpura, Ahmedabad as to why:-

- (i) The said differential amount should not be considered as taxable value and the Service tax involved in the said amount to the extent of Rs.6708923/-(Including Cess) (Rupees Sixty Seven Lakh Eight Thousand Nine Hundred Twenty Three only) short paid /not paid by them, should not be 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 should not be imposed upon them under the provisions of Section 77(1) of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Service Tax Rules, 1994.
- (v) 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.
- (vi) Penalty should not be imposed upon them for late filing ST-3 return for the period April'2014-September'2014 under the provisions of Rule 7C of the Service Tax Rules, 1994.

PERSONAL HEARING

12. Personnel hearing was granted to the assessee on 09.03.2022 wherein Shri Kumar Pal Shah, Proprietor of M/s Pal Industries appeared for personnel hearing. They submitted reconciliation statement along with their reply and requested to drop all further proceedings.

DEFENCE REPLY :

13. The assessee vide letter dated 08.03.2022 has furnished their written submission wherein they stated that they are engaged in providing Pandal and Shamiana Services and Reselling of Pandal Material and items; that they have been complying with all the legal provisions of Service tax regularly. Further, they submitted that during the FY 2014-15 and FY 2016-17, they have rendered Pandal and Shamiana services as well as sold Pandal related material to various Governmental organisations, Private organisations, Religious Trusts in India; that the demand in the SCN is on the exact value of Rs. 4,91,42,239 (FY 2014-15 Rs. 2,50,91,429 and FY 2016-17 Rs. 2,40,50,810) on which service tax of Rs. 67,08,923 is demanded; that majority of their Income is from Sale of Material and from rendering services in the state of Jammu and Kashmir which is not taxable under the Finance Act 1994.

13.1 Further, they also submitted that during the FY 2014-15 and FY-2016-17 they were engaged in the activity of trading in Pandal Material / items like Tables, Carpets, Lights etc to other reputed decorators like Deep Gandhi Associates, Gandhi

Corporation and Red Events and as per the extant provisions of Chapter V of the Finance Act, 1994 activity of trading of Goods is not taxable.

13.2 They also submitted that in the FY 2014-15 they have sold Goods worth Rs. 2,50,91,429/- and paid VAT amounting to Rs. 32,59,193 on the same and rendered Pandal and Shamiana services amounting to Rs. 72,81,553/- on which Service tax amounting to Rs. 8,99,999 has already been paid and in FY 2016-17 they have sold Goods worth Rs. 53,00,810/- and paid VAT amounting to Rs. 5,26,161 on the same.; that in the FY 2016-17 they provided pandal and shamiana services amounting to Rs. 1,87,50,000/- to Shri Mata Vaishno Devi Shrine Board in Jammu & Kashmir; that the Board has organised Ram Katha of Morari Bapu in Jammu and Kasmir from 01.10.2016 to 10.10.2016 which is outside the purview of Finance Act, 1994.

14. DISCUSSION AND FINDINGS:

14.1 I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 09.03.2022 alongwith the documents submitted by the noticee. Further I have also carefully gone through the written submission furnished at the time of personel hearing.

14.2 On going through the SCNs, I find that data of Sales /Gross receipt from services was shared by the CBDT with CBIC for FY 2014-15 & 2016-17, The difference in value of service to the extent of Rs. 4,91,42,239/- the year 2014-15 & 2016-17 was noticed and therefore, the subject SCNs was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the basis of ITR filed for the period 2014-15 & 2016-17 on differential value of Rs. 4,91,42,239/- under proviso to section 73(1) of Finance Act, 1944 or not.

14.3 I find that the assessee in their reply dated 09.03.2022 has stated that they are engaged in providing Pandal and Shamianaservices and also reselling of pandal materials & items. to various government organizations, private organizations, religious trust. Further, I also find that in support of their reply, the assessee have submitted the copy of Balance Sheet, P&L account, form 26AS for FY 2014-15 & 2016-17 and the reconciliation statement for the year 2015-16. I find from the records submitted by the assessee that they have provided following services and sale of material in 2014-15 & 2016-17;

| Sr. No. | Particulars | Sale of Material | | | Service | | Total Income |
|---------|--|------------------|--------------------|------------------|--------------------|-----------------|--------------------|
| | | Sale 5% | Sale 15% | VAT | Service | S.tax | |
| 1 | Gujarat Livestock Development Board | | | | 9,55,060 | 1,18,045 | 9,55,060 |
| 2 | Director Of Animal Husbandry Gandhinagar | | | | 9,95,060 | 1,22,989 | 9,95,060 |
| 3 | Red Events | 17,40,520 | 49,72,180 | 8,32,855 | | | 67,12,700 |
| 4 | Mahindra & Mahindra Ltd Farm Equipment Sector | | | | 16,85,400 | 2,08,315 | 16,85,400 |
| 5 | Deep Gandhi Associates | 8,58,000 | 60,32,000 | 9,47,700 | 5,00,000 | 61,800 | 73,90,000 |
| 6 | Federation Of Indian Export Organisations | | | | 23,95,733 | 2,96,113 | 23,95,733 |
| 7 | Gandhi Corportaion | 24,46,720 | 90,42,009 | 14,78,638 | 7,50,300 | 92,737 | 1,22,39,029 |
| | Total FY 2014-15 | 50,45,240 | 2,00,46,189 | 32,59,193 | 72,81,553 | 8,99,999 | 3,23,72,982 |
| 1 | Deep Gandhi Associates | 97,000 | 19,47,510 | 2,96,976 | | | 20,44,510 |
| 2 | Shree Mata Vaishno Devi Shrine Board (Katra J&K) | | | | 1,87,50,000 | | 1,87,50,000 |
| 3 | Gandhi Corporation | 25,92,600 | 6,63,700 | 2,29,185 | | | 32,56,300 |
| | Total FY 2016-17 | 26,89,600 | 26,11,210 | 5,26,161 | 1,87,50,000 | - | 2,40,50,810 |
| | Grand Total of FY 2014-15 & 2016-17 | | 3,03,92,239 | 37,85,354 | 2,60,31,553 | 8,99,999 | 5,64,23,792 |

14.4 I find from the above reconciliation statement and documents submitted by the assessee that the demand in the SCN is on the value of Rs. 4,91,42,239 (FY 2014-15 Rs. 2,50,91,429 and FY 2016-17 Rs. 2,40,50,810) on which service tax of Rs. 67,08,923 is demanded. I also find that majority of their Income is from Sale of Material and from rendering services in the state of Jammu and Kashmir which is not taxable under the Finance Act 1994. I would like to discuss year wise as under:

Financial Year 2014-15

14.5 From the records available in file and details submitted by the assessee during the personnel hearing, I find that during the FY 2014-15, they have traded and sold material to the tune of Rs. 50,45,240/- on the payment of appropriate VAT of 5% and Rs. 2,00,46,189/- at appropriate rate of 15% (total Rs. 2,50,91,429/-). The same is the difference of value on which Service Tax has been demanded. I have verified from the VAT return of the respective period that they have paid VAT on the trading items. I find that in FY 2014-15 they have rendered Pandal and Shamiana services amounting to Rs. 72,81,553/- on which Service tax amounting to Rs. 8,99,999 has already been paid by the assessee

Financial year 2015-16

14.6 I find that during the FY 2015-16, they have traded and sold material to the tune of Rs. 26,89,600/- on the payment of appropriate VAT of 5% and Rs. 26,11,120/- at appropriate rate of 15% (total Rs. 53,00,720 /-). I have verified from the VAT return of the respective period and find that they have paid VAT of Rs. 5,26,161/- on the trading items.

14.7 Further during the Financial Year 2016-17, I find from the available records and details submitted by the assessee that they have provided pandal and shamiana services amounting to Rs. 1,87,50,000/- to Shri Mata Vaishno Devi Shrine Board in Jammu & Kashmir. They stated that the Board has organised Ram Katha of Morari Bapu in Jammu and Kashmir from 01.10.2016 to 10.10.2016 which is outside the purview of Finance Act, 1994.

14.8 Now, I discuss the relevant provision with regard to trading of goods;

As per the extant provisions of Chapter V of the Finance Act, 1994 activity of trading in Goods is not taxable. Levy of Service as per Section 66B is on Services only, said section reads as under:

66B. *There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. on the value of all services, other than those services specified in the 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.*

Term 'Service' as defined in section 2 (44) excludes the activity of transfer title in goods by way of sale, which is nothing for Trading.

(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



Further, as seen in section 66B, all activities listed as Negative List in section 66D are also out of the ambit of Service tax. Activity of Trading in Goods is mentioned in section 66D (e), said section reads as under:

66D. The negative list shall comprise of the following services, namely:—

(e) trading of goods;

14.9 Further, I find from the records available in the file that Sale of goods is taxable under the Gujarat Value Added Tax Act and assessee has paid the requisite VAT on the Sales and submitted VAT returns for the period 2014-15 & 2016-17. Therefore, in view of the above provision, I find that the assessee is not liable to pay Service Tax on the trading of goods as stated above for the year 2014-15 and 2016-17.

Services

14.10 Further with regards to pandal and shamiana services provided to the tune of Rs. 1,87,50,000/- in Jammu & Kashmir which is outside the purview of Service tax as per Section 64 of the Finance Act, 1994. provided pandal and shamiana services amounting to Rs. 1,87,50,000/- to Shri Mata Vaishno Devi Shrine Board in Jammu & Kashmir. They stated that the Board has organised Ram Katha of Morari Bapu in Jammu and Kashmir from 01.10.2016 to 10.10.2016 which is outside the purview of Finance Act, 1994.

Section 64(1) covers applicability of chapter/Act.

64(1) this chapter extends to the whole of India except the State of Jammu and Kashmir.

14.11 I find that as per above, provisions of service tax law are applicable only to the whole India **except the state of Jammu and Kashmir**. I also find from the above submission and attached documents, they have rendered services at Katra which is located within the State of Jammu and Kashmir which is outside the ambit of the Service Tax Law as provided in section 64 read with Rule 3 of the place of supply Rules, hence the levy of service tax doesn't apply as per Section 66B to this transaction and therefore no tax is payable on value of Rs. 1,87,50,000/-. Levy of Service as per Section 66B is on Services rendered in Taxable Territory only, said section reads as under:

*66B. There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. on the value of all services, other than those services specified in the 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. Term 'Taxable Territory' as defined in section 2(52) reads as under:*

(52) "taxable territory" means the territory to which the provisions of this Chapter apply;

14.12 I find that from the above provisions of the Finance Act, 1994, service tax law doesn't apply to services rendered in the State of Jammu & Kashmir.

14.13 Further, I also find that as per Rule 3 of the place of supply rules, the Place of provision of Services shall be the location of the recipient of Service. In this case, the place of provision of services is Katra, Jammu and Kashmir. Said rules reads as under:

3. Place of provision generally.- The place of provision of a service shall be the location of the recipient of service:

Provided that in case of services other than online information and database access or retrieval services, where the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

6. Place of provision of services relating to events.- *The place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held.*

14.14 I find that, Services amounting to Rs. 1,87,50,000 rendered to Shri Mata Vaishno Devi Shrine Board for providing Pandal and Shamiana Services in Katra, Jammu and Kashmir in respect of "Ram Katha" of Morari Bapur organised by the Mata Vaishno Devi Shrine Board. Shri Morari Bapu is an Indian spiritual leader and preacher from Gujarat who is known for his discourses on Ramcharitmanas across various cities in India and abroad. Therefore, I find that the Services Provided in the state of Jammu and Kashmir to Mata Vaishno Devi Shrine Board for providing Pandal and Shamiana Services in Katra, Jammu and Kashmir are not taxable and therefore no Service Tax is payable on value of Service Provided of Rs. 1,87,50,000 as discussed above and provided in Section 64 (1) of Finance Act.

14.15 Further with regard to Taxability in respect of Services provided in the region Jammu and Kashmir, the CESTAT ALLAHABAD in the case of 2018 (3) TMI 1428 - M/S BHARAT PETROLEUM CORPORATION LTD VERSUS COMMISSIONER OF SERVICE TAX, NOIDA ST/70453/2017-CU[DB] Order No. - A/70379/2018 Dated: - 25 January 2018 allowed the appeal in favour of the appelland and in the order stated " Scope of Service Tax Act - State of Jammu and Kashmir - GTA Service - reverse charge mechanism - Held that: - provisions of service within the state of Jammu & Kashmir is beyond scope of Chapter No. V of the Finance Act, 1994. Therefore, no provision related to Service Tax Law is presently applicable to services rendered in the state of Jammu & Kashmir - appeal allowed - decided in favor of appelland."

14.16 I find that the financial and other records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company/ individual during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated 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 at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the 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 of the company/ individual. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

15. From the above discussions and document available on records, I find that all the ingredients which formalize/ qualify the activity to be " exempted service" and trading activity which are not taxable as discussed herein above.

16. Having considered these factual and documentary evidences available on records, I find no reason to disagree the assessee's contentions. I am therefore of the view that the assessee has established their case quite clearly that the amount shown in Show Cause Notices i.e. Sales of Service under Sales/Gross Receipt from ITR is the value of service is on account of trading of goods & Services provided by the assessee

in the state of Jammu and Kashmir. Therefore, I am of the view that no service tax is liable to pay by the assessee.

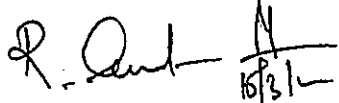
17. I further find that the SCN has not questioned the taxability on any income. I, therefore, refrain from discussing the taxability on other income other than the income disclosed in Show Cause Notice. For the sake of clarity, the consolidated worksheet are tabulated and reconciled as under:

| Description | 2014-15 | 2016-17 |
|--|----------|----------|
| Total income as per ITR and SCN | 32372982 | 24050810 |
| Total income declared as per ST3 | 7281553 | 0 |
| Differential value on which service tax as per SCN | 25091429 | 24050810 |
| Less: Trading sales not liable to pay Service Tax | 25091429 | 5300810 |
| Difference | 0 | 18750000 |
| Less: Service Provided in the region Jammu and Kashmir not liable to pay Service Tax | 0 | 18750000 |
| Difference | 0 | 0 |

18. In view of the facts and circumstances pertaining to the case as aforementioned, the demand is not tenable in law, accordingly I do not consider it necessary to delve in the merits of invoking extended period of limitation which has been discussed in the SCNs at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

: ORDER :

19. I drop the demand of Rs. 67,08,923/- and proceedings initiated against M/s. Pal Enterprises, Sakal Apartment W/8 Sakal Apartment Opp.Naranpura Post Office Naranpura Ahmedabad Naranpura Vistar Ahmedabad Gujarat, and accordingly Show Cause Notice F.No. STC/15-88/OA/2020 dated 29.09.2020 is hereby disposed off.


(R. Gulzar Begum)
Additional Commissioner
Central Excise &CGST,
Ahmedabad North

File No:STC/15-88/O&A/2020
By Regd. Post AD./Hand Delivery

Dated: 15/03/2022

To,
M/s.-Pal Enterprises,
Sakal Apartment W/8 Sakal Apartment
Opp.Naranpura Post Office Naranpura
Naranpura Vistar Ahmedabad Gujarat

Copy for information to:

1. The Commissioner, CGST & CX, Ahmedabad North.
- 2.. The Dy. /Assistant Commissioner, DIV-VII, CGST & CX, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, CGST & CX, Ahmedabad North
4. The Superintendent, Systems, CGST & CX, Ahmedabad North
5. Guard File.