


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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO. STC/15-201/OA/2021-22

DIN : 20220664WT0000777A4D

आदेश की तारीख / Date of Order : 17.06.2022
जारी करने की तारीख / Date of Issue : 17.06.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV
आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 06/2022-23

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।

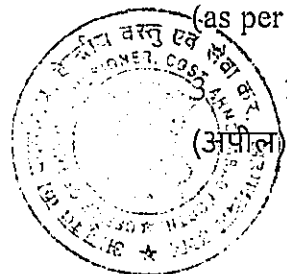
Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax 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)

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- 06 /2022-23

M/s. Piyushkumar Babubhai Modi, GF 20, Birva Raw House, Nr. Purshottam Nagar Bus Stop, Bopal, Ahmedabad- 380058 were issued SCN No. STC/15-201/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. PIYUSHKUMAR BABUBHAI MODI, ARE AS FOLLOWS:

M/s. Piyushkumar Babubhai Modi, GF 20, Birva Raw House, Nr. Purshottam Nagar Bus Stop, Bopal, Ahmedabad- 380058 (hereinafter referred to as the 'noticee' for the sake of brevity) were engaged in providing taxable services. It also appeared that the noticee having PAN No. AJHPM1827D, was not registered with Service tax department.

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. Piyushkumar Babubhai Modi, 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. It appeared that as per the information received from the Income Tax Department, the said noticee had earned substantial amount of service income from "sales of service" (as per ITR) during FY 2015-16 and 2016-17, however, noticee had not obtained the service tax registration and had not paid service tax thereon.

4. Since the noticee had failed to provide the required details of services provided during the Financial Year 2015-16 and 2016-17, the service tax liability was required to be ascertained on the basis of income from sale of service mentioned in the ITR Return OR amount paid to the noticee for providing services as per Form 26AS. Therefore, the figures/data provided by the Income Tax Department were considered to be total taxable value in terms of Section 67 of the Finance Act, 1994 for ascertaining the service tax liability on the noticee. By considering the "sales of services under Sales/ Gross Receipts from services (Value from ITR)" as provided by the income tax department, the service tax liability for FY 2015-16 and 2016-17 was calculated as under:



Sr. No.	Financial Year	Sales /Gross Receipts from Services (ITR) (in Rs.)	Service Tax (in Rs.)
01.	2015-16	7,92,86,966	1,10,62,074
02.	2016-17	6,08,09,648	90,70,633
		14,00,96,614	2,01,32,707

Therefore, it appeared that the said noticee had not paid service tax to the extent of Rs. 2,01,32,707/- (including Cess) on the Gross receipts from Services.

It appeared that the activities carried out by the noticee for a consideration were falling under the definition of service and the said services appeared to be not covered under the negative list of services provided under Section 66D of the Finance Act, 1994 as well as not covered under exemption notification. Hence, the said services provided by the noticee, appeared to be subjected to service tax under Section 66B of the Finance Act, 1994.

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.

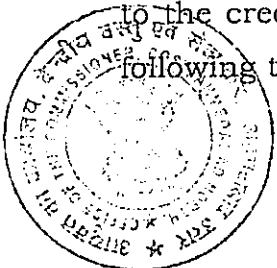
6. As per the provisions of Section 70 (Furnishing of Returns) of the Finance Act, 1994:

“(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

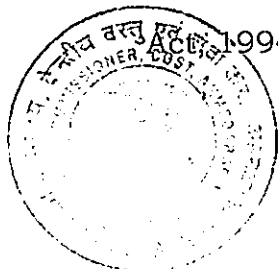


the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that the noticee shall submit their Service Tax returns in the form ST-3 within the prescribed time.

9. As per Section 69(1) of the Act, every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise. Further, as per Section 69(2) of Finance Act, 1994, any service provider, whose aggregate value of taxable service in a financial year exceeds 9 lakhs is required to take Registration. Further, according to Notification No. 33/2012 -ST dated 20.06.2012, Central Government had exempted taxable service of aggregate value not exceeding ten lakh rupees in preceding year from the whole of the Service Tax leviable thereon under Section 66B of the Finance Act, 1994. Therefore, it appeared that the noticee was required to obtain Service tax Registration and comply with the service tax laws accordingly.

10. From the documentary evidence available at the relevant time, it appeared that the said noticee had failed to pay/deposit Service Tax to the extent of Rs. 2,01,32,707/- (including Cess) which was arrived at on the basis of "Sales /Gross Receipts from Services (ITR)" during the Financial Year 2015-16 and 2016-17. The said non payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said noticee had failed to discharge the Service Tax liability of Rs. 2,01,32,707/- (including Cess) worked out on value of Rs. 14,00,96,614/- 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.

11. Therefore, it appeared that the said noticee 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; (vi) 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) contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them (viii) also contravened the provision of section 69 in as much as they did not obtain the service tax registration.

12. It had been noticed that at no point of time, the noticee 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 noticee had knowingly suppressed the facts regarding receipt of/providing of services by them, and thereby not paid/deposited Service Tax thereof to the extent of Rs. 2,01,32,707/-. 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 noticee which were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

13. 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 noticee had not-paid Service Tax of Rs. 2,01,32,707/- 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 noticee had suppressed the facts from the department and had contravened the provisions with an intent to evade payment of Service Tax. The said noticee had not discharged their Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.



14. All the above acts of contravention on the part of the said noticee 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. 2,01,32,707/- (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.

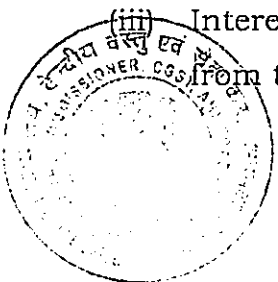
15. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In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

16. In addition to the contravention, omission and commission on the part of the said noticee as stated in the foregoing paras, it appeared that the said noticee 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.

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

- (i) The service rendered by the noticee should not be considered as "taxable service" under Section 65 of the Finance Act, 1994 and the total/gross amount of Rs. 14,00,96,614/- received towards provision of such services, should not be considered as taxable value charged for the said service by the noticee for FY 2015-16 and 2016-17.
- (ii) An amount of Service Tax of Rs. 2,01,32,707/- (Rupees Two Crore One Lakh Thirty Two Thousand Seven Hundred Seven Only) not paid for FY 2015-16 and 2016-17, should not be confirmed and recovered from the noticee 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 Section 75 of the Finance Act, 1994;



- (iv) Prescribed late fees should not be recovered under Rule 7C of Service Tax Rules 1994 read with Section 70 of the Finance Act, 1994;
- (v) Penalty should not be imposed upon the noticee under the provision of Section 76 of the Finance Act, 1994 for failure to make payment of service tax payable by them.
- (vi) Penalty should not be imposed upon the noticee under the provision of Section 77(1) of the Finance Act, 1994, for failure to take service tax registration as per the provisions of Section 69 of the Finance Act, 1994.
- (vii) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994.

DEFENCE REPLY:

18. The noticee vide their letter dated 25.05.2021 submitted their written submission, wherein they interalia have stated that:

- Their business was of building Roads on behalf of AUDA (Ahmedabad Urban Development Authority), Govt. Department for use by general public.
- The Road construction is exempt from the service tax by virtue of Entry No. 13(a) of Notification No. 25/2012-Service Tax date 20.06.2012.
- In support of their submission they have enclosed the copy of ITR and Computation of Income, Audited P&L and Balance Sheet, Form 26AS for 2015-16 and 2016-17. They have also enclosed the details of work done, copy of their bill, department bill, work order copy, in case of sub contract the copy of agreement with main contractor and work order issued to the main contractor.
- The entire work carried out by them was road construction for general public and hence the service provided was exempt service. In view of this, they vide their written reply requested to drop the demand.

PERSONAL HEARING:

19. Personal Hearing was granted to the noticee on 13.05.2022, which was attended by Shri Sunil Sanghvi, CA and Shri Rajesh Mehta, as authorized by the noticee. During the course of hearing, they made reference to their earlier written submission dated 25.05.2021 and stated that their activity was exempted from payment of service tax as they were engaged in providing Road



Construction services to AUDA and Other Government Departments. They requested to drop the SCN in the interest of justice.

DISCUSSION AND FINDINGS:

20. 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 25.05.2021, the documents submitted by the noticee and oral submission made during the course of hearing by the authorized representatives of the noticee.

21. On going through the SCN, I find that basically the essence of the case is that data of "Sales /Gross Receipts from Services (value from ITR)" / "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" (as per TDS Statement-Form 26AS) were shared by the CBDT for FY 2015-16 and 2016-17. It was observed from the data that the noticee had Sales/ Gross Receipt of Rs. 14,00,96,614/- for FY 2015-16 and 2016-17 from providing services and they had not paid service tax on it. Therefore, it was alleged that the noticee had not paid the service tax of Rs. 2,01,32,707/- on such sales/gross receipts, 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 noticee is liable to pay service tax of Rs. 2,01,32,707/- on the sales/gross receipts of Rs. 14,00,96,614/- as per the data shared by the CBDT for the Financial Year 2015-16 and 2016-17 under proviso to section 73(1) of Finance Act, 1994 or not.

21.1 I find from the available records that the noticee is proprietorship firm and Shri Piyushkumar Babubhai Modi is a proprietor of the firm and he runs his business in the name of M/s. Rutvi Construction.

22. I find that the noticee vide their letter dated 25.05.2021 has submitted their written submission wherein they have contested that services provided by them were Road Construction Services for use by the general public, pursuant to contracts awarded by AUDA (government department) either directly or indirectly and since the said service were covered under Entry No. 13(a) of Notification No. 25/2012-ST dated 20.06.2012, the said services were exempt form service tax. In support of their defence, they have submitted the documents i.e. copy of ITR and Computation of Income, Audited P&L and Balance Sheet, Form 26AS for 2015-16 and 2016-17, copy of their bill, department bill, work order copy, sub contract agreement with main contractors and work order issued to the main contractor.



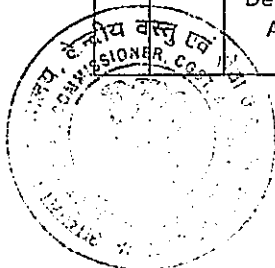
23. I find from the data shared by the CBDT that the noticee was paid/credited the amount of Rs. 7,92,86,966/- and Rs. 6,08,09,648/-, as disclosed by the tax deductor under section 194C of the Income Tax Act during FY 2015-16 and 2016-17 respectively. I find that Section 194C of the Income Tax Act deals with the tax deduction at source (TDS) and that is to be compulsorily deducted from any payments that have been made to any person who is a resident contractor or a subcontractor. Therefore, any amount paid/credited on which TDS has been deducted under Section 194C is contract income. I find that the noticee has admittedly stated in their written submission dated 25.05.2021 that they had provided the service of Road Construction services to government, therefore, I find that there is no dispute about the provision of services by the noticee.

24. I find that the SCN mentions of the sharing of data from ITR, however, on going through the said data shared by the CBDT, it is seen that the value of service provided by the noticee, has been derived from the data pertaining to amount paid/ credited to the noticee as disclosed by the tax deductor (service recipients) under Section 194C of the Income Tax Act, and not from the ITR as has been mentioned in the subject SCN. I also find that the said value of service /amount are found to be tallying with Form 26AS for FY 2015-16 and 2016-17. Hence, I proceed with these data i.e data of Form 26AS (amount paid or credited to the noticee) for deciding the matter.

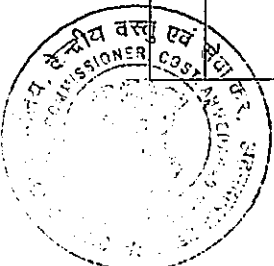
25. In order to ascertain the availability of the exemption from payment of service tax under Notification No. 25/2012- ST (Sr, No. 13(a)) or otherwise to the services rendered by the noticee, I would like to examine the documents submitted by the noticee alongwith their written submission dated 25.05.2021. On going through the Form 26AS, work orders, and department bill (RA bills), and Sales Bill, the following facts are emerging as under:

FY 2015-16

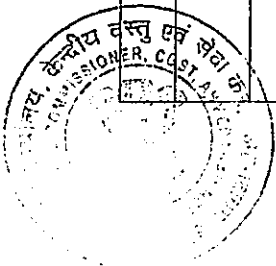
Sr. No.	As per Form 26AS statement				Documents produced and Nature of work done by the noticee as per RA Bills /other documents
	Name of the TDS deductor	Transacti on date	Amount paid /credited (Rs.)	TDS deducte d under Section 194C (Rs.)	
1 (i)	Ahmedabad Urban Development Authority	08-01-2016	178522	3570	<ul style="list-style-type: none"> • Bill No. 017 (15-16) dt, 08.01.2016 for Cleaning of state highway and service road between Indira Bridge to Preksha Bharti (Koba) in AUDA area. • 1st RA Bill



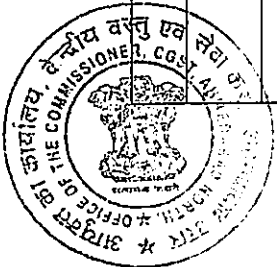
						<ul style="list-style-type: none"> • Work Order – Job No. 22/2014-15 dt. Nil issued by the Ex. En. Ahmedabad Urban Development Authority, Ahmedabad.
	(ii)		02-06-2015	183555	1836	<ul style="list-style-type: none"> • Bill No. 001(2015-16) dt. 30.04.2015 for Constructing protection wall providing laying 2000MM 900MM dia pipe stone pitching on 30 mtr road wide TP Roads in TP Scheme No. 241 Nana Chiloda (job No. 16/2014-15, • 3rd & Final RA Bill • Work Order dt 19.12.2014 (Job No. 16/2014-15) issued by Ex. En. Ahmedabad Urban Development Authority, Ahmedabad.
	(iii)		05-05-2015	1141583	11416	<ul style="list-style-type: none"> • Bill No. 002(2015-16) dt. 05.05.2015 for Constructing protection wall providing laying 2000MM 900MM dia pipe stone pitching on 30 mtr road wide TP Roads in TP Scheme No. 241 Nana Chiloda (job No. 16/2014-15, • 2nd RA Bill • Work Order 013456 dt 19.12.2014 (Job No. 16/2014-15) by Ex.En. Ahmedabad Urban Development Authority, Ahmedabad.
2	(i)	Dwarkesh Infrastructure P Ltd	31-07-2015	3358206	33582	<ul style="list-style-type: none"> • Bill No. 005(15-16) dt. 02.07.2015 for Construction of various TP Road in TP 6 Kalol in AUDA Area. (RW 13/2013-14) • 5th RA Bill by AUDA (Road Work No. 13/2013-14) • Work Order dated 15.04.2014 (for Subcontracting of work) issued by Dwarkesh Infrastructure Pvt Ltd (Item No. 1 to 10 of the work allotted to M/s. Dwarkesh Infrastructure P Ltd.). • Work Order No. 11873 for Road work 13/2013-14 issued to M/s. Dwarkesh Infrastructure P Ltd, by Ex.En. Ahmedabad Urban Development Authority, Ahmedabad
	(ii)		08-06-2015	6522405	65224	<ul style="list-style-type: none"> • Bill No. 004(15-16) dt. 08.06.2015 for Construction of various TP Road in TP 6 Kalol in AUDA Area. (RW 13/2013-14) • 4th RA Bill by AUDA (Road Work No. 13/2013-14) • Work Order dated 15.04.2014 (for Subcontracting of work) issued by Dwarkesh Infrastructure Pvt Ltd. (Item No. 1 to 10 of the work allotted to M/s. Dwarkesh Infrastructure P Ltd.). • Work Order No. 11873 for Road work 13/2013-14 issued to M/s. Dwarkesh Infrastructure P Ltd, by Ex.En. Ahmedabad Urban Development Authority, Ahmedabad
3	(i)	Fortune Builders	31-03-2016	3076017	30760	<ul style="list-style-type: none"> • Bill No. 021(15-16) dt. 14.03.2016 for Construction of various Road in TP 131 at Kathwada in AUDA area (RW No. 21/2014-15) • 2nd RA Bill • Sub Contract Agreement dated 19.09.2015 entered into by M/s. Fortune Builders and M/s. Rutvi Construction (the Noticee) for Construction of various Road



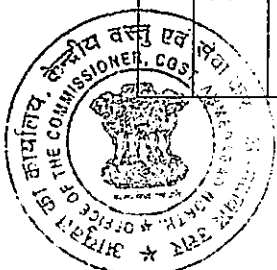
						in TP 131 at Kathwada in AUDA area (RW No. 21/2014-15)
	(ii)		06-11-2015	5592635	55927	<ul style="list-style-type: none"> Work Order No. 11046 dated 03.08.2015 for Construction of various TP Road at Kathwada in TPS 131 of AUDA Area. (RW 21/2014-15) issued to M/s. Fortune Builders by AUDA Bill No. 014(15-16) dt. 20.11.2015 for Construction of various Road in TP 131 at Kathwada in AUDA area (RW No. 21/2014-15) 1st RA Bill Sub Contract Agreement dated 19.09.2015 entered into by M/s. Fortune Builders and M/s. Rutvi Construction (the Noticee) for Construction of various Road in TP 131 at Kathwada in AUDA area (RW No. 21/2014-15) Work Order No. 11046 dated 03.08.2015 for Construction of various TP Road at Kathwada in TPS 131 of AUDA Area. (RW 21/2014-15) issued to M/s. Fortune Builders by AUDA
4	(i)	Kunj Corporation	13-07-2015	55000	550	<ul style="list-style-type: none"> Bill No. 008 (15-16) dated 13.07.2015 for Road work
	(ii)		07-07-2015	157000	1570	<ul style="list-style-type: none"> Bill No. 007 (15-16) dated 07.07.2015 for Road work
5		L G Chaudhary	31-03-2016	32937658	329376	<ul style="list-style-type: none"> Bill No. 003 (15-16) dated 07.05.2015 for Rs. 30,66,646/- for Construction of various Cat wide TP Road of Kathwada TP 131 in AUDA Area (RW 02 (13-14) 7th & Final Bill) issued by the noticee to M/s. L G Chaudhary. Bill No. 010 (15-16) dated 28.08.2015 for Rs. 50,86,235/- for Construction of various TP Road Scheme No. 79 Bhatt-Koteshwar in AUDA area (RW 02 (14-15) 1st RA Bill) issued by the noticee to M/s. L G Chaudhary. Bill No. 018 (15-16) dated 13.01.2016 for Rs. 1,19,28,397/- for Construction of various TP Road Scheme No. 79 Bhatt-Koteshwar in AUDA area (RW 02 (14-15) 2nd RA Bill) issued by the noticee to M/s. L G Chaudhary. Bill No. 020 (15-16) dated 01.03.2016 for Rs.1,28,56,380/- for Construction of various TP Road Scheme No. 79 Bhatt-Koteshwar in AUDA area (RW 02 (14-15) 3rd RA Bill) issued by the noticee to M/s. L G Chaudhary. RA Bills (four) issued by AUDA Subcontract Agreement dated 01.10.2013 entered into by M/s. Rutvi Construction (the noticee) with M/s. L.G. Chaudhary for Construction of various Cat wide TP Road of Kathwada TP 131 in AUDA Area (RW 02 (13-14)) excluding Asphalt work of the work awarded to M/s. L G Chaudhary. Work Order No. 09454 dated 13.09.2013 issued to M/s. L G Chaudhary, by Ex. En, Ahmedabad Urban Development Authority, Ahmedabad for construction of various Cat wide TP Road of Kathwada TP 131 in AUDA Area (RW 02 (13-14))



						<ul style="list-style-type: none"> • Work Order /Subcontract agreement dated 01.02.2015 entered into by M/s. Rutvi Construction (the noticee) with M/s. L.G. Chaudhary for Construction of various TP Road Scheme No. 79 Bhatt-Koteshwar in AUDA area (RW 02 (14-15)) excluding Asphalt work of the work awarded to M/s. L G Chaudhary. • Work Order No. 12072 dated 25.11.2014 issued by Ex. En, Ahmedabad Urban Development Authority, Ahmedabad for Construction of various TP Road Scheme No. 79 Bhatt-Koteshwar in AUDA area (RW 02 (14-15))
6	(i)	Narendrabhai Popatbhai Patel	28-03-2016	1515152	15152	<ul style="list-style-type: none"> • Bill No. 022 (15-16) dated 21.03.2016 for Providing and Laying of Sewerage Network in Bopal in AUDA Area- 5th RA Bill (Job No. 60/2014-15) issued by the noticee to M/s. N.P. Patel & Co. • RA Bill (5th) issued by Dy. Ex. En. Ahmedabad Urban Development Authority. • Subcontract Agreement dated 13.10.2015 entered into by M/s. Rutvi Construction (the noticee) with M/s. N. P. Patel & Co. 2016 for Providing and Laying of Sewerage Network in Bopal in AUDA Area (Job No. 60/2014-15) – Road work part of the work awarded to M/s. Narendra Popatbhai Patel. • Work Order No. 11788 dated 19.08.2015 issued by Ex. En, Ahmedabad Urban Development Authority, Ahmedabad for Providing and Laying of Sewerage Network in Bopal in AUDA Area (Job No. 60/2014-15). • Bill No. 019 (15-16) dated 15.02.2016 for Providing and Laying of Sewerage Network in Bopal in AUDA Area- 3rd RA Bill (Job No. 60/2014-15) issued by the noticee to M/s. N.P. Patel & Co. • Subcontract and work order are as per above. • Bill No. 016 (15-16) dated 16.12.2015 for Providing and Laying of Sewerage Network in Bopal in AUDA Area- 3rd RA Bill (Job No. 60/2014-15) issued by the noticee to M/s. N.P. Patel & Co. • RA Bill (3rd) issued by Dy. Ex. En. Ahmedabad Urban Development Authority. • Subcontract and work order are as per above • Bill No. 013 (15-16) dated 10.11.2015 for Providing and Laying of Sewerage Network in Bopal in AUDA Area- 2nd RA Bill (Job No. 60/2014-15) issued by the noticee to M/s. N.P. Patel & Co. • RA Bill (2nd) issued by Dy. Ex. En. Ahmedabad Urban Development Authority. • Subcontract and work order are as per above. • Bill No. 005 (15-16) dt 19.06.2015 for Construction of 15,12 and 9 mtr. Wide TP Road in TP 241 in AUDA Area (RW 09 (2013-14) issued to M/s. N.G. Project Ltd by the noticee. • RA Bill (6th) issued by AUDA
	(ii)		21-03-2016	505051	5051	
	(iii)		21-03-2016	1764368	17644	
	(iv)		15-02-2016	402141	4021	
	(v)		16-12-2015	1606003	16060	
	(vi)		10-11-2015	5453998	54540	
7		N G Projects Ltd.	19-06-2015	3580188	35802	



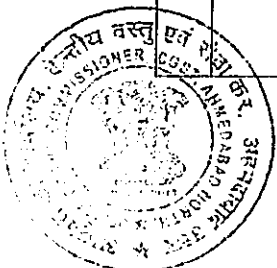
						<ul style="list-style-type: none"> • Subcontract Agreement dtd. 01.11.2013 entered into by M/s. Rutvi Construction (the noticee) with M/s. N. G. Projects Ltd. for Construction of 15,12 and 9 mtr. Wide TP Road in TP 241 in AUDA Area (RW 09 (2013-14))) excluding Asphalt work part of the contract awarded to M/s. N G Projects Ltd. • Work Order No. 10019 dt. 01.10.2013 issued to M/s. N G Projects Ltd., for Construction of 15,12 and 9 mtr. Wide TP Road in TP 241 in AUDA area (RW 09 (2013-14) by the Ex. En. Ahmedabad Urban Development Authority.
8	(i)	P R Patel & Company	12-12-2015	162831	1628	<ul style="list-style-type: none"> • Bill No. 015(15-16) dt 12.12.2015 for Providing & Laying WMM and PCC work (Affordable Housing at TP Scheme No. 60 Khodiyar MMGI and LIG in AUDA Area- Job No. 40,41, 42 (2013-14)) issued to M/s. P. R. Patel & Co. by M/s. Rutvi Construction (the noticee). • Sub contract agreement dated 01.10.2015 entered into by M/s. Rutvi Construction (the noticee) with M/s. P. R. Patel & Co. for work of Wetmix and PCC work part of the contract awarded to M/s. P. R. Patel & Co. • Work order No. 01362 dated 31.01.2014 issued to M/s. P. R. Patel, by AUDA for Affordable Housing at TP Scheme No. 60 Khodiyar MMGI and LIG in AUDA Area- Job No. 40,41, 42 (2013-14)).
	(ii)		30-10-2015	600470	6005	<ul style="list-style-type: none"> • Bill No. 012(15-16) dt 30.10.2015 for Providing & Laying WMM and PCC work (Affordable Housing at TP Scheme No. 60 Khodiyar MMGI and LIG in AUDA Area- Job No. 40,41, 42) issued to M/s. P. R. Patel & Co. by M/s. Rutvi Construction (the noticee). • Subcontract and work order are as per above.
9	(i)	Vishal Infra Global Pvt Ltd.	13-10-2015	4229059	42291	<ul style="list-style-type: none"> • Bill No. 011(15-16) dt 13.10.2015 for Construction of various road in TP 5 at Kalol in AUDA area- (RW No. 27 (2013-14)- 2nd RA Bill) issued to M/s. Vishal Infra Global Pvt Ltd. by M/s. Rutvi Construction (the noticee) • RA Bill (2nd) issued by Dy. Ex. En. Ahmedabad Urban Development Authority • Sub contract agreement dated 09.04.2015 entered into by M/s. Rutvi Construction (the noticee) with M/s. Vishal Infra Global Pvt Ltd., for Construction of various road in TP 5 at Kalol in AUDA area- (RW No. 27 (2013-14) except Asphalt part of the work contract awarded to M/s. Vishal Infra Global P L. • Work order No. 11592 dated 15.11.2014 issued to M/s. Vishal Infra Global P L for Construction of various road in TP 5 at Kalol in AUDA area- (RW No. 27 (2013-14)
	(ii)		24-07-2015	6265124	62651	<ul style="list-style-type: none"> • Bill No. 009(15-16) dt 24.07.2015 for Construction of various road in TP 5 at Kalol in AUDA area- (RW No. 27 (2013-14)- 1st RA Bill) issued to M/s. Vishal Infra Global Pvt



						Ltd. by M/s. Rutvi Construction (the noticee)
						<ul style="list-style-type: none"> RA Bill (1st) issued by Dy. Ex. En. Ahmedabad Urban Development Authority Subcontract and work order are as per above.
			Total	79286966	794656	

FY 2016-17

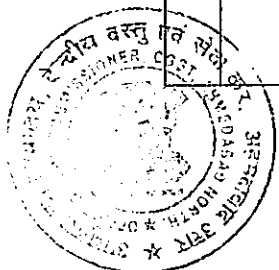
Sr. No.	As per Form 26AS statement				Documents produced and Nature of work done by the noticee as per RA Bills /other documents
	Name of the TDS deductor	Transaction date	Amount paid /credited (Rs.)	TDS deducted under Section 194C (Rs.)	
1	Ahmedabad Urban Development Authority	28-03-2017	1167026	11670	<ul style="list-style-type: none"> Bill No. 016 (16-17) dt. 27.03.2017 for Constructing of immediate start or restoration of TP Road of TPS from Shilaj Cross Road to Bhatt- Road work No. 21/2016-17. 1st RA Bill issued by Dy. Ex. En. Ahmedabad Urban Development Authority Work Order No. 03234 dated 21.03.2017 issued by the Ex. En. Ahmedabad Urban Development Authority, Ahmedabad for Constructing of immediate start or restoration of TP Road of TPS from Shilaj Cross Road to Bhatt- Road work No. 21/2016-17.
2	Akash Infra Projects Limited	28-02-2017	15117772	151178	<ul style="list-style-type: none"> Bill No. 15 (16-17) dated 10.03.2017 for Rs. 63,61,195/- issued to M/s. Akash Infra Projects Limited by the noticee for Constructing of 30,24,18,15,12 and 09 mtr remaining Roads in TPS No. 01 in Bareja in AUDA Area (Road Work No. 13/2015-16— 2nd RA Bill). Bill No. 12 (16-17) dated 10.03.2017 for Rs. 87,56,577/- issued to M/s. Akash Infra Projects Limited by the noticee for Constructing of 30,24,18,15,12 and 09 mtr remaining Roads in TPS No. 01 in Bareja in AUDA Area (Road Work No. 13/2015-16— 1st RA Bill). RA Bills(1st and 2nd) Subcontract agreement dated Nil entered into by M/s. into by M/s. Rutvi Construction with M/s. Akash Infra Projects Limited for Constructing of 30,24,18,15,12 and 09 mtr remaining Roads in TPS No. 01 in Bareja in AUDA Area (Road Work No. 13/2015-16) Work Order No. 11080 dated 23.08.2016 issued by the Ex. En. Ahmedabad Urban Development Authority, Ahmedabad for Constructing of 30,24,18,15,12 and 09 mtr remaining Roads in TPS No. 01 in Bareja in AUDA Area (Road Work No. 13/2015-16).
3	(i) Dwarkesh Infrastructure P Ltd	31-03-2017	1976903	19769	<ul style="list-style-type: none"> Bill No. 014(16-17) dt. 10.03.2017 for Construction of various TP Road in TP -109 Muthiya, Bilasiys, Hanspura in AUDA Area. (RW 06/2016-17) issued to M/s. Dwarkesh Infrastructure P L by the noticee.



					<ul style="list-style-type: none"> • 2nd RA Bill by AUDA (Road Work No. 06/2016-17) • Subcontract Agreement dated 21.01.2017 entered into by M/s. Rutvi Construction with M/s. Dwarkesh Infrastructure P L for Construction of various TP Road in TP -109 Muthiya, Bilasiys, Hanspura in AUDA Area. (RW 06/2016-17). • Work Order No. 17099 dated 20.12.2016 for Construction of various TP Road in TP -109 Muthiya, Bilasiys, Hanspura in AUDA Area. (RW 06/2016-17) to M/s. Dwarkesh Infrastructure P Ltd, by Ex.En. Ahmedabad Urban Development Authority, Ahmedabad
	(ii)	10-03-2017	9702335	97023	<ul style="list-style-type: none"> • Bill No. 014(16-17) dt. 10.03.2017 for Construction of various TP Road in TP -109 Muthiya, Bilasiys, Hanspura in AUDA Area. (RW 06/2016-17) issued to M/s. Dwarkesh Infrastructure P L by the noticee • 1st RA Bill by AUDA (Road Work No. 06/2016-17) • Subcontract Agreement dated 21.01.2017 entered into by M/s. Rutvi Construction with M/s. Dwarkesh Infrastructure P L for Construction of various TP Road in TP -109 Muthiya, Bilasiys, Hanspura in AUDA Area. (RW 06/2016-17). • Work Order No. 17099 dated 20.12.2016 for Construction of various TP Road in TP -109 Muthiya, Bilasiys, Hanspura in AUDA Area. (RW 06/2016-17) to M/s. Dwarkesh Infrastructure P Ltd, by Ex.En. Ahmedabad Urban Development Authority, Ahmedabad
	(iii)	14-11-2016	552077	5521	<ul style="list-style-type: none"> • Bill No. 008(16-17) dt.07.11.2016 for Construction of various TP Road in TP 6 Kalol in AUDA Area. (RW 13/2013-14) issued to M/s. Dwarkesh Infrastructure P L by the noticee • 7th RA Bill by AUDA (Road Work No. 13/2013-14) • Work Order dated 15.04.2014 (for Subcontracting of work) issued by M/s. Dwarkesh Infrastructure Pvt Ltd (Item No. 1 to 10 of the work allotted to M/s. Dwarkesh Infrastructure P Ltd.). • Work Order No. 11873 for Road work 13/2013-14 issued to M/s. Dwarkesh Infrastructure P Ltd, by Ex.En. Ahmedabad Urban Development Authority, Ahmedabad
	(iv)	31-07-2016	7763021	77630	<ul style="list-style-type: none"> • Bill No. 005(16-17) dt.15.07.2016 issued to M/s. Dwarkesh Infrastructure P L by the noticee for Construction of various TP Road in TP 6 Kalol in AUDA Area. (RW 13/2013-14). • 6th RA Bill by AUDA (Road Work No. 13/2013-14) • Work Order dated 15.04.2014 (for Subcontracting of work) issued by M/s. Dwarkesh Infrastructure Pvt Ltd (Item No. 1 to 10 of the work allotted to M/s. Dwarkesh Infrastructure P Ltd.). • Work Order No. 11873 for Road work 13/2013-14 issued to M/s. Dwarkesh



						Infrastructure P Ltd, by Ex.En. Ahmedabad Urban Development Authority, Ahmedabad
4	(i)	Fortune Builders	03-03-2017	2824173	28242	<ul style="list-style-type: none"> • Bill No. 013(2016-17) dated 03.03.2017 issued to M/s. Fortune Builders by the noticee for Construction of various Road in TP 131 at Kathwada in AUDA area (RW No. 21/2014-15- 3rd RA Bill) • RA Bill (7th) • Sub Contract Agreement dated 19.09.2015 entered into by M/s. Fortune Builders and M/s. Rutvi Construction (the Noticee) for Construction of various Road in TP 131 at Kathwada in AUDA area (RW No. 21/2014-15) • Work Order No. 11046 dated 03.08.2015 for Construction of various TP Road at Kathwada in TPS 131 of AUDA Area. (RW 21/2014-15) issued to M/s. Fortune Builders by AUDA
	(ii)		22-01-2017	5178604	51787	<ul style="list-style-type: none"> • Bill No. 011(2016-17) dated 22.01.2017 issued to M/s. Fortune Builders by the noticee for Construction of various Road in TP 131 at Kathwada in AUDA area (RW No. 21/2014-15- 3rd RA Bill) • RA Bill (6th) • Subcontract and work order are as per above.
	(iii)		20-12-2016	2630522	26306	<ul style="list-style-type: none"> • Bill No. 009(2016-17) dated 21.12.2016 issued to M/s. Fortune Builders by the noticee for Construction of various Road in TP 131 at Kathwada in AUDA area (RW No. 21/2014-15- 3rd RA Bill) • RA Bill (5th) • Subcontract and work order are as per above.
	(iv)		01-11-2016	3307236	33073	<ul style="list-style-type: none"> • Bill No. 007(2016-17) dated 23.10.2016 issued to M/s. Fortune Builders by the noticee for Construction of various Road in TP 131 at Kathwada in AUDA area (RW No. 21/2014-15- 3rd RA Bill) • RA Bill (4th) • Subcontract and work order are as per above.
	(v)		27-06-2016	5494685	54947	<ul style="list-style-type: none"> • Bill No. 003(2016-17) dated 27.06.2016 issued to M/s. Fortune Builders by the noticee for Construction of various Road in TP 131 at Kathwada in AUDA area (RW No. 21/2014-15- 3rd RA Bill) • RA Bill (3rd) • Subcontract and work order are as per above.
5		M S Khurana Engineering Limited	03-01-2017	336456	3365	<ul style="list-style-type: none"> • Bill No. 10/2016-17 dated 31.12.2016 issued to M/s. M. S Khurana Engg. Ltd by the noticee for providing & laying sealcoat at Odhav Flyover Bridge.
6	(i)	N G Projects Ltd.	30-07-2016	1588701	15888	<ul style="list-style-type: none"> • Bill No. 006 (2016-17) dtd. 01.08.2016 for Construction of 24, 18 and 12 mtr. Wide TP Road for Kalol TP 03 in AUDA Area issued to M/s. N.G. Project Ltd by the noticee. (RW No. 08/2013-14 Kalol) • RA Bill (7th) issued by AUDA • Subcontract Agreement dtd. 01.11.2013 entered into by M/s. Rutvi Construction (the noticee) with M/s. N. G. Projects Ltd. for Construction of 24, 18 and 12 mtr. Wide TP Road for Kalol TP 03 in AUDA Area (RW 08 (2013-14)) excluding Asphalt work part of



						the contract awarded to M/s. N G Projects Ltd. • Work Order No. 11199 dt. 29.10.2013 issued to M/s. N G Projects Ltd., for Construction of 24, 18 and 12 mtr. Wide TP Road for Kalol TP 03 in AUDA area (RW 08 (2013-14) by the Ex. En. Ahmedabad Urban Development Authority.
	(ii)		29-06-2016	2742827	27429	• Bill No. 004 (16-17) dt 27.06.2016 for Construction of 15,12 and 9 mtr. wide TP Road in TP 241 in AUDA Area (RW 09 (2013-14) issued to M/s. N.G. Project Ltd by the noticee. • RA Bill (7 th) issued by AUDA • Subcontract Agreement dtd. 01.11.2013 entered into by M/s. Rutvi Construction (the noticee) with M/s. N. G. Projects Ltd. for Construction of 15,12 and 9 mtr. wide TP Road in TP 241 in AUDA Area (RW 09 (2013-14)) excluding Asphalt work part of the contract awarded to M/s. N G Projects Ltd. • Work Order No. 10019 dt. 01.10.2013 issued to M/s. N G Projects Ltd., for Construction of 15,12 and 9 mtr. wide TP Road in TP 241 in AUDA area (RW 09 (2013-14) by the Ex. En. Ahmedabad Urban Development Authority.
7		Tulsi Developers	25-10-2016	427310	4273	• Bill No. 07-A/2016-17 dated 25.10.2016 issued to M/s. Tulsi Developers by the noticee for Asphalt Road Work at Visat Nagar
			TOTAL	60809648	608101	

25.1 Since the noticee has claimed the exemption from service tax under Sr. No. 13(a) of Notification 25/2012-ST dated 20.06.2012 on Road Construction Services provided by them, the relevant extracts of the said notification are reproduced as under for ready reference.

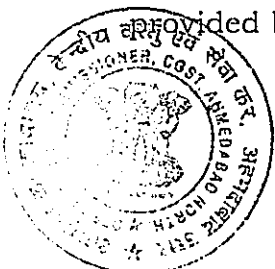
Notification No. 25/2012-Service Tax dated 20th June, 2012

"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 No. 12/2012-Service Tax, dated the 17th 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 17th 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":-

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public
(b)

Therefore, on perusing the above legal position, I find that the services provided by way of construction, completion, repair, maintenance, renovation or

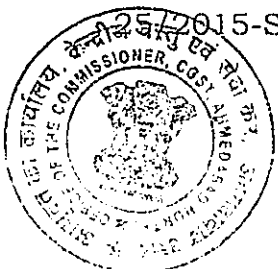


alteration of Road for use by general public is exempt from payment of service tax in terms of Sr. No. 13(a) of Notification No. 25/2015-ST dated 20.06.2012.

25.2 Therefore, it is apparent from the documentary evidences provided by the noticee that they had provided service by way of construction, completion, repair, maintenance, renovation or alteration of Road. It is also seen that the services provided by the noticee were in pursuant to the work orders /contacts awarded by the Ahmedabad Urban Development Authority (AUDA- a government authority); even in case of services provided in pursuant to subcontract awarded to the noticee by the main/ principal contractor, the work orders were issued by the AUDA to main contractor. Hence, I find that the Road Construction services provided by the noticee were for the use by general public only. However, in some of the cases, whether the road constructed by the noticee were for general public or otherwise is not ascertainable from the documents submitted by them. Such cases are discussed hereinunder.

25.2.1 In case of services provided by the noticee to M/s. Kunj Corporation during FY 2015-16 as detailed in above table (Sr. No.4), the noticee has provided the Bills issued by them only. The bill issued by the noticee describes the services provided by the noticee as "Road Work at Your site". No other details are forthcoming to ascertain the road construction by the noticee, as to whether the same were for the use by the general public or otherwise. As regards services provided by the noticee to M/s. P R Patel & Company during FY 2015-16 as detailed in above table (Sr. No.8), I find from the subcontract agreement that the noticee was awarded work of "wetmix and PCC" part of the contract in Housing Projects. From the documents submitted by the noticee, it is seen that the noticee has not provided road construction services for use by general public. I also find from the bill issued to M/s. Tulsi Developers by the noticee during FY 2016-17 as detailed in the table given above (Sr. No. 7), that they had provided services of Road Work, however, no other details are forthcoming to ascertain as to whether the road construction were for the use by the general public or otherwise.

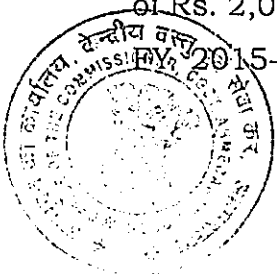
25.3 Therefore, from above legal position, detailed discussion and documentary evidences on record, except the cases discussed in para 25.2.1 above, I find that the services provided by the noticee by way of construction, completion, repair, maintenance, renovation or alteration of Road for use by general public are squarely covered under Sr. No. 13(a) of Notification No. 25/2015-ST dated 20.06.2012. Therefore, I find that the noticee is eligible for



exemption from payment of service tax on services provided by them during FY 2015-16 and 2016-17 under Notification No. 25/2012-ST dated 20.06.2012 vide Sr. No. 13(a), and accordingly, they are not liable to pay service tax in these cases. Here, it is pertinent to mention that in the case of services provided to M/s. Narendrabhai Popatbhai Patel (Sr. No. 6 of the table for FY 2015-16) by the noticee, I find from the RA Bills that the noticee was subcontracted the Road Work part in Bopal AUDA Area of contract by the main contractor vide sub-contract agreement entered into by the noticee with M/s. Narendrabhai Popatbhai Patel. Therefore, the services provided to M/s. Narendrabhai Popatbhai Patel by the noticee is also covered under Sr. No. 13(a) of Notification No, 25/2012-ST dated 20.06.2012. Similarly, the service provided to M/s. M. S. Khurana by the noticee (Sr. No. 5 of table for FY 2016-17) by way of providing & laying Sealcoat at Odhav Flyover Bridge, is also covered by the Sr. No. 13(a) of Notification No, 25/2012-ST dt. 20.06.2012 being repair maintenance of Bridge for use by general public. As discussed in para 25.2.1, the following cases are not covered under the Sr.No. 13(a) of Notification No. 25/2012-ST dated 20.06.2012, hence, exemption from the payment of service tax is also not available to the noticee on provision of services of Rs. 14,02,611/-. Accordingly, the noticee is liable to pay service tax of Rs. 2,01,453/- for FY 2015-16 & 2016-17, as worked out hereinunder on provision of services amounting to Rs. 14,02,611/- provided by them.

Sr. No.	Name of service recipients	Dt. of transaction as per form 26AS	Amount paid/credited for services (in Rs.)	Rate of service tax (including cess)	Service Tax payable (in Rs.)
1	M/s. Kunj Corporation	07-07-2015	157000	14.0	21980
2	M/s. Kunj Corporation	13-07-2015	55000	14.0	7700
3	M/s. P R Patel & Company	30-10-2015	600470	14.0	84066
4	M/s. P R Patel & Company	12-12-2015	162831	14.5	23610
5	M/s. Tulsi Developers	25-10-2016	427310	15.0	64097
		Total	1402611		201453

26. From the above factual, legal position and documents submitted by the noticee, I find that the difference in the value of service as alleged in the subject SCN is on account of the exemption claimed by the noticee. I find that apart from the differences noticed in the figures reported in ST-3 returns and in ITR/Form 26AS, the department has not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non payment of service tax. Having considered these factual and documentary evidences available on record, I find that the noticee is liable to pay service tax of Rs. 2,01,453/- out of the total demand of service tax of Rs. 2,01,32,707/- for FY 2015-16 & 2016-17. Thus, the rest of demand of Service Tax of Rs.



1,99,31,254/- is liable to be dropped on merits being incorrect and legally not sustainable. Therefore, I hold that the noticee is required to pay service tax of Rs. 2,01,453/- and thus, the same is required to be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

27. I also find that Section 75 of Finance Act, 1994 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate. I, therefore hold that the noticee is also liable to pay the interest on the demand of service Tax of Rs. 2,01,453/-.

28. Based on above facts and circumstances, discussion and documents available on records, I hold that noticee is liable to pay the service tax amounting to Rs. 2,01,453/- for the period from FY 2015-16 to 2016-17. Therefore, I find that the noticee has contravened the provisions of Section 68 and 66B of the Finance Act, 1994 read with Rules 2 and 6 of the Service Tax Rules 1994, in as much as they have failed to pay service tax to the tune of Rs. 2,01,453/- though they were liable to pay the same; they have also contravened the provision of Section 69 in as much as they have failed to obtain service tax registration, though they were liable to pay service tax; they have also contravened the provision of Section 70 of Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to assess their correct service tax liability and have failed to file ST-3 Returns for the period FY 2015-16 to 2016-17.

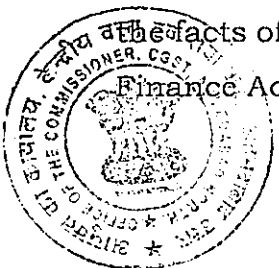
29. From the facts and discussion aforementioned, I find that noticee has failed to assess and discharge their service tax liability for the period from FY 2015-16 to FY 2016-17. They have failed to obtain service tax registration and have also failed to pay legitimate service tax due to the govt. account. They have also failed to disclose their actual taxable income by not declaring of taxable value of service provided by them and by not filing service tax returns, though they were having income which was liable to service tax. These acts of non payment of service tax, non filing of service tax returns, suppressing the material facts from the department were done with an intent to evade the payment of service tax. The government has from the very beginning placed full trust on the assessee, accordingly measures like self assessment etc. based on mutual trust and confidence have been put in place. Further, the assessee are not required to maintain any statutory or separate records under the Excise /service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for purpose of service tax law. Moreover, returns are also filed online without any



supporting documents. All these operate on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provisions is contravened or there is breach of trust placed on them. Such contravention on the part of the noticee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is evident that such fact of contravention and non payment of service tax, as discussed earlier, on the part of the noticee only came to the notice of the department when the inquiry was initiated by the department, consequent upon the data shared by the CBDT. In the case of *Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241*, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In *2009 (23) STT 275, in case of Lalit Enterprises v CST Chennai*, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under the proviso to Section 73(1) of Finance Act, 1994. Hence, by invoking the extended period of five years, I hold that the noticee is liable to pay Service Tax of Rs. 2,01,453/- along with applicable interest under Section 75 of the Finance Act, 1994. And for the same reasons, the noticee has rendered themselves liable for penal action under the provisions of Section 78 of the Finance Act, 1994.

30. As far as the imposition of penalty under Section 76 of the Finance Act, 1994 is concerned, I find that Section 78B of the Finance Act, 1994 stipulates that the provisions of the amended Section 76 and 78 will be applicable in cases where the order is passed after the date on which the Finance Bill, 2015 receives the assent of the President. The Finance Bill, 2015 received the assent of the President on 14.05.2015. Therefore, the amended provisions of Section 76 and 78 are applicable in the present case.

31. In view of the above, the penalty under Section 76 is imposable only in cases where the non-payment/ short-payment of service tax is on account of reasons other than fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there-under with the intent to evade payment of service tax. In the instant case, as I have already discussed hereinabove, the non-payment/ short-payment of service tax is on account of suppression of facts and contravention of the provisions of law with an intent to evade payment of service tax and as such the provisions of Sec. 76 of the Finance Act, 1994 will not be applicable to the facts of the present case and no penalty can be imposed under Sec. 76 of the Finance Act, 1994.



32. As regards, the proposal of levy of prescribed late fees for not filing the service tax half yearly returns for FY 2015-16 to 2016-17 by the noticee, I find from the records that the noticee had not filed requisite service tax returns within due date as provided Rule 7 of Service Tax Rules 1994 read with Section 70 of Finance Act, 1994. I find that the Rule 7C of Service Tax Rules 1994, prescribes the late fees for delayed submission of returns subject to maximum limit of Rs. 20,000/-. It is evident that the noticee had not filed service tax returns for the period Apr-15 to Sep-15, Oct-15 to Mar-16, Apr-16 to Sep-16 and Oct-16 to Mar-17. In all cases of failure to file returns by the noticee, the late fees of Rs. 20,000/- for each case, is leviable from the noticee. Therefore, I find that the noticee is required to pay late fees of Rs. 80,000/- for not filing the service tax returns for FY 2015-16 to 2016-17, under the provisions of Rule 7C of Service Tax Rules 1994 read with Section 70 of the Finance Act, 1994.

33. As regards, the proposal for imposition of penalty under Section 77(1) for failure to obtain service tax registration under the provisions of Section 69 of the Finance Act, 1994, I find that the noticee has not obtained the service tax registration though they were liable to pay service tax as discussed hereinabove, hence, they have contravened the provisions of Section 69 of the Finance Act, 1994. Thus, I find that the noticee is liable to penal action under Section 77(1)(a) the Finance Act, 1994.

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

ORDER

- (i) I hereby confirm the demand of service tax of Rs. 2,01,453/- (Rupees Two Lakh One Thousand Four Hundred Fifty Three only) on provision of service made by them, out of the total demand of service tax of Rs. 2,01,32,707/, not paid by the noticee for FY 2015-16 and 2016-17 and order to recover the same from the noticee under proviso to Sub-section (1) of Section 73 of Finance Act, 1994. I however drop the rest of the demand of Service Tax of Rs. 1,99,31,254/- in view of the service being exempt from service tax.
- (ii) I order to charge Interest at the appropriate rate on the demand of service tax of Rs. 2,01,453/- (Rupees Two Lakh One Thousand Four Hundred Fifty Three only) and order to recover the same from the noticee under Section 75 of the Finance Act, 1994;



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- (iii) I order to levy late fees of Rs. 80,000/- (Rs. Eighty Thousand only) under Rule 7C of Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 from the noticee, for failure to file service tax returns for FY 2015-16 to 2016-17.
- (iv) I do not impose any penalty on the noticee in terms of the provisions of Section 76 of the Finance Act 1994 for the reasons discussed in para 30 & 31.
- (v) I impose penalty of Rs. 10,000/- on the noticee under the provision of Section 77(1)(a) of the Finance Act, 1994, for failure to obtain service tax registration as provided under Section 69 of the Finance Act, 1994.
- (vi) I impose penalty of Rs. 2,01,453/- (Rupees Two Lakh One Thousand Four Hundred Fifty Three only) on the noticee under the provision of Section 78 of the Finance Act, 1994.

However, in view of clause (ii) of the second proviso to Section 78 (1), if the amount of Service Tax confirmed and interest thereon is paid within period of thirty days from the date of receipt of this Order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

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

By Regd. Post AD./Hand Delivery
F.No. STC/15-201/OA/2021-22

Date: .06.2022.

To
M/s. Piyushkumar Babubhai Modi,
GF 20, Birva Raw House,
Nr. Purshottam Nagar Bus Stop,
Bopal, Ahmedabad- 380058,

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-I, Division-VI, Ahmedabad North.
4. The Superintendent (System), CGST, Ahmedabad North for uploading on website.
5. Guard File

