


Signature

आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1 st Floor) Navrangpura, Ahmedabad-380009
फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO.STC/15-182/OA/2021-22

DIN : 20220564WT0000722194

आदेश की तारीख /

Date of Order : 04.05.2022

जारी करने की तारीख /

Date of Issue : 04.05.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव /

UPENDRA SINGH YADAV

आयुक्त /

COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-02/2022-23

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 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 Tribunal 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)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 02 /2022-23

M/s. Jignesh Jagdishkumar Patel, 137, Shiv Ganesh Bunglow, Sola Over Bridge, Thaltej, Ahmedabad -380054, were issued SCN No. STC/15-182/OA/2021-22 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad..

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S. JIGNESH JAGDISHKUMAR PATEL, ARE AS FOLLOWS:

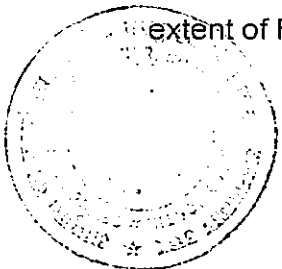
M/s. Jignesh Jagdishkumar Patel, 137, Shiv Ganesh Bunglow, Sola Over Bridge, Thaltej, Ahmedabad -380054 (hereinafter referred to as the 'Assessee' for the sake of brevity) were engaged in providing taxable services, and were holding Service Tax Registration No. AFKPP5171LSD001.

2. 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" in respect of M/s. Jignesh Jagdishkumar Patel, was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the records available with the Divisional Office of Division-VI and on going through the Third Party Data provided by CBDT of the said assessee for the F.Y. 2015-16 and 2016-17, the total sales of service (Value from ITR/ Form 26) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return of F.Y. 2015-16 and 2016-17. Therefore, it appeared that the said assessee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for F.Y. 2015-16 and 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for 2015-16 and 2016-17. The difference in value as observed for F.Y. 2015-16 and 2016-17 was found to be as under:

Sr. No.	Financial Year	Value of Difference in (ITR & STR / TDS & STR) (Whichever is higher) (in Rs.)	Service Tax (in Rs.)
1	2015-16	16,66,16,505	2,32,46,243
2	2016-17	12,64,76,842	1,88,65,840
	Total	29,30,93,347	4,21,12,083

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. 4,21,12,083/- (including Cess) on the differential value of Rs. 29,30,93,347/-



4. As per the provisions of Section 72 of the Finance Act, 1994, 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 Section 68 of the Finance Act, 1994 every person liable to pay service tax shall pay service tax at the rate specified in Section 66B in such manner and within such period which is prescribed under Rule 6 of the Service tax Rules 1994.

6. As per the provisions of Section 70 (Furnishing of Returns) of the Finance Act, 1994:

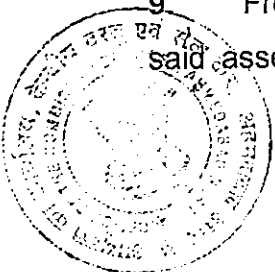
“(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.

(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.”

7. As per the provisions of Section 73(1) of the Finance Act, 1994 where any Service Tax has not been levied or paid or has been short levied or short paid by 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 a notice on the person chargeable with Service Tax which has not been levied or paid or which has been short levied or short paid requiring him to show cause why he should not pay the amount specified in the notice.

8. 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 the assessee shall submit their Service Tax returns in the form ST-3 within the prescribed time.

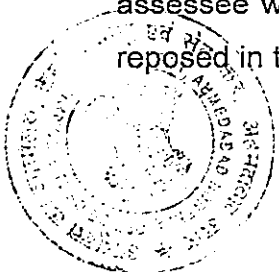
9. From the documentary evidence available at the relevant time, it appeared that the said assessee had failed to pay/short paid/deposit Service Tax to the extent of Rs.



4,21,12,083/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 2015-16 and 2016-17 vis-à-vis their ITR/Form 26AS. The said short payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 4,21,12,083/- (including Cess) worked out on value of Rs. 29,30,93,347/- and therefore, the said Service Tax was 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.

10. Therefore, it appeared that the said assessee had (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; (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 had not paid service tax as worked out in the Table for Financial Year 2015-16 and 2016-17; (iv) contravened the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 which appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (v) made themselves 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) also contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

11. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value, that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 and 2016-17. From the evidences gathered/available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 4,21,12,083/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the assessee which were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

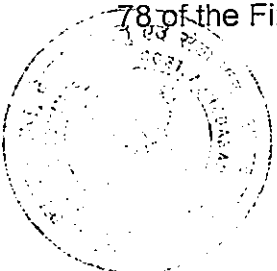


12. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (at such rate 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 appeared that the said assessee had short paid/not-paid Service Tax of Rs. 4,21,12,083/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the Finance Act, 1994 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 had suppressed the facts from the department and had contravened the provisions with an intent to evade payment of Service Tax. The said assessee had not discharged their Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.

13. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax and they appeared 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 Service Tax amounting to Rs. 4,21,12,083/-(inclusive of Cess) not paid was required to be demanded and recoverable from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

14. 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 appeared 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 appeared that the said assessee had contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee appeared to have rendered the assessee liable to penalty under Section 76 & Section 77 of the Finance Act.

15. In addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appeared that the said assessee had willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of Service Tax thus rendering them liable for penalty under Section 78 of the Finance Act, 1994.



16. The assessee was given opportunity to appear for pre-SCN consultation on 23.04.2021, but the same was not attended by them.

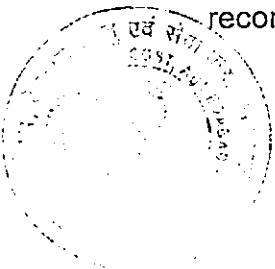
17. Therefore, Show Cause Notice dated 23.04.2021 was issued to the assessee asking them as to why:

- (i) Differential amount of Service Tax of Rs. 4,21,12,083/- (Rupees Four Crore Twenty One Lakh Twelve Thousand Eighty Three only) short/ not paid, should not be confirmed and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (ii) Interest at the appropriate rate should not be demanded and recovered from them under Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provision of Section 76 of the Finance Act, 1994.
- (iv) Penalty should not be imposed upon them under the provision of Section 77 of the Finance Act, 1994.
- (v) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994.

DEFENCE REPLY:

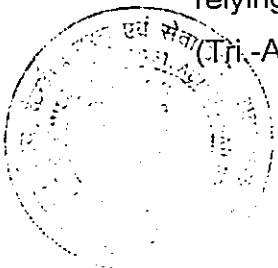
19. The assessee vide their letter dated 27.05.2021 submitted their written submission, wherein they interalia have stated that

- They have denied the allegation made in the SCN as there was no contravention of any provisions of service tax law on their part and there was no short payment of service tax by them.
- The cognizance of ST-3 Returns filed by them and submission made by them have not been taken by the department.
- They have stated that the SCN is also not sustainable on merit as well as on the ground of limitation.
- They have submitted the Final Audit Report No. CE/ST-1224/2020-21 dated 11.05.2021 for the period from April 2016 to June 2017. They have argued that since their records have been audited by Office of Commissioner of CGST Audit, there is no question of demanding of service tax for the financial years 2015-16 and 2016-17 as per the SCN. They have further stated they had submitted the copy of reconciliation to the Audit Party on 14.12.2020, based on which Final Audit Report



dated 11.05.2021 has been issued. They have submitted the said copy of reconciliation.

- They have submitted the following documents:
 - Audited Profit & Loss Statement for FY 2015-16 to 2016-17
 - ST-3 Returns FY 2015-16 and 2016-17
 - 26AS for FY 2015-16 and FY 2016-17
- They have further stated that they had submitted complete details vide their letter dated 21.08.2020 filed on 24.08.2020 in response to summons dated 17.08.2020. The department without taking cognizance of details submitted by them, had presumed that no service tax had been paid by them on the entire amount reflected in 26AS for 2015-16 and 2016-17.
- They have submitted the copy of Summons dated 17-8-2020 issued by the department and their reply dated 21-8-20 filed on 24-8-20 submitting full details and documents along with Reconciliation Statement of Books of A/c and 26AS for FY 2014-15, 2015-16, 2016-17 with Bills dated 10-01-2016 and 21-10-2016. From this submission, it was evident that there was no short payment of service tax by them. Further, the Office of AC, Div-VI, Ahmedabad vide letter dated 15.04.2021 had sought their explanation again, however, the extension of time was sought by them due to their consultant suffering from CORONA.
- The SCN has been issued presuming Gross Receipts as reflected in Form 26AS as taxable value despite the fact that from that value deduction had to be made for value of exempt services, abatement and value on which service tax was already paid as per ST-3 returns already filed. They had explained this fact vide their letter dated 21-10-2020 also and in sheer disregard of information on record, this SCN was issued to them which has caused unwarranted harassment to them.
- They have argued that onus of proving a service to be taxable was on the department and without discharging such onus, proposal to demand service tax was not legal or proper. The SCN had proposed demand of service tax without adducing any evidence and based on presumption and assumption that when TDS was deducted, the gross income was in respect of taxable service without even taking pain to look at ST-3 returns filed by them. They have further argued that It is settled law that tax cannot be assessed merely on assumption and presumptions. In this case, entire proposal for demand of service tax is based on presumptions and assumptions contrary to facts on record and hence they requested to drop the proceedings under the SCN relying on decision by them in case of CST v. Purni Ads. Pvt. Ltd. [2010 (9) STR 242 (Tri.-Ahmd.)]. In this case, Hon. Tribunal has held that **tax cannot be assessed**



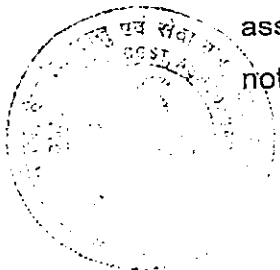
merely on assumptions and presumptions, the onus to prove with sufficient evidence that the receipts were against the taxable service lies on the department, the entire demand was based on the assumption that all receipts which were accounted by the appellants in their books of account were related to taxable service rendered by the appellants, without establishing the same and hence, the demand was not in accordance with law and therefore has no merits. In their case, the SCN issuing authority has proceeded surprisingly on the basis of total receipts appearing in Form 26AS without verifying whether the same was received towards the value of taxable service or otherwise and that too in total disregard of the service tax returns filed by them and further details filed by them with department when sought. It was duty of the Department to establish the demand with evidence which the department has failed to do so and hence they requested to drop the proceedings under the SCN. They have also relied on the decision in case of *Nirav Travels v. CCE* [2012 (27) STR 73 (Tri.-Ahmd.)] wherein it was stated that it was not proper to issue SCN based on balance sheet and profit and loss account without even giving an opportunity to explain the situation.

- They have contended that the department cannot raise the demand on the basis of 26AS figures and balance sheet figures without examining the real nature of income and without establishing that the entire amount received by them as reflected in Form 26AS is consideration for any taxable services provided and without examining whether the said income was because of any exemption and also in total disregard of periodical ST-3 returns filed by them. It is not legal to presume that the entire amount was on account of consideration for providing taxable services without such examination. In this regard they have relied on decision of Hon. Tribunal in case of *Kush Constructions v. CGST NACIN, ZTI, Kanpur* [2019 (24) GSTL 606 (Tri.-All.)], where in the Hon'ble Tribunal has held that that the difference in figures reflected in ST-3 returns and Form 26AS filed under Income-tax Act, 1961 cannot be basis for raising Service Tax demand without examining the reasons for such difference and without examining whether amount as reflected in said Income Tax return was the consideration for providing any taxable services or the difference was due to any exemption or abatement. They have also relied on decision of Hon. Tribunal in case of *Sharma Fabricators & Erectors Pvt. Ltd.* [2017 (5) GSTL 96 (Tri.-All.)] wherein it was held that the charges in the SCN have to be on the basis of books of accounts and records maintained by the assessee and other admissible evidences. In their case, their records clearly show that there is no short payment of service tax and this fact is further corroborated by Final Audit Report dated 11-05-2021 issued after carrying out audit on 12-03-2021 based on information that was



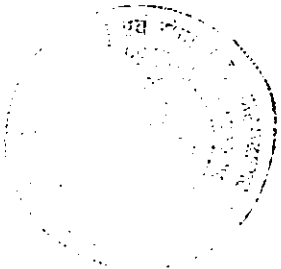
provided by them in the year 2020. They have further stated that the said order has been maintained by Hon. High Court and reported as [**Commissioner v. Sharma Fabricators & Erectors Pvt. Ltd. - 2019 (22) GSTL J166 (All.)**]. Hence, proposing demand of service tax by making presumption contrary to facts is not legal or proper.

- They have requested to take on record their grievance that the SCN was issued based on presumption of entire amount shown in Form 26AS being taxable in sheer disregard of ST-3 returns filed by them as also their submissions dated 21-08-2020 filed on 24-08-2020 as also with the Audit party which initiated audit process in year 2020, conducted audit on 12-03-2021 and issued Final Audit Report on 11-05-2021 according to which there is no short payment of service tax at all. It was categorically informed to the Department during the course of inquiry that there is no short payment of service tax on their part and complete reconciliation was also provided to office of Ahmedabad North Commissionerate as also to Audit Party. Such SCN has caused financial and mental stress to them. Their grievance may please be sent to office of Hon. Chief Commissioner, CBIC and Hon. Prime Minister for resolution as such shocks of SCN proposing huge demands based on presumptions has caused great pain to them and they have been unnecessarily dragged to litigation without any fault on their part and such attempt would ruin entrepreneurial spirit of honest people.
- They have filed their returns and have submitted all details vide their letter dated 21-8-20 and they have submitted details to Audit party in December, 2020. There is no mention of these facts and the authorities have also not brought out whether they have examined the submissions, invoices and documents filed by them. They are unable to understand how the authorities without examining the details and documents, have proceeded to issue SCN. Such SCN is clearly defective and relying on the decision of Hon. Tribunal in case of **V. S. Distributors v. CCE [2010 (17) STR 530 (Tri.-Del.)**, they have requested to drop the proceedings under the SCN as the same was issued mechanically without application of mind and without examining the submissions made by them in this regard.
- They had got email on 22-04-2021 at 9.48 PM fixing pre-SCN consultation on 23-04-2021 at 2 PM, and they had sent email dated 23-4-2021 wherein it was submitted that their consultant was suffering from Covid 19 and hence they had sought time of 30 days. Giving notice by email at 9.48 pm on 22-04-2021 and asking someone to come at 2 pm on 23-04-2021 was mockery of process of Pre-SCN consultation which was a process put in place by Government with honest intention of listening to the assessee before saddling him with SCN. The department had resorted to effectively not providing pre-SCN consultation and had also ignored the submission made on



23-4-2021 to give time due to genuine reason of consultant Shri Mukesh Kanani suffering from COVID-19 at that time. Without giving pre-SCN consultation, SCN was issued SCN on 23-4-2021 which was patently in defiance of direction of CBIC and hence, the proceedings under the SCN should be dropped as not granting an opportunity of pre-SCN consultation making the SCN defective.

- They have argued that the demand of service tax can be made only if department discharges the onus of showing any taxable service with evidence. **Demanding service tax based on figures of 26AS was patently wrong as 26AS does not state any nature of service and it is injustice to presume something else when the records verified by the officers also showed that there was no short payment of service tax on our part.**
- Since the service tax is not payable by them, no penalty can be imposed on them under section 76 or 77 or 78 of the Finance Act, 1994.
- They have also contested that beyond period of 30 months from relevant date, the subject SCN was also not sustainable on ground of limitation apart from entire demand being unsustainable on merit. Considering the following facts, it is crystal clear that there is not an iota of evidence of suppression or intent to evade payment of tax on our part.
- They have argued that there is not an iota of evidence to show that they have suppressed information with an intention to evade payment of duty. It only depicts wrong attitude of routinely invoking the extended period of limitation. They have cited CBEC Circular No. 5/92-CX.4, dated 13-10-1992 – (1993) 63 ELT T7, wherein Board has taken note of such attitude. Board had stated that such attitude only increased **fruitless adjudication with the gamut of appeals and reviews, inflation of outstanding figures and harassment of assesses.** Board has warned that such **casualness in issuance of show cause notices will be viewed seriously.**
- They have contested that no effective opportunity of pre-SCN consultation was given to them. Such show cause notice issued in defiance of CBEC instruction is void ab initio, in this regard they have relied upon the decision in case of **Amadeus India Pvt. Ltd. v. Pr. Commr. of CE, ST & CT [2019 (25) GSTL 486 (Del.)]** wherein it was held that SCN issued with demand for earlier period without mandatory pre-Show Cause Notice consultation is not sustainable being contrary to CBEC Circular as departmental circulars are binding on departmental officers. The subject SCN issued to them is also not sustainable respectfully following the judicial discipline.



- They have not concealed any information from service tax or any other department and there is no violation of any provisions of service tax law on their part. In a series of other cases, it has been held that when suppression is not alleged or proved, penalty cannot be levied. In this regard they have relied on the following decisions/ judgements.
 - (i) CCE, Mumbai-IV v. Damnet Chemicals P. Ltd. [2007 (216) ELT 3 (SC)]
 - (ii) CC v. Seth Enterprises [1990(49) ELT 619 (Tri.-Del.)]
 - (iii) Tamilnadu Housing Board v. CCE – 1994 (74) ELT 9 (SC)
 - (iv) Collector v. Chemphar Drugs – 1989 (40) ELT 276 (SC)
 - (v) Pahwa Chemicals P. Ltd. v. CCE, Delhi [2005 (189) ELT 257 (S.C.)]
 - (vi) Hindustan Steel v. State of Orissa [1978 (2) ELT (J159) (S.C.)]
 - (vii) Cement Marketing Co. [1980 (6) ELT 295 (SC)]

- They have also argued that apart from the proposed demand of service tax as per SCN not being sustainable on merit that with effect from 01-07-2017, the provisions of Chapter V of the Finance Act, 1994 were omitted vide Section 173 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act'). Further the Constitution (One Hundred and First Amendment) Act, 2016 was notified on 08-09-2016. Section 7 of the said Act omitted Article 268A of the Constitution. As a result Entry 92C relating to "tax on services" of the List I of the Seventh Schedule of the Constitution was also omitted vide Section 17 of the Constitution (One Hundred and First Amendment) Act, 2016 and thus with effect from 16-09-2016, levy of service tax was done away with.

- According to Section 173 of the CGST Act, Save as otherwise provided in this Act, **Chapter V of the Finance Act, 1994 shall be omitted.**

- They have stated that the provisions of the General Clauses Act, 1897 that saves the rights accrued under the prior legislation and empowers the Central Government to initiate any proceedings under the repealed legislations in terms of section 6 of the said Act. However, in case of **Rayala Corporation v. Directorate of Enforcement [1969 (2) SCC 412]**, a five-judge Bench of Hon. Supreme Court had held that **Section 6 of the General Clauses Act, 1897 applied only to repeals and not to omissions.** In the present case, the Legislation has omitted provisions of Chapter V of the Finance Act, 1994 and therefore relying on decision of Hon. Supreme Court in case of Rayala Corporation (Supra), no proceedings can be initiated, no liability can be fastened by the Government in respect of any alleged violation or non-compliance of the provisions contained in Chapter V of the Finance Act, 1994 as omitted vide Section 173 of the CGST Act. The initiation of proceedings vide SCN against them are without jurisdiction, unconstitutional and erroneous. They have requested to drop the proceedings under the SCN on this ground also.

Further, the assessee has submitted the copies of work order as detailed below, agreement with principal contractor vide emails (three) all dated 26.04.2022.

- 7 work orders issued to M/s. Jay Constructions Co. for construction of class rooms, quarters and school by Gujarat Council of Elementary (Serva Siksha Abhiyan) and agreement between them. Further, subcontracting agreement between the assessee and M/s. Jay Constructions.
- 1 work order issued to M/s. Krishna Construction Co by Ahmedabad Municipal Corporation for development of Lmbha Lake in south zone Ahmedabad and agreement between them. Further, subcontracting agreement between the assessee and M/s. Krishna Construction Co.
- 5 work orders issued to M/s. Samarth Builders for construction of class rooms, quarters and school by Gujarat Council of Elementary (Serva Siksha Abhiyan) and agreement between them. Further, subcontracting agreement between the assessee and M/s. Samarth Builders.

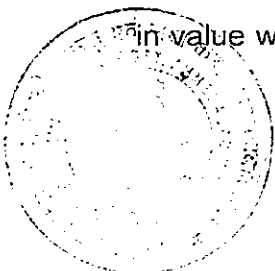
PERSONAL HEARING:

20. Personal Hearing was granted to the assessee on 11.05.2022, however, as per oral request for fixing the personal hearing earlier, by Shri Nilesh Suchak, the authorized representative of the assessee, the personal hearing was held on 23.04.2022. During the course of hearing, Shri Nilesh Suchak made the reference to their earlier written submission dated 27.05.2021 and stated the assessee was exempted from payment of service tax under Mega Exemption as they were providing services to Government and he also stated that records of the assessee have been duly audited by the department. He also contended that the pre-SCN was not offered to the assessee. Lastly, he requested to drop the SCN.

DISCUSSION AND FINDINGS:

21. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply submitted on 27.05.202, the documents submitted by the assessee and oral submission made during the course of hearing by authorized representative of the assessee.

22. On going through the SCN, I find that basically the essence of the case is that data of Sales /Gross receipt from services/ Total Amount Paid/Credited under 194C, 194H, 194I, 194J" were shared by the CBDT for FY 2015-16 and 2016-17. The difference in taxable value was worked out after comparing the income declared in ITR /Form 26AS vis-à-vis taxable value disclosed in ST-3 Returns. The difference of Rs. 29,30,93,347/- in value was observed for FY 2015-16 and 2016-17, therefore, it was alleged that the



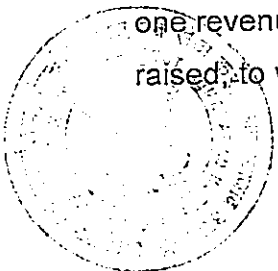
assessee had short paid the service tax of Rs. 4,21,12,083/- on such differential value, for providing the taxable service. Therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 4,21,12,083/- on the taxable value of Rs. 29,30,93,347/- for the Financial Year 2015-16 and 2016-17 under proviso to section 73(1) of Finance Act, 1994 or not.

23. I find from the available records that the assessee is proprietorship firm and Shri Jignesh Jagdishkumar Patel is a proprietor of the firm and he runs his business in the name of M/s. Jagdish Construction Co.

24. I find that the assessee have submitted their written submission dated 27.05.2021 along with the following documents.

- Audited P&L statement for FY 2015-16 and 2016-17
- ST-3 Returns for FY 2015-16 and 2016-17
- Form 26AS for FY 2015-16 and 2016-17
- Copy of summons dated 17-08-2020 and reply dated 21.08.2020 along with Reconciliation Statement of Books of A/c and 26AS for FY 2014-15, 2015-16, 2016-17 with Bills dated 10-01-2016 and 21-10-2016
- Letter dated 15-4-2021 from Office of AC, Div. VI, Ahmedabad North seeking explanation and reply dated 27-4-21 filed with office of AC, Div. VI, Ahmedabad North seeking time
- Copy of Email dated 22-4-2021 from Department along with letter dated 22-4-21 received at 9.48 pm granting Pre-SCN Consultation on 23-4-2021 and their reply email dated 23-4-21
- Reconciliation for 2015-16 to June, 2017 provided to Service Tax Audit Commissionerate on 14-12-2020
- Final Audit Report No. CE/ST-1224/2020-21 dated 11-05-2021 for period from April, 2016 to June, 2017

25. I find that that the assessee in their defence reply has stated that the audit of the their records has been conducted by the audit department and they have submitted the copy of the Final Audit Report No. CE/ST-1224/2020-21 dated 11.05.2021. On the basis of which, they have contested that the demand of service tax for 2015-16 and 2016-17 is not proper and illegal. On perusing the said audit report, I find that the audit of the assessee was conducted on 12.03.2021 covering the period from FY 2016-17 to 2017-18 (upto June 2017). It is also apparent that the audit has not noticed any short payment of service tax for providing the service by the assessee during the said period. The only one revenue para regarding non payment of service tax under RCM on legal service was raised, to which the assessee had agreed and they had paid the amount of Rs. 7350/-



as pointed out by the audit. I find that as per Rule 5A(2) of the Service tax Rules 1994, the assessee was required to produce all the records maintained/ prepared in terms of sub-rule 2 of Rule 5 of Service tax Rules 1994, to the audit party deputed by the department for scrutiny of the same. The Rule 5A of Service Tax Rules, 1994 is reproduced as follows:

Rule [5A. Access to a registered premises. — (1) An officer authorised by the [Principal Commissioner or Commissioner, as the case may be] in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

[(2) Every assessee shall, on demand, make available to the officer authorised under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor-General of India or a cost accountant or chartered accountant nominated under section 72A of the Finance Act, 1994, -

- (i) the records maintained or prepared by him in terms of sub-rule (2) of rule 5;*
- (ii) the cost audit reports, if any, under section 148 of the Companies Act, 2013 (18 of 2013); and*
- (iii) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961),*

for the scrutiny of the officer or audit party or the cost accountant or chartered accountant, within the time limit specified by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be.]

25.1 The Rule 5A(2), inter alia, provides for scrutiny of records by the audit party deputed by the Commissioner. Such scrutiny essentially constitutes audit by the audit party consisting of departmental officers. Therefore, relying on the Final Audit Report, I find that there is no short payment on the part of the assessee for FY 2016-17. Therefore, demand of service tax vide subject SCN for 2016-17 without verification of records and only on account of difference in taxable value, that too was on wrong set of facts, is bad in law and is absolutely incorrect and is not justified.

26. I find that the assessee has vehemently denied the charges levelled against them and has contested that though they have filed ST-3 Returns but the value of service shown in the ST-3 Returns for FY 2015-16 and 2016-17, have not been taken into consideration while computing the difference in value of service as reflected in their Form 26AS vis-à-vis ST-3 Returns for FY 2015-16 and 2016-17. The assessee has also contested that the SCN was issued presuming Gross Receipts as reflected in Form 26AS as taxable value despite the fact that from that value deduction had to be made for value of exempt services, abatement and value on which service tax was already paid as per ST-3 returns already filed. In support of their arguments they have provided the reconciliation statement of income as reflected in ST-3 returns vis-a-vis Income as per P&L Accounts and Form 26AS.

27. As regards the assessee's contention for the department not taking cognizance of ST-3 Returns for FY 2015-16 and 2016-17 for demanding service tax from them, I find that the assessee has produced the copy of ST-3 Returns for FY 2015-16 and 2016-17 filed by them alongwith their written submission dated 27.05.2021. On perusing the said ST-3 Returns filed by the assessee, the following details are forthcoming:

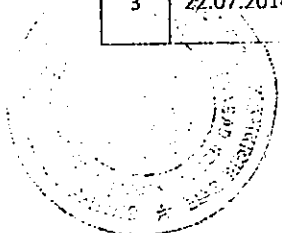
Details as per ST-3 Returns for FY 2015-16				
Description of service Provided: Works Contract Service				
	Period	Apr 2015-Sep 2015	Oct 2015-March 2016	Total
	Gross amount in relation to service provided or to provided (including exempt and export of service)	49915497	87323015	137238512
Less	Amount charged for Exempted service	0	44991876	44991876
	Amount liable to tax	49915497	42331139	92246636
Less	Amount claimed as Abatement	29949299	25398683	55347982
	Net Taxable Value	19966198	16932456	36898654
	Total Service Tax Paid (in Rs.)	2687032	2524350	5211382

Details as per ST-3 Returns for FY 2016-17				
Description of service Provided: Works Contract Service				
	Period	Apr 2016-Sep 2016	Oct 2016-March 2017	Total
	Gross amount in relation to service provided or to provided (including exempt and export of service)	51937736	74863349	126801085
Less	Amount charged for Exempted service	29426891	16699851	46126742
	Amount liable to tax	22510845	58163498	80674343
Less	Amount claimed as Abatement	13506507	34898099	48404606
	Net Taxable Value	9004338	23265399	32269737
	Total Service Tax Paid (in Rs.)	1350652	3489809	4840461

27.1 It is quite clear that contrary to the bland assertion of the department that the assessee had not filed the ST-3 Returns for the period, the facts are totally different as can be seen above. The assessee had filed the service tax returns for the period. Further, it is discerned from the said service tax returns that the assessee has provided the service under category of "Works Contract Service" and has availed the benefit of abatement under Notification No. 024/2012-ST (Sr. No. 1) and benefit of exemption from payment of tax under Notification No. 25/2012-ST (Sr. No. 12A(a)), 30/2012-ST (Sr. No. 9) and 09/2016-ST (Sr. No. 1(a)(iv) i.e Sr. No. 12A).

27.2. The assessee has provided the work orders and agreements vide mails dated 26.04.2022 as mentioned in para 19 above, in support of their claim of exemption and abatement available to them. The details of work awarded and contractee and principal contractor are as under:

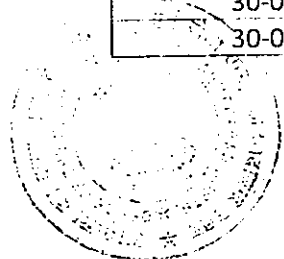
Sr. No.	Agreement dt.	Principal Contractor	Work Order Issued by	Nature of Work	Amount of contract
1	22.01.2014	Jay Construction Co.	Gujarat Council of Elementary Education (Sarva Siksha Abhiyan)	Construction of class rooms	21818118
2	22.01.2014	Jay Construction Co.	Gujarat Council of Elementary Education (Sarva Siksha Abhiyan)	Construction of class rooms	21819486
3	22.07.2014	Jay Construction Co.	Gujarat Council of Elementary Education (Sarva Siksha Abhiyan)	Construction of class rooms	19628085



4	20.12.2014	Jay Construction Co.	Gujarat Council of Elementary Education (Sarva Siksha Abhiyan)	Construction of class rooms and electric work	30166330
5	27.05.2015	Jay Construction Co.	Gujarat Council of Elementary Education (Sarva Siksha Abhiyan)	Construction of class rooms	13607104
6	03.08.2015	Jay Construction Co.	Gujarat Council of Elementary Education (Sarva Siksha Abhiyan)	Construction of class rooms and staff quarters	17155999
7	03.08.2015	Jay Construction Co.	Gujarat Council of Elementary Education (Sarva Siksha Abhiyan)	Upgradation of school, construction of school and quarters	11729513
					135924635
1	WO dated 01.03.2014	Krishna Construction Co.	Ahmedabad Municipal Corporation	Development of Lambha Lake in South Zone Ahmedbad	147751532
1	22.01.2014	Samarth Builders	Gujarat Council of Elementary Education (Sarva Siksha Abhiyan)	Construction of class rooms	23500302
2	22.07.2014	Samarth Builders	Gujarat Council of Elementary Education (Sarva Siksha Abhiyan)	Construction of class rooms	13585410
3	22.07.2014	Samarth Builders	Gujarat Council of Elementary Education (Sarva Siksha Abhiyan)	Construction of class rooms	12165620
4	27.05.2015	Samarth Builders	Gujarat Council of Elementary Education (Sarva Siksha Abhiyan)	Construction of class rooms	16414832
5	03.08.2015	Samarth Builders	Gujarat Council of Elementary Education (Sarva Siksha Abhiyan)	Construction of class rooms	20082247
					85748411

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

Details of FORM 26AS for FY 2015-16			
Transaction date	Amount paid/credited	Name of TDS Deductor	Section under which TDS deducted
31-03-2016	2395835	Jay Construction Co.	194C
31-03-2016	2917448	Jay Construction Co.	194C
31-03-2016	3547380	Jay Construction Co.	194C
31-03-2016	3442107	Jay Construction Co.	194C
22-03-2016	4105222	Jay Construction Co.	194C
08-02-2016	2254200	Jay Construction Co.	194C
08-02-2016	25900	Jay Construction Co.	194C
30-01-2016	56100	Jay Construction Co.	194C
30-01-2016	4882718	Jay Construction Co.	194C
19-01-2016	5078280	Jay Construction Co.	194C
18-10-2015	4865385	Jay Construction Co.	194C
18-10-2015	3319863	Jay Construction Co.	194C
18-10-2015	6474448	Jay Construction Co.	194C
03-08-2015	9091124	Jay Construction Co.	194C
27-06-2015	5954870	Jay Construction Co.	194C
22-06-2015	4079416	Jay Construction Co.	194C
13-05-2015	12232926	Jay Construction Co.	194C
Sub Total	74723222		
31-03-2016	3724686	Samarth Builders	194C
22-03-2016	5344798	Samarth Builders	194C
26-02-2016	7376107	Samarth Builders	194C
30-01-2016	3790476	Samarth Builders	194C
30-01-2016	261400	Samarth Builders	194C
20-10-2015	3879427	Samarth Builders	194C
30-09-2015	2357583	Samarth Builders	194C
30-09-2015	4585371	Samarth Builders	194C



08-07-2015	2920373	Samarth Builders	194C
30-06-2015	5084779	Samarth Builders	194C
22-06-2015	6285517	Samarth Builders	194C
07-04-2015	2164035	Samarth Builders	194C
Sub Total	47774552		
31-03-2016	26787232	Krishna Construction Co	194C
30-10-2015	12064997	Krishna Construction Co	194C
31-05-2015	5266502	Krishna Construction Co	194C
Sub Total	44118731		
Grand Total	166616505		

Details of FORM 26AS for FY 2016-17			
Transaction date	Amount paid/credited	Name of TDS Deductor	Section under which TDS deducted
31-03-2017	1316991	Jay Construction Co.	194C
02-02-2017	6149515	Jay Construction Co.	194C
15-11-2016	8604822	Jay Construction Co.	194C
15-11-2016	1507253	Jay Construction Co.	194C
18-10-2016	2277376	Jay Construction Co.	194C
17-10-2016	8796368	Jay Construction Co.	194C
31-08-2016	2499424	Jay Construction Co.	194C
31-08-2016	6400728	Jay Construction Co.	194C
03-06-2016	4826245	Jay Construction Co.	194C
24-05-2016	4329092	Jay Construction Co.	194C
21-05-2016	566601	Jay Construction Co.	194C
Sub Total	47274415		
31-03-2017	5884609	Samarth Builders	194C
28-03-2017	3592650	Samarth Builders	194C
14-03-2017	14832133	Samarth Builders	194C
31-12-2016	2839048	Samarth Builders	194C
15-11-2016	4315866	Samarth Builders	194C
31-08-2016	6729380	Samarth Builders	194C
31-08-2016	2277116	Samarth Builders	194C
Sub Total	40470802		
31-03-2017	3425227	Krishna Construction Co.	194C
31-10-2016	13274624	Krishna Construction Co	194C
30-09-2016	8404523	Krishna Construction Co	194C
31-08-2016	13627251	Krishna Construction	194C
Sub Total	38731625		
Grand Total	126476842		

27.4 As per the 26AS, the Income has been shown under Section 194C of Income Tax Act 1961 which is for Contract Income. Further, the value difference as worked out in the SCN for FY 2015-16 and 2016-17 is found to be tallying with the total amount credited/paid as per Form 26AS. It is rather shocking that no data from the service tax returns have been taken into consideration by the department in computing the tax liability of the assessee, as is evident from the table (for computation of service tax) provided in the subject SCN though the returns for 2015-16 and 2016-17 had been filed by the assessee. Therefore, it is evident that the entire amount credited/paid as per Form 26AS has been considered as differential value of taxable service provided by the

assessee, without taking cognizance of taxable value disclosed in the ST-3 Returns filed by the assessee.

27.5 I therefore find that it is an unfortunate fact that the Assessee's contentions of department not taking cognizance of ST-3 Returns filed by them for FY 2015-16 and 2016-17 for demanding service tax from them, is quite correct.

28. I find that the assessee has provided reconciliation statement of income from providing service as disclosed in ST-3 for FY 2015-16 to 2016-17 vis-a-vis P&L accounts and Form 26AS. The image of the same is reproduced hereunder for ready reference. The figures reported in the reconciliation statements and remarks is found to be correct as per P&L accounts/ 26AS and ST-3 Returns.

JAGDISH CONSTRUCTION CO. (Service Tax Registration No. AFKPP5171LSD001)

Reconciliation Statement OF Service tax Return and Books of Account period 1.4.2015 to 30.6.2017

PARTICULARS	AS PER ST-3				AS PER BOOKS OF ACCOUNTS				DIF	REMARKS
	2015-16	2016-17	2017-18	TOTAL	2015-16	2016-17	2017-18	TOTAL		
TOTAL SERVICE	138238512	126801085	12189996	277225593	165025744	126801085	12189996	304016825	26787232	Krishna Cont. RA BJR of 31.3.16 Book Entry pass after Service Tax Return file (At the time of I.T.Audit) This Service are fully Exempt (Work Name : Construction of Lambha Lact. Ahmedabad
EXEMPT SERVICE	44991876	46126742	0	91118618	71779108	46126742	0	117905850	26787232	
TAXABLE SERVICE	92246636	80674343	12189996	185110975	93246636	80674343	12189996	186110975	1000000	Basic Exemption
60% AMOUNT CLAIMED AS ABATMENT	55347982	48404606	7313998	111066585	55947982	48404606	7313998	111666585	600000	
TOTAL AMOUNT CLAIMED AS DEDUCTION	100339858	94531348	7313998	202185203	127727090	94531348	7313998	229572435	27387232	
TOTAL TAXABLE SERVICE	37898654	32269737	4875998	75044390	37298654	32269737	4875998	74444390	600000	
SERVICE TAX PAYABLE	14	5033817	4517763	682640	10234220	5081817	4517763	682640	10282220	48000
I.C. PAYABLE	2	15839	0	15839	16799	0	0	16799	960	
S. & H.E. PAYABLE	1	7920	0	7920	8400	0	0	8400	480	
SOC PAYABLE	0.5	76903	161349	24380	262632	76903	161349	24380	262632	0
KKC PAYABLE	0.5	0	161349	24380	185729	0	161349	24380	185729	0
TOTAL SERVICE AS PER BOOK	5134479	4840461	731400	10706339	5134479	4840461	731400	10706339	0	
DIF	0	0	0	0	0	0	0	0	0	

PARTICULARS	AS PER ST-3				AS PER BOOKS				DIF
	2015-16	2016-17	2017-18	TOTAL	2015-16	2016-17	2017-18	TOTAL	
PAID IN CASH	5134479	4840460	731400	10706339	5134479	4840461	731400	10706339	0
PAID BY CENVAT CREDIT	0	0	0	0	0	0	0	0	0
TOTAL SERVICE TAX PAID IN CASH AND THROUGH CENVAT CREDIT	5134479	4840460	731400	10706339	5134479	4840461	731400	10706339	0
INTEREST PAID	150911	73752	14428	239091	150911	73752	14428	239091	0
LATE FEE PAID	500	0	500	1000	500	0	500	1000	0
TOTAL SERVICE TAX AND	5285890	4914212	745828	10945930	5285890	4914213	745828	10945930	0

Notes: In 1st Half Basic Exemption Limit Rs. 10,00,000/- are Deduct in ST-3 (50915497-1000000 = 49915497)

125

28.1 The assessee has also provided the reconciliation statement of taxable value /income from service disclosed in ST-3 returns vis-a-vis Form 26AS for FY 2015-16 and 2016-17 and has explained the difference therein. As demand of service tax on differential value of service tax has been worked out on the basis of Form 26AS in the subject SCN, the reconciliation for FY 2015-16 and 2016-17, on the basis of the said statement, Form 26AS and ST-3 Returns has been worked out as under:

Reconciliation of Income /Taxable value of service for FY 2015-16		
Income from rendering work contract service (in Rs.)		
As per Form 26AS	As per ST-3	Diff (A-B)
A	B	C
166616505	137238512	29377993

Less : Amount received from M/s. Krishna Construction Co., which was received after filing of the ST-3 return for 2015-16, the amount has been credited on 31.03.2016 and was booked in 26AS on 17.05.2016. The Service (Development of Lambha Lake in Ahmedabad) provided to AMC is exempt in terms of Sr. 12A of 25/2012-ST.	26787232
Less: Previous years' entry, the amount has been received from SAMARTH Builders and credited 07.4.2015 in FORM 26AS and was booked on 24.07.2015. The said work is exempt in terms of Sr. 12A of 25/2012-ST.	2164035
Less : Basic Exemption availed	1000000
Net Difference	-573274

28.2 I find that the details provided above in the table, are found to be tallying with Form 26AS and ST-3 returns and deduction/ explanation provided made in the statement is proper and correct as per the documents available on records. I find that M/s. Krishna Construction had subcontracted the work of development of Lambha Lake to the assessee, which was awarded to them by Ahmedabad Municipal Corporation. The work agreement was entered into by them prior to 01.03.2015 and Ahmedabad Municipal Corporation being local authority, the exemption from payment of service tax was available to the assessee under Sr. No, 12A(a) / 29 of 25/2012-ST read with section 102 of the Finance Act, 1994. Similarly, M/s. Samartha Builders had subcontracted the work of Construction of Classrooms to the assessee, which was awarded to them by Gujarat Council for Elementary Education (GCEE). Gujarat Council for Elementary Education is an administrative agency of Department of Education Gujarat Government. The council is responsible for administration of elementary education in the state as well as implementing state level agency for Serva Siksha Abhiyan. The Council has been registered under the Societies Registration Act 1860. The work agreement was entered into by them prior to 01.03.2015 and Council being Governmental authority, the exemption from payment of service tax was available to the assessee under Sr. No, 12A(a) and (b) / 29 of 25/2012-ST read with section 102 of the Finance Act, 1994. As regards deduction claimed by the assessee on account of taxable value of services upto Ten Lakh Rupees available for small services providers, it is apparent from the reconciliation statement that the service was mainly provided to M/s. Krishna Construction Co., M/s. Samarth Builders and M/s. Jay Construction during 2014-15 and assessee has considered this service to be exempt service. I find that the SCN does not cover the period 2014-15, and no other documents contrary to the claim of assessee is available on records or has been adduced by the department, the claim of exemption upto ten lakh rupees has to be accepted.

Reconciliation of Income /Taxable value of service for FY 2016-17		
Income from rendering work contract service (in Rs.)		
As per Form 26AS	As per ST-3	Diff (A-B)
A	B	C
126476842	126801085	-324243



28.3 From the above comparison of taxable value of service, the taxable value of service disclosed in ST-3 returns filed by the assessee for FY 2016-17, is higher than the taxable value (Receipt from contract) as reflected in corresponding Form 26AS. Hence, I find that there is no difference in taxable value of service as alleged in SCN for FY 2016-17.

29. From the above factual matrix, and documents submitted by the assessee, I find the difference in the value of service as alleged in the subject SCN is on account of the taxable value of service disclosed in ST-3 returns filed by the assessee being not taken into consideration while computing the service tax liability for FY 2015-16 and 2016-17 by the department. Therefore, I find that the entire demand has been raised on the presumption that the amount credited to the assessee as per Form 26AS was the differential value of taxable service. I also find that the assessee in response to the summon dated 17.08.2020, had submitted various document vide their letter dated 21.08.2020 to Jurisdictional Range Superintendent, however, the SCN has not brought these facts on records or has not given any reason for not accepting the reply of the assessee. I also find that no primary verification appear to have been carried out by the department on the basis of reply. I also find that apart from the differences noticed in the figures reported in ST-3 returns and in Form 26AS, that too based on wrong set of facts, the department has not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non payment of such high quantum of service tax. I find that the SCN is basic and crucial foundation of adjudication process. If the allegations in SCN are not specific and on the contrary vague, lack details and /or unintelligible, then the SCN is not tenable and sustainable in eyes of law. In this regard, I rely on the decision of the Hon'ble Supreme Court in the case of *BRINDAVAN BEVERAGES (P) LTD* [2007 (213) E.L.T. 487 (S.C.)], wherein it was held that "*SCN is foundation on which the Department has to build up its case - If allegations in show cause notice not specific and on the contrary vague, lack details and/or unintelligible, sufficient to hold that noticee not given proper opportunity to meet allegations indicated in show cause notice*". I also rely on the decision of the Hon'ble Supreme Court in the case of *GARWARE NYLONS LTD* [1996 (87) E.L.T. 12 (S.C.)] wherein it was held that "*The burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority*". Having considered these factual and documentary evidences available on records and legal precedents, I find that there is no short payment of service tax by the assessee.



Thus, the subject SCN is liable to be dropped on merits being incorrect and legally not sustainable.

30. In view of the aforementioned detailed discussion and in view of the facts and circumstances pertaining to the subject case, the demand is also not tenable in law as there is no suppression of facts whatsoever as alleged in the SCN, as it was based on wrong set of facts. It is also pertinent that the department had undertaken audit of the assessee for the FY 2016-17 and 2017-18 (upto June 2017) on 12.03.2021 and had not come with any para apart from non payment of service tax of Rs. 7350/- on legal service by the assessee under RCM. Therefore, invocation of extended period of five years is not sustainable as well. Accordingly, the SCN fails on this count as well and issuance of SCN beyond 30 months from the relevant date is barred by limitation. Further, since there is no short payment of tax by the assessee, no penalty is imposable as proposed in the impugned SCN. Similarly, no interest is leviable from the assessee.

In view of the above discussion and findings, I pass the following order:

ORDER

I drop the proceedings initiated against M/s. Jignesh Jagdishkumar Patel, 137, Shiv Ganesh Bunglow, Sola Over Bridge, Thaltej, Ahmedabad -380054, vide Show Cause Notice F.No. STC/15-182/OA/2021-22 dated 23.04.2021.

(Upendra Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.

By Regd. Post AD./Hand Delivery
F.No. STC/15-182/OA/2021-22

Date: .05.2022.

To
M/s. Jignesh Jagdishkumar Patel,
137, Shiv Ganesh Bunglow,
Sola Over Bridge,
Thaltej, Ahmedabad -380054

Copy to:

- 1 The Principal Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
- 2 The Deputy/Assistant Commissioner, CGST & C.Ex., Division-VI, Ahmedabad North.
- 3 The Superintendent, Range-II, Division-VI, Ahmedabad North.
- 4 The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- 5 Guard File.

