


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(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/15-25/OA/2021

DIN : 20220764WT0000813638

आदेश की तारीख /

Date of Order : 12.07.2022

जारी करने की तारीख /

Date of Issue : 13.07.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव /

UPENDRA SINGH YADAV

आयुक्त /

COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 10 & 11/2022-23

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

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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।

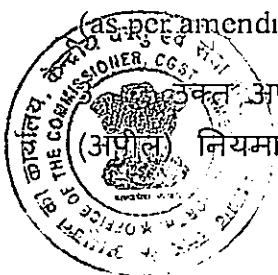
Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax 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 नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा



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

M/s. Shreeji Construction, 16, New Kalptaru Society, Nr. Ishwar Bhuvan, Navrangpura Ahmedabad-380014, were issued two SCNs (1) F. No. STC/15-25/OA/2021 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad and (2) F.No. DGGI/SZU/36-72/2020-21 dated 05.11.2020 by the Additional Director, DGGSTI, Surat Zonal Unit, Surat.

BRIEF FACTS OF THE CASE PERTAINING TO THE TWO SCNs ISSUED TO M/S. SHREEJI CONSTRUCTION, ARE AS FOLLOWS:

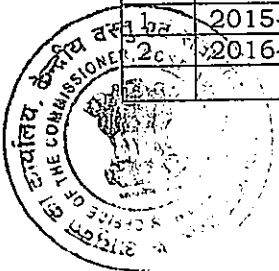
SCN No. STC/15-25/OA/2021 dated 23.04.2021

M/s. Shreeji Construction, 16, New Kalptaru Society, Nr. Ishwar Bhuvan, Navrangpura Ahmedabad-380014 (hereinafter referred to as the 'assessee' for the sake of brevity) were engaged in providing taxable services, and were holding Service Tax Registration No. AARFS9260RSD001.

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. Shreeji Construction, was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17, and details of the 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-VII 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 for 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 Form 26AS ("Total Amount paid /Credited Under 194C, 194H, 194I, 194J") for 2015-16 and 2016-17. The difference in value as observed for F.Y. 2015-16 and 2016-17, was as under:

Sr. No.	FY	Taxable Value as per ST-3 Returns (in Rs.)	Gross Receipts from services (Value from ITR/26AS) (in Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service tax provided (in Rs.)	Resultant Service tax short paid (in Rs.)
	2015-16	0	6,74,85,396	6,74,85,396	97,85,382
	2016-17	0	7,37,06,413	7,37,06,413	1,10,55,962
			14,11,91,809	14,11,91,809	2,08,41,344



Therefore, it appeared that the said assessee had short /not paid service tax to the extent of Rs. 2,08,41,344/- (including Cess) on the differential value of Rs. 14,11,91,809/-.

4. Accordingly, the service tax liability of M/s. Shreeji Construction was worked out solely on the basis of income mentioned in ITR/Form 26AS, which were shared by Income tax Department. The said income was considered as the Total Taxable value in order to ascertain the service tax liability under Section 67 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.

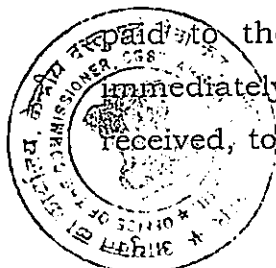
6. As per the provisions of Section 70 (Furnishing of Returns) of the Finance Act,1994:

“(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.

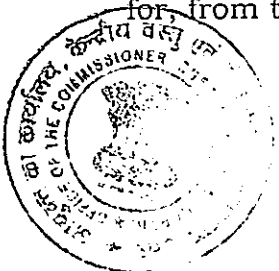
8. As per Rule 6 of the Service Tax Rules, 1994, the Service Tax shall be paid to the credit of the Central Government by 5th day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules,



1994 stipulates that the 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. Rs. 2,08,41,344/- (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 "Sales /Gross Receipts from Services (ITR)" OR "Total Amount paid /Credited Under 194C, 194H, 194I, 194J" (as per 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. 2,08,41,344/- (including Cess) worked out on value of Rs. 14,11,91,809/- 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; (vi) contravened the provision of Rule 7 read with Section 70 of the Finance Act, 1994 in as much as they failed to file ST-3 Returns by due date; (viii) 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.



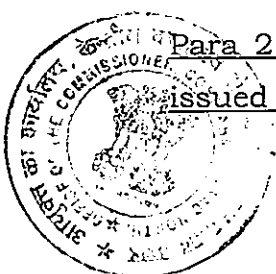
11. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value, that had come to the notice of the Department 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. 2,08,41,344/-. 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. 2,08,41,344/- 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. No data was shared by the CBDT, for the period FY 2017-18 (upto June-2017) and the assessee had failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of issuance of SCN it was not possible to quantify short payment of Service Tax, if any, for the period FY 2017-18 (upto June-2017).

Unquantified demand at the time of issuance of SCN.

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified that:



'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the assessee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'

14. 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. 2,08,41,344/- (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 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.

16. 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.

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

18. 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. 2,08,41,344/- (Rupees Two Crore Eight Lakh Forty One Thousand Three Hundred Forty Four Only) short/ not paid towards provision of those services, 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 78 of the Finance Act, 1994.
- (iv) Penalty should not be imposed upon them under the provision of Section 77(2) of the Finance Act, 1994, for failure to assess their correct Service Tax Liability and for failure to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

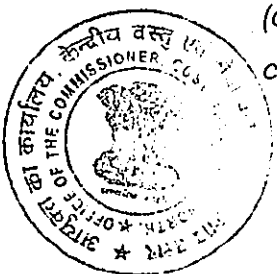
SCN No. DGGI/SZU/36-72/2020-21 dated 05.11.2020

19. M/s. Shreeji Construction, 16, Kalpataru Society, Navarangpura, Ahmedabad -380014 (hereinafter referred to as "the Assessee" for the sake of brevity), a partnership firm were engaged in providing taxable Construction Services and were having Service Tax Registration No. AARFS9260RSD001.

20. Intelligence was gathered that certain civil contractors engaged in providing taxable services such as construction services to the Government, Local Authority or a Governmental Authority viz Executive Engineer, Road & Building Division, Project Implementation Unit, etc. were not paying Service Tax on the services provided to Government, Govt. Authority or Local Authority.

21. It appeared that certain categories of services listed at (a), (c) and (f) in Entry No. 12 of Notification No. 25/2012-ST dated 20.06.2012, were omitted vide Notification 06/2015-ST dated 01.03.2015, thereby making these services taxable services. The said omitted services under entries No. 12, were as under:

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;



(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;

22. Subsequently, vide Notification No. 09/2016-ST dated 01.03.2016, the Notification No. 25/2012-ST was amended to insert the new entry No. 12A as under:

"12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

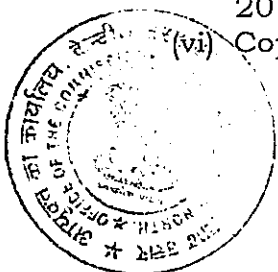
under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

provided that nothing contained in this entry shall apply on or after 1st April, 2020"

It appeared from the above legal position that the services as described under Entry No. 12A of Notification No. 25/2012-ST was exempt service if the said service had been provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, if applicable, had been paid prior to such date.

23. On the basis of the gathered intelligence, an inquiry against the assessee was initiated under summons proceeding by calling certain information /records. In light of above legal changes, the following documents as submitted by the assessee, were scrutinised with reference to the intelligence and legal changes.

- (i) Copy of Form ST-2 issued on 06.06.2014
- (ii) Service Tax Return for the Period 2015-16, 2016-17 & 2017-18 (Up-to June)
- (iii) Copy of Form 26AS for the year 2015-16 to 2017-18 (Upto June-17).
- (iv) Copies of Profit and Loss of Balance Sheet for the year 2015-16 & 2016-17 & trial balance sheet for the period April-2017 to June-2017.
- (v) Copies of available Work Orders/RA bills for the period 2015-16 to 2017-18 (up to June 2017).
- (vi) Copy of partial payment challans.

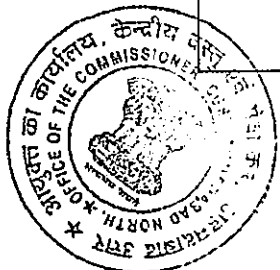


24. On perusing the above records/documents, it appeared that the assessee were engaged in the business of providing works contract services like Construction of buildings etc to the Government, Local Authority, Government Bodies and they had also provided services to some private entities. It appeared that they had provided construction services to the following entities:

- (i) Project Implementation Unit, Gandhinagar
- (ii) Ahmedabad Municipal Corporation
- (iii) DY FA & CAO © W Rly, Ahmedabad
- (iv) Executive Engineer R & B Division
- (v) Gujrat University E
- (vi) Gujrat Pollution Control Board
- (vii) Gujrat Ecological Education & Research (Geer) Foundation
- (viii) Ankleshwar Industries Association
- (ix) Sardar Sarovar Narmada Nigam limited
- (x) Chanasma Municipal Borough
- (xi) Uttar Gujrat Company Limited
- (xii) Ex Engineer Kheda R & B Division Nadiad
- (xiii) Laxmi Construction Co
- (xiv) Mansa Municipal Baro

25. It appeared from the Balance Sheet & 26AS for the period FY 2015-16, 2016-17 and 2017-18 (upto June 2017) that the assessee had received contract income as under:

Year	Service Receiver	As per Balance Sheet / Trial Balance Sheet	As per 26AS (194C)	
2015-16	Ahmedabad Municipal Corporation	6,64,34,873	47,24,663	
	DY FA & CAO © W Rly, Ahmedabad		21,74,163	
	Executive Engineer R & B Division		2,17,27,605	
	Gujrat University E		12,85,229	
	Gujrat Pollution Control Board		2,44,956	
	Gujrat Ecological Education & Research (Geer) Foundation		1,04,135	
	Project Implementation Unit		3,18,13,085	
	Ankleshwar Industries Association		1,02,020	
	Sardar Sarovar Narmada Nigam limited		53,09,600	
	Total		6,64,34,873	6,74,85,396
	2016-17		Ahmedabad Municipal Corporation	7,47,16,890
Chanasma Municipal Borough		94,34,167		
DY FA & CAO © W Rly, Ahmedabad		18,75,663		
Executive Engineer R & B Division		39,79,439		
Gujrat Pollution Control Board		13,025		
Gujrat Ecological Education & Research (Geer) Foundation		37,289		
Project Implementation Unit		3,07,93,810		
Uttar Gujrat Company Limited		15,12,748		
Uttar Gujrat Company Limited		47,63,006		
Ex Engineer Kheda R & B Division Nadiad		96,91,166		
Sardar Sarovar Narmada Nigam limited		75,70,200		
Laxmi Construction Co		19,50,000		
Total	7,47,16,890	7,37,06,412		

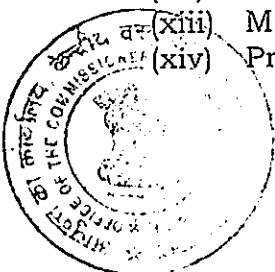


2017-18 (upto June)	Chanasma Municipal Borough		14,24,736
	DY FA & CAO @ W Rly, Ahmedabad		68,99,768
	Project Implementation Unit	3,48,85,399	18,48,249
	Uttar Gujrat Company Limited		8,92,715
	Mansa Municipal Baro		40,15,079
	Total	3,48,85,399	1,50,80,547
Grand Total			15,62,72,355

25.1 The assessee explained that higher income was appearing in 26AS as compared to income as per Balance sheet for FY 2015-16 because TDS was deducted by the Gujarat University on amount of Rs. 12,85,229/- as could be seen in Form 26AS. However, it was observed that out of Rs. 12,85,229/-, the amount of Rs. 12,54,326/- was accounted for in previous financial year i.e. 2014-15 and TDS was deducted in the year 2015-16. It also appeared that the assessee had already paid service tax on Income of Rs. 12,54,326/-, therefore, the remaining amount of Rs. 34,706/- was considered as taxable income for computing assessable value for demand of service tax. Further, Gujrat Pollution Control Board had deducted TDS on Rs 2,44,956/- in place of Rs 4,44,956/- as per books. The Explanation tendered by the assessee appeared acceptable so the calculation & quantification had been done as per income of the balance sheet for 2015-16. The calculation & quantification had been done as per income of the balance sheet 2016-17 & 2017-18 (up-to June) as the income received as per balance sheet was on higher side.

26. A Statement of Shri Patel Chintul Prafulbhai, partner of the assessee was recorded under Section 70 of the CGST Act, 2017 on 20.07.2020, wherein he has stated that they had provided services under Construction Services under the category of "Works Contract Services" to the following Government, Local Authority or a Government Authority & private entities during the period 2015-16 to 2017-18 (Upto June-2017):-

- (i) Ahmedabad Municipal Corporation
- (ii) DY FA & CAO @ W Rly, Ahmedabad
- (iii) Executive Engineer R & B Division
- (iv) Gujrat University E
- (v) Gujrat Pollutions Control Board
- (vi) Gujrat Ecological Education & Research (Geer) Foundation
- (vii) Ankleshwar Industries Association
- (viii) Sardar Sarovar Narmada Nigam limited
- (ix) Chanasma Municipal Borough
- (x) Uttar Gujrat Vij Company Limited
- (xi) Ex Engineer Kheda R & B Division Nadiad
- (xii) Laxmi Construction Co
- (xiii) Mansa Municipal Baro
- (xiv) Project Implementation Unit, Gandhinagar



26.1 He further stated that as per Form 26AS they had received total amount of Rs. 6,74,85,396/- during FY 2015-16, from the following department/ entities as per 26AS, as detailed under:

Sr. No.	Name of the Deductor	Amount (in Rs.)
1	Ahmedabad Municipal Corporation	47,24,663
2	DY FA & CAO @ W Rly, Ahmedabad	21,74,163
3	Executive Engineer R & B Division	2,17,27,605
4	Gujrat University E	12,85,229
5	Gujrat Pollution Control Board	2,44,956
6	Gujrat Ecological Education & Research (Geer) Foundation	1,04,135
7	Project Implementation Unit	3,18,13,085
8	Ankleshwar Industries Association	1,02,020
9	Sardar Sarovar Narmada Nigam limited	53,09,600
		6,74,85,396

(i) The bifurcation of the amount of Rs. 47,24,663/- (Ahmedabad Municipal Corporation) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	1891 dated 16/08/2013	Construction of new Community Hall at FP No. 110 TP No. 8 in Asharwa Ward, Ahmedabad	Original Work	N/A	47,24,663	As work order prior to 01/03/2015. Hence it is exempted.
					47,24,663	

(ii) The bifurcation of the amount of Rs. 21,74,163/- (DY FA & CAO @ W Rly) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	DYCE@ P&D/ADI/Misc/01 dated 02/09/2013	Addition/ alteration /Modification of transit accommodation at SBI officers rest house at ADI	Original Work	N/A	21,74,163	As work order prior to 01/03/2015. Hence it is exempted.
					21,74,163	

(iii) The bifurcation of the amount of Rs. 2,17,27,605/- (Executive Engineer R & B Division) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	1292 dated 09/03/2015	Construction of Academic Block in K D Polytechnic at Patan	Original Work	N/A	2,17,27,605	As the contract enter prior to 01/03/2015 & I will submit the copy within 5 days.
					2,17,27,605	

(iv) The bifurcation of the amount of Rs. 12,85,229/- (Gujarat University E) was provided by the assessee as under:

Sr. No.	Work Order No. / Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	Nil dated 19/01/2014	Construction of steel roof truss near IAS training Centre at Gujarat University Campus, Ahmedabad	Original Work	60%	12,85,229	I have paid the amount Rs. 62748/- (S.Tax -60208 + Edu Cess- 1204 + S. Edu Cess-602 + Interest -734) vide challan No. 0510247 dated 25/04/2015
					12,85,229	

(v) The bifurcation of the amount of Rs. 2,44,965/- (Gujarat Pollution Control Board) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	Nil dated 23/07/2013	Construction & Establishment of Laboratories at Gandhinagar for Gujarat Pollution Control Board.	Original Work	N/A	2,44,965	As work order prior to 01/03/2015. Hence it is exempted.
					2,44,965	

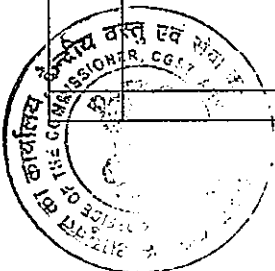
(vi) The bifurcation of the amount of Rs.1,04,135/- (Gujarat Ecological Education & Research (Geer) Foundation) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	Nil dated 19/08/2015	Additional Anodized Aluminium Partition inside of Central Research Laboratory	Other than Original Work	30%	1,04,135/-	I accept, it is taxable & I will pay the duty with applicable interest & penalty.
					1,04,135/-	

(vii) The assessee could not provide the bifurcation of the amount of Rs. 3,18,13,025/- (Project Implementation Unit, Gandhinagar), however he assured to submit the same within two days.

(viii) The bifurcation of the amount of Rs. 1,02,020/- (Ankleshwar Industries Association) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	Not available	Color Work	100% Taxable	N/A	1,02,020	I accept, it is taxable & I will pay the duty with applicable interest & penalty.



(ix) The bifurcation of the amount of Rs. 53,09,600/- (Sardar Sarovar Narmada Nigam Limited) was provided by the assessee as under:

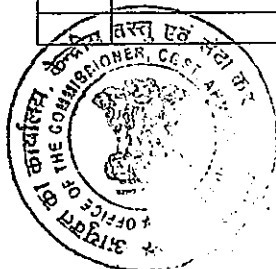
Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	D&V/TC/2600/1823 dated 09.09.2015	Special Repair work to kotna Distry from Ch 0 to 8919m Dharampur Distry from Ch 60 to 6585m 840 to 1718m & Kundhal Distry CH 0 to 1629m Block No. 9C2	Original Work	N/A	53,09,600	As the work related to canal & we are covered under the Sr.No. 12(d) of 25/2012-ST dated 20.06.2012. Hence it is exempted.

26.2 Further, on being asked about the Work Contracts & Service tax payment during FY 2016-17, the assessee stated that during FY 2016-17, they had received the amount of Rs. 7,37,06,412/- from the following department/Entity as per 26AS, as detailed under.

Sr. No.	Name of the Deductor	Amount (in Rs.)
1.	Ahmedabad Municipal Corporation	20,85,899
2.	Chansama Municipal Borough	94,34,167
3.	DY FA & CAO @ W Rly, Ahmedabad	18,75,663
4.	Executive Engineer R & E Division	39,79,439
5.	Gujrat Pollution Control Board	13,025
6.	Gujrat Ecological Education & Research (Geer) Foundation	37,289
7.	PIU (Project Implementation Unit)	3,07,93,810
8.	Uttar Gujarat Vij Company Limited	15,12,748
9.	Uttar Gujarat Vij Company Limited	47,63,006
10.	Ex. Engineer Kheda R&B Division Nadiad	96,91,166
11.	Sardar Sarovar Narmada Nigam limited	75,70,200
12.	Laxmi Construction Co.	19,50,000
	Total	7,37,06,412

(i) The bifurcation of the amount of Rs. 20,85,899/- (Ahmedabad Municipal Corporation) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	1891 dated 16/08/2013	Construction of new Community Hall at FP No. 110 TP No. 8 in Asharwa Ward, Ahmedabad	Original Work	N/A	20,85,899	As work order prior to 01/03/2015. Hence it is exempted.
					20,85,899	



(ii) The bifurcation of the amount of Rs. 94,34,167/- (Chanasma Municipal Borough) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	04/2016 dated 30/07/2016	New Lake Work for irrigation	Original Work	N/A	62,75,264	As this work pertains to other irrigation work. Hence it is exempted under 12(d) of Notification No, 25/2012-ST dated 20.06.2012
	07/2016 dated 30/09/2016	Furniture work in New Building	Original Work	60%	28,58,903	I have paid the S.Tax. I will submit the payment particulars.
Total					97,34,167	

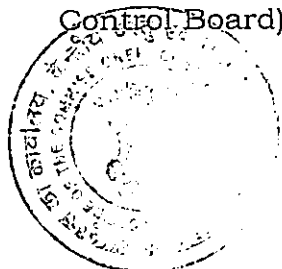
(iii) The bifurcation of the amount of Rs. 18,75,663/- (DY FA & CAO © W Rly, Ahmedabad) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	DYCE(C)P&D/ ADI/Misc/01 dated 02/09/2013	Additional/alteration /Modification of transit accommodation at SBI, Officers rest house at ADI	Original Work	N/A	11,38,147	This work pertains to railways hence it is exempted under Sr. No. 14(a) of Exemption notification
2.	DYCE(C)P&D/ ADI/ADI-HMT /12 dated 29/11/2016	Construction of Station Building and various structures at Himatnagar Station	Original Work	N/A	7,35,516	This work pertains to railways hence it is exempted under Sr. No. 14(a) of Exemption Notification.
Total					18,75,663	

(iv) The bifurcation of the amount of Rs. 39,79,439/- (Ex Engineer R & B Division) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	1292 dated 09/03/2015	Construction of Academic Block in K D Polytechnic at Patan	Original Work	N/A	39,79,439	As contract entered prior to 01/03/2015, Hence it is exempted.
Total					39,79,439	

(v) The bifurcation of the amount of Rs. 13,025/- (Gujrat Pollution Control Board) was provided by the assessee as under:



Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	Nil dated 23/07/2013	Construction & Establishment of Laboratories at Gandhinagar for Gujarat Pollution Control Board.	Original Work	N/A	13,025	As work order prior to 01/03/2015. Hence it is exempted.
Total					13,025	

(vi) The bifurcation of the amount of Rs. 37,289/- (Gujrat Ecological Education & Research (Geer) Foundation) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	Nil dated 19/08/2015	Additional Anodized Aluminium Partition inside of Central Research Laboratory	Other than Original Work	30%	37,289	I accept, it is taxable & I will pay the duty with applicable interest & penalty.
Total					37,289	

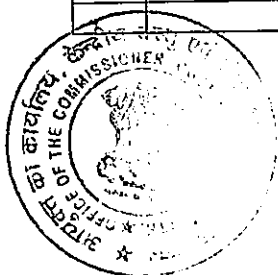
(vii) The assessee could not provide the bifurcation of the amount of Rs. 3,07,93,810/- (Project Implementation Unit, Gandhinagar), however he assured to submit the same within two days.

(viii) The bifurcation of the amount of Rs. 15,12,748/- (Uttar Gujrat Vij Company Limited) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	UGVCL/Civil/184/2015-16 dated 20/05/2016	Construction of Ladol Sub Division Office Building at Ladol Dist-Mehsana	Original Work	60%	15,12,748	I have paid the liability on the 50% as per RCM Rules. I will submit the complete details
Total					15,12,748	

(ix) The bifurcation of the amount of Rs. 47,63,006/- (Uttar Gujrat Vij Company Limited) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	UGVCL/Civil/179/2015-16 dated 20/05/2016	Construction of Office & Store Building & other infrastructure with compound wall at Himatnagar Circle	Original Work	60%	47,63,006	I have paid the liability on the 50% as per RCM Rules. I will submit the complete details
Total					47,63,006	



(x) The bifurcation of the amount of Rs. 96,91,166/- (Ex Engineer Kheda R & B Division, Nadiad) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	B-2/2020/2016-17 dated 15/06/2016	Construction of category C-type-6 Unit Residential Quarters for staff members in District court compound at Nadiad	Original Work	60%	96,91,166	I have paid the S.Tx & I will submit the complete details
Total					96,91,166	

(xi) The bifurcation of the amount of Rs. 75,70,200/- (Sardar Sarovar Narmada Limited) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	D&V/TC/2600/1823 dated 09.09.2015	Special Repair work to kotna Distry from Ch 0 to 8919m Dharampur Distry from Ch 60 to 6585m 840 to 1718m & Kundhal Distry CH 0 to 1629m Block No. 9C2	Original Work	N/A	75,70,200	As the work related to canal & we are covered under the Sr.No. 12(d) of 25/2012-ST dated 20.06.2012. Hence it is exempted.
Total					75,70,200	

(xii) The bifurcation of the amount of Rs. 19,50,000/- (M/s Laxmi Constructions) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	Not available	RCC np4 Hume Pipe at Morbi/Malya Cross Road (work related to irrigation)	Original Work	N/A	19,50,000	As the work pertains to other irrigation works. Hence it is exempted under 12(d) of 25/2012-ST dated 20.6.2012
Total					19,50,000	

26.3 Further, on being asked about the Work Contracts & Service tax payment during FY. 2017-18, the assessee stated that during FY 2017-18, they had received the amount from the following department/Entity as per 26AS, as detailed under.

Sr. No.	Name of the Deductor	Amount (in Rs.)
1.	Chansama Municipal Borough	14,24,736
2.	DY FA & CAO © W Rly, Ahmedabad	68,99,768
3.	PIU (Project Implementation Unit)	18,48,249
4.	Uttar Gujarat Vij Company Limited	8,92,715
5.	Mansa Municipal Baro	40,15,079
	Total	1,50,80,547

(i) The bifurcation of the amount of Rs. 14,24,736/- (Chanasma Municipal Borough) was provided by the assessee as under:

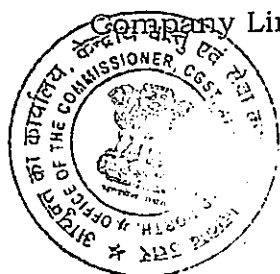
Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	04/2016 dated 30/07/2016	New Lake Work for irrigation	Original Work	N/A	14,24,736	As this work pertains to other irrigation work. Hence it is exempted.

(ii) The bifurcation of the amount of Rs. 68,99,768/- (DY FA & CAO © W Rly, Ahmedabad) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	DYCE(C) I/ADI/ADI-MS H/10 dated 12/07/2016	Construction of platforms, platform covering etc in Mehsana	Original Work	N/A	13,26,744	This work pertains to railways hence it is exempted under Sr. No. 14(a) of Exemption Notification
2.	DYCE(C)P&D/ADI/ADI-HMT /12 dated 29/11/2016	Construction of Station Building and various structures at Himatnagar Station	Original Work	N/A	50,52,678	This work pertains to railways hence it is exempted under Sr. No. 14(a) of Exemption Notification.
3	DYCE(C)P&D/ADI/Misc/01 dated 02/09/2013	Additional/alteration /Modification of transit accommodation at SBI, Officers rest house at ADI	Original Work	N/A	5,20,346	This work pertains to railways hence it is exempted under Sr. No. 14(a) of Exemption notification
Total					68,99,768	

(iii) Further as regarding bifurcation of the amount of Rs. 18,48,249 (PIU, Gandhinagar), the assessee could not explain the bifurcation of the PIU.

(iv) The bifurcation of the amount of Rs. 8,92,715/- (Uttar Gujrat Vij Company Limited) was provided by the assessee as under:



Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	UGVCL/Civil/184/2015-16 dated 20/05/2016	Construction of Ladol Sub Division Office Building at Ladol Dist-Mehsana	Original Work	60%	8,92,715	I have paid the liability on the 50% as per RCM Rules. I will submit the complete details within 2 days
				Total	8,92,715	

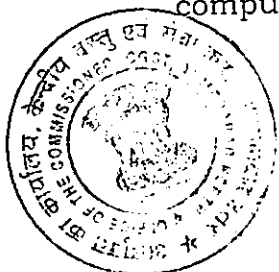
(v) The bifurcation of the amount of Rs. 40,15,079/- (Mansa Municipal Baro) was provided by the assessee as under:

Sr. No.	Work Order No./ Dated	Nature of Work	Category of Work	Abatement	Amount in Rs. Received as per 26AS	Covered under exempted Noti. No.
1.	235 dated 16/02/2017	Construction of Town hall building	Original Work	60%	40,15,079	I accept the liability & I will pay the applicable duty, penalty & Interest
				Total	40,15,079	

26.4. On being asked about the difference in work income as per Balance Sheet, 26AS & ST-3, the assessee submitted the reconciliation sheet.

26.5 In view of the above, it appeared that the assessee had claimed work order issued by Executive Engineer R & B Division, Patan which was issued prior to 01/03/2015 as exempted services. However, during the requested period, they could not produce the relevant document in support of their claim that the contract had been entered prior to the 01/03/2015 on which appropriate stamp duty, where applicable had been paid prior to such date, therefore, the exemption from payment of service tax on the said contract was not available to them and the amount received against the services provided to Executive Engineer R & B Division, Patan was considered as taxable amount and had been included in the assessable value for computing service tax taxable income.

26.6 Further, the assessee had explained in the reconciliation sheet as submitted by them, that the TDS deducted by Gujrat University (E) on amount of Rs. 12,85,229/- was appearing in 26AS. Out of Rs. 12,85,229/-, the amount of Rs. 12,54,326/- was accounted for in previous financial year i.e. in the year 2014-15 & TDS had been deducted in the year 2015-16. Since, they had already paid service tax on income of Rs 12,54,326/, therefore, remaining amount i.e. Rs. 34,706/- was considered as taxable income for computing assessable value for demand of differential service tax & & Gujrat



Pollution Control Board had deducted TDS on Rs 2,44,956/- in place of Rs 4,44,956/- as per book

26.7 The Assessee had claimed exemption from payment of service tax in the case of income received from PIU, Sankheda (Construction of New CHC Building, Village-Sankheda), however, Assessee could not produce the relevant documents regarding PIU, Sankheda (Construction of New CHC Building, Village-Sankheda) for claiming the benefit of exemption. Hence, the amount received from PIU, Sankheda was considered as taxable income for demanding service tax.

27. Legal Provisions:

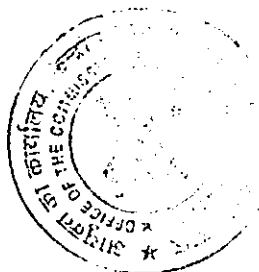
27.1 It also appeared that the services rendered by the assessee were squarely covered under the definition of "Taxable Service" under Section 65B(51) of the Finance Act, 1994. Further, it also appeared from the work order, work scope were neither covered in the negative list of services nor exempted and thus, the same appeared taxable service.

27.2 Further, it also appeared that in the case of provision of Works Contract services, the following abatement under Service Tax (Determination of value) Rules, 2006, was available to the assessee.

Sr. No.	Nature of Work	Abatement
1.	Works Contracts for Original Work	60%
2.	Works Contract other than Original Work	30%

28. Scrutiny of documents revealed that the assessee was liable for payment of Service Tax as detailed in Annexure-A for the F.Y, 2015-16, F.Y. 2016-17 & F.Y. 2017-18 (up-to June), attached to the notice. A summary of such taxable value and Service Tax liability for the period from F.Y. 2015- 16 to 2017-18 (up-to June-17) is as under:-

F. Year	Total Contract Income			Service Tax liability (including KKC & SBC) on Col. (d)
	Total	Exempted /Non taxable	Taxable	
(a)	(b)	(c)	(d)	(e)
2015-16	6,64,34,873	2,76,23,190	3,88,11,683	22,21,948
2016-17	7,47,16,890	2,10,45,048	5,36,71,842	30,06,936
2017-18 (upto June 2017)	3,48,85,399	2,04,41,783	1,44,43,616	8,66,616
Total	17,60,37,162	6,91,10,021	10,69,27,141	60,95,050



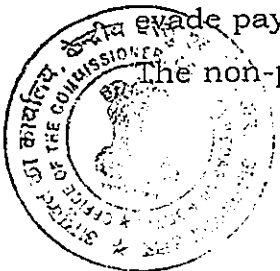
28.1 It appeared from the above table that the assessee had received the gross contract income of Rs.17,60,37,162/- towards works contract services provided to various entities during the period F.Y. 2015-16 to 2017-18 (upto June-2017). Out of which services of Rs. 6,91,19,021/- were non taxable/exempted from payment of service tax & remaining amounting i.e. Rs. 10,69,27,141/- appeared to be taxable. The service tax liability computed on the said assessable value was Rs.60,95,050/-(Including SBC & KKC).

29. It also appeared that the assessee had obtained the Service Tax registration on 06.06.2014 as per ST-2 Certificate & assessee had filed Service Tax Return for the period 2015-16, 2016-17 & April to June (2017-18). It further appeared that the assessee had already paid Service Tax amounting to Rs.25,60,416/- along with Interest of Rs.2,15,733/- and Krishi Kalyan Cess amounting to Rs. 90,971/- alongwith interest of Rs. 7,322/- & Swachh Bharat Cess amounting to Rs. 90,955/- alongwith interest of Rs. 7,307/- during the period 2015-16, 2016-17 and 2017-18 (upto June 2017) . The details of the challans are as under:-

Details of Service Tax Challans of M/s Shreeji Construction
Service Tax Challan Details

Sl. No.	Challan No.	Date	S. Tax	Interest	KKC	Amount Paid			Total
						Interest	SBC	Interest	
1	02967	27-10-2016	103019	1491	3679	53	3679	53	111974
2	01457	09-12-2016	131857	5549	4709	198	4709	198	147220
3	01551	09-12-2016	415846	0	14852	0	14852	0	445550
4	02451	11-01-2017	48608	159	1736	6	1736	6	52251
5	03688	27-04-2017	554980	9853	19821	352	19821	352	605179
6	03647	27-04-2017	52684	936	1882	33	1882	33	57450
7	03710	27-04-2017	295631	5249	10558	187	10558	187	322370
8	03720	27-04-2017	23229	412	829	15	829	15	25329
9	03734	27-04-2017	24996	443	893	16	893	16	27257
10	01215	28-04-2017	97641	1798	3487	64	3487	64	106541
11	01774	12-08-2017	308844	7515	11031	268	11031	268	338957
12	01740	12-08-2017	55271	1345	1974	48	1974	48	60660
13	00185	23-11-2017	84819	2676	3029	96	3029	96	93745
14	507642	11-09-2020	136755	64631	4884	2308	4884	2308	215770
15	313641	11-09-2020	212119	102164	7575	3648	7575	3648	336729
16	656511	11-09-2020	12529	10040	0	0	0	0	22569
17	802936	11-09-2020	1588	1472	32	30	16	15	3153
Total			25,60,416	2,15,733	90,971	7,322	90,955	7,307	29,72,704

30. Therefore, it appeared that the assessee has failed to discharge their Service Tax liability, failed to file ST-3 Returns on time and failed to assess their Service Tax liability correctly. It also appeared that they were fully aware of the responsibility of payment of the said Service Tax amount, but had intentionally avoided the payment of the Service Tax, by way of contravention of the various provisions of Finance Act, 1994 relating to levy and collection of Service Tax and rules made there under with an intent to evade payment of Service Tax even after obtaining the Service Tax Registration. The non-payment of Service Tax and short payment of Service Tax came to the

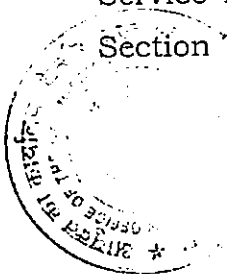


notice only after initiation of investigation as the assessee was liable to pay Service Tax on the taxable services provided by them. Therefore, Service Tax amounting to Rs.60,95,050/- (including SBC & KKC) as detailed in Annexure 'A' attached to the SCN appeared recoverable from them for the said taxable service under the proviso of Section 73(1) of the Finance Act, 1994.

31. In view of the above, it appeared that the assessee had contravened the provisions of (i) Section 66 of the Finance Act, 1994 in as much as they had failed to collect and pay the service tax to the credit of the Central Government; (ii) Section 68 of the Finance Act, 1994, read with Rule 6 of the Service Tax Rules, 1994, inasmuch as they had failed to make the payment of Service Tax to the credit of the Central Government and; (iii) Section 70 of the Finance Act, 1994, read with Rule 7C of the Service tax Rules, 1994, in as much as they had failed to file Service Tax returns on time .

32. From the above, it appeared that the assessee had provided taxable services of works contracts to various entities but they had failed to discharge the Service Tax liability amounting to Rs. 60,95,050/- (including SBC & KKC), as per Annexure-A to the notice, during the period FY 2015-16 to 2017-18 (up-to June-2017) with intent to evade the payment of Service Tax as the Works Contract services provided by the assessee to Government/Local Authority /Government Authority had become taxable if the work order was entered on or after 01.03.2015.

33. All the acts of contravention on the part of the assessee appeared to have been committed by them by taking recourse to suppression of facts with intention to evade Service Tax because the non-payment of Service Tax by the assessee came to knowledge of the department on initiation of investigation as the assessee had not shown the actual taxable amount received and Service Tax liability for the period 2015-16, 2016-17 and 2017-18 (up-to June 2017) before the initiation of the investigation correctly. It therefore, appeared that the Service Tax amounting to Rs. 60,95,050/- (including SBC & KKC) as detailed in Annexure-"A" was required to be recovered from them under the proviso of Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Further, for all the acts of contravention of the provisions of Finance Act, 1994 relating to levy and collection of Service Tax and the rules made there under made with intent to evade payment of Service Tax, the assessee had rendered themselves liable to penal action under Section 77 & 78 of the Finance Act, 1994.



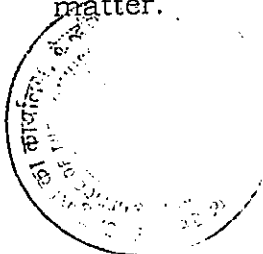
34. Therefore, the assessee was issued SCN No. DGGI/SZU/36-72/2020-21 dated 05.11.2020 by the Additional Director, DGGSTI, Surat Zonal Unit, Surat, asking them as to why:

- (i) Service Tax (including SBC & KKC) amounting to Rs. 60,95,050/- (including SBC & KKC), (Sixty Lakh Ninety Five Thousand Fifty Only) should not be demanded and recovered from them under provision to section 73(1) of the Finance Act 1994 and Rs.27,42,342/- paid by them should not be appropriated from the total demand of Rs.60,95,050/-.
- (ii) Interest on the amount mentioned at S. No.(i) above, at the applicable rates, should not be recovered under Section 75 of the Finance Act, and Rs.2,30,362/- paid by them should not be appropriated from the interest liability.
- (iii) Penalty should not be imposed upon them under Section 78(1) of the Finance Act, 1994, for failure to pay Service Tax.
- (iv) Penalty should not be imposed upon them under Section 70 read with Rule 7C of the Service Tax Rules, 1994, for failure of filing/submitting ST-3 returns on time.

DEFENCE REPLY:

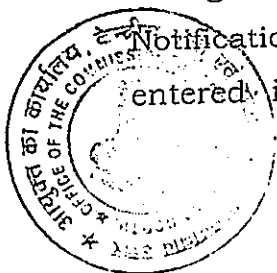
35. The assessee vide their letter dated 14.12.2021 submitted their written submission, wherein they interalia have stated that they had carried out business of contract of the Government and its authorities and the same was exempt from service tax. Therefore, the gross receipt shown as per ITR/26AS were exempt service. They further stated that they had already provided details to the Deputy Commissioner of CGST & CX, Ahmedabad North Preventive Wing vide letter dated 07.09.2020. They had also submitted the details to Directorate General of Goods and Service Tax Intelligence, Regional Unit-Vapi vide their letter dated 18.06.2019.

35.1 The assessee vide their letter dated 22.04.2022 requested to close the file of SCN demanding Service Tax of Rs. 2,08,41,344/-, because they had already received the SCN dated 05.11.2020 issued by Office of Directorate General Of Goods and Service Tax Intelligence, Surat Zonal Unit in the subject matter.



35.2 The assessee vide their letter dated 17.05.2022 (Received on 25.05.2022) submitted their written submission in detail, wherein they interalia have stated that:

- During the period FY 2015-16 and 2016-17, they have carried out contract work with Government Agencies viz. Railways, AMC, Gujarat University, Pollution Control Board, Sardar Sarovar Nigam etc.
- The value of service considered in the SCN is inclusive of Service tax and Cess. Thus, there is a mistake in the SCN while considering the taxable value. They have provided the calculation and have requested to reduce the demand to the extent of Rs. 49,17,592/- for FY 2015-16 and 2016-17, instead of demand of service tax of Rs. 2,08,41,344/-. Therefore, the SCN dated 23.04.2021 is not proper and misleading. Similarly, the demand should be Rs. 49,17,592/- for FY 2015-16 and 2016-17. instead of Rs. 52,28,434/- (it should be Rs. 52,28,884/-) as per SCN dated 05.11.2020.
- They had applied for Tender Offer before 01.03.2015, to Executive Engineer, R&B Division, Patan for construction of Academic block and to PIU Gandhinagar - Sankheda for Construction of CHC Building and both the contracts are covered under Entry No. 12(a) /12(c) of Notification No. 25/2012-ST.
- At the time of issuance of above tenders, the said services were exempted vide Mega Exemption Notification 25/2012-ST dated 20.6.2012. The services listed as item (a), (c) and (f) in Entry No. 12 of Notification No. 25/2012-ST were withdrawn w.e.f. 01.04.2015 vide Notification No. 06/2015-ST dated 01.03.2015. Therefore, if any contracts for government work, where tender was issued on or after 01.04.2015, was liable to service tax.
- Tender is an offer to contract and once tender is accepted with conditions, the conditions mentioned therein remain in force. Hence, contract comes into existence on opening of it and subsequent developments vis-à-vis contract are only procedural requirements.
- Interpretation of applicability of this notification to withdraw exemption should be considered to tenders issued on or after 01/04/2015 only. It can not be made applicable with retrospective effect to the existing works.
- The government has further amended the notification 25/2012-ST vide Notification No. 09/2016-ST to allow the exemption to contracts, which were entered into prior to 01.03.2015. The said exemptions were earlier



withdrawn vide Notification No. 06/2015-ST. In view of the same, they requested to grant exemption to them in respect of tenders were invited prior to 01.03.2015.

35.3 The assessee vide letter dated 13.06.2022 (submitted on 14.06.2022) submitted further written submission, where they have reiterated the arguments tendered earlier vide their letter dated 17.05.2022. However, they have provided service tax calculation and stated that the service tax demand should be Rs. 56,30,129/- instead of Rs. 2,08,41,344/- and Rs. 60,95,050/- as demanded vide SCNs dated 23.04.2021 and 05.11.2020 respectively.

PERSONAL HEARING:

36. Personal Hearings were granted to the assessee on 14.12.2021, 11.01.2022, 22.04.2022, 17.05.2022 and 14.06.2022. The personal hearing granted to the assessee on 14.06.2022, was attended by Shri Chintul Patel, Partner and Shri B.K. Patel, CA on behalf of the assessee. During the course of hearing, they referred to their written submission dated 25.05.2022. The crux of the arguments put forth by them was that they had provided construction services to government/ government entities, therefore, they were entitled to exemption from service tax. They further submitted additional submission dated 13.06.2022 and requested to take the same into consideration and do justice.

DISCUSSION AND FINDINGS:

37. I have carefully gone through the facts of the case and records available in the case file, which include both the SCNs, the defence replies dated 14.12.2021, 22.04.2022, 17.05.2022 (Received on 25.05.2022) and 13.06.2022 (Received on 14.06.2022) submitted by the assessee and oral submission made during the course of hearing by authorized representatives of the assessee.

38. I observe that two SCNs have been issued to the assessee. The tables below show the service tax demanded from the assessee in the two SCNs.

Service tax demanded under SCN dated 23.04.2021

Sr. No.	FY	Taxable Value as per ST-3 Returns (in Rs.)	Gross Receipts from services (Value from ITR/26AS) (in Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service tax provided (in Rs.)	Resultant Service tax short paid (in Rs.)
1	2015-16	0	6,74,85,396	6,74,85,396	97,85,382
2	2016-17	0	7,37,06,413	7,37,06,413	1,10,55,962
			14,11,91,809	14,11,91,809	2,08,41,344



Service tax demanded under SCN dated 05.11.2020

F. Year	Total Contract Income			Service Tax liability (including KKC & SBC) on Col. (d)
	Total	Exempted /Non taxable	Taxable	
(a)	(b)	(c)	(d)	(e)
2015-16	6,64,34,873	2,76,23,190	3,88,11,683	22,21,948
2016-17	7,47,16,890	2,10,45,048	5,36,71,842	30,06,936
2017-18 (upto June 2017)	3,48,85,399	2,04,41,783	1,44,43,616	8,66,616
Total	17,60,37,162	6,91,10,021	10,69,27,141	60,95,050

On going through the SCN dated 23.04.2021, I find that basically the essence of the case here is that data of "Sales /Gross Receipts from Services (ITR)" / "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" (as per TDS Statement-Form 26AS) were shared by the CBDT with CBIC for FY 2015-16 and 2016-17. The difference in taxable value was worked out after comparing the income declared in Form 26AS/ITR vis-à-vis taxable value disclosed in ST-3 Returns. As per SCN dated 23.04.2021, the difference of Rs. 14,11,91,809/- in value was observed for FY 2015-16 and 2016-17, therefore, it was alleged vide SCN dated 23.04.2021, that the assessee had short/not paid the service tax of Rs. 2,08,41,344/- on such differential value, for providing the taxable service. However, on perusing the SCN dated 05.11.2020 issued by the DGGI, SZU, I find that an investigation was carried out against the assessee, which revealed that the benefit of exemption from service tax under Notification No. 25/2012-ST (E.No. 12/12A) was not available to the assessee on provision of service by them, accordingly, it was noticed that there was short payment of service tax of Rs. 60,95,050/- for FY 2015-16 to 2017-18 (upto June 2017) by the assessee. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay (1) service tax of Rs. 2,08,41,344/- on the differential taxable value of Rs. 14,11,9,,809/- for the Financial Year 2015-16 and 2016-17 as demanded in SCN dated 23.04.2021 and (2) Service tax of Rs. 60,95, 050/- short paid on account of exemption wrongly claimed by the assessee under Notification No. 25/2012-ST (E.No. 12/12A), as demanded under SCN dated 05.11.2020, under proviso to section 73(1) of Finance Act, 1994 or not.

39. I find that the SCN dated 23.04.2021 seeks demand of service tax purely on differential value of service as reflected in ITR /26AS vis-a-vis value declared in ST-3 Returns for FY 2015-16 to 2016-17. On the other hand, the SCN dated 05.11.2020 seeks demand of Service Tax short paid, which was noticed during the investigation/scrutiny of financial records carried out by the DGGI, for FY 2015-16 (from Oct 15) to 2017-18 (upto June17). Therefore, both the SCNs seek the demand on incomes on which tax has not been paid by



the assessee. Further, I find that the period covered under both the SCNs is almost coterminous and for the same period and the same can not be decided separately in the interest and uniformity of the decision, as both the SCNs are inter connected. I find that the assessee vide their letter dated 22.04.2022, has also pointed out the issuance of the SCN dated 05.11.2020 on the similar issue and requested to drop the SCN dated 23.04.2021. Therefore, I am taking up the matter simultaneously for a fair and just decision in the matter.

40. I find that the assessee vide their defence replies dated 17.05.2022 and 13.06.2022 has admittedly stated the provision of contract services (construction services) to government, government authority, local authority and few private entities. They have not raised any contention about the provision of service. Therefore, I am of the opinion that there is no dispute regarding provision of services by the assessee.

41. First and foremost, I would like to proceed with the **SCN dated 05.11.2020**. I observe from the SCN that the investigation was carried out against the assessee by DGGI, Surat Zonal Unit. During the investigation it was observed from the financial and other records called for by them that the assessee was engaged in providing works contract services to government, government authorities, Local Authorities and also to private entities during FY 2015-16 to 2017-18 (upto June 2017). It was also observed that exemption from payment of service tax was available to various services described at Sr. No. 12 of Notification No. 25/2012-ST dated 20.06.2012, when the same had been provided to Government, Government authority and Local Authority. However, the said Notification No. 25/2012-ST was amended vide Notification No. 06/2015-ST dated 01.03.2015 and 09/2016-ST dated 01.03.2016. The Items/services described at (a), (c) and (f) under Entry No. 12 of Notification No. 25/2012-ST dated 20.06.2012, were omitted vide Notification 06/2015-ST dated 01.03.2015, thereby making these services taxable. Notification No. 25/2012-ST dated 20.06.2012 was amended vide Notification No. 09/2016-ST dated 01.03.2016, to insert the new entry No, 12A to Notification No. 25/2012-ST. The new entry allowed the exemption to said services which was withdrawn vide notification no. 06/2015-ST, subject to the condition that the contract under which the services had been provided, had been entered into prior to 01.03.2015 and appropriate stamp duty had been paid. In this backdrop, the investigation of financial and other records was carried out by the DGGI, Surat Zonal Unit, and short payment of service tax of Rs. 60,95,050/- by the assessee, was noticed. Accordingly, SCN dated



05.11.2020 seeking demand of Service tax of Rs. 60,95,050/-, covering the period from FY 2015-16 to 2017-18 (upto June 17) was issued to the assessee on 05.11.2020.

41.1 I find that the assessee vide their defence replies dated 17.05.2022 and 13.06.2022 has contested that they had submitted the tender before 01.03.2015, in respect of services provided to R&B Division Patan and PIU Gandhinagar and tendering procedures were completed by 01.04.2015. They have further argued that the entering into contract is merely a procedural requirement after acceptance of the tender by the authority. Therefore, they may be allowed the exemption from payment of service tax under Notification No. 25/2012-ST (Entry No. 12A).

41.2 As per Sr. No. 12 and 12A of Notification No. 25/2012-ST dated 20.06.2012, the service provided to the government, local authority or a governmental authority by way of construction, repair, maintenance, renovation, fitting out of civil structure /building meant for use other than commerce/industry, is exempt service. For ease of reference, the said Sr. No. 12 and 12A of the Notification are reproduced as under:

"12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) *a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business of profession; (omitted by Notification No. 6/2015-ST dated 01.03.2015 w.e.f. 01.04.2015.)*

(b)

(c) *a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; (omitted by Notification No. 6/2015-ST dated 01.03.2015 w.e.f. 01.04.2015.)*

(d) *canal, dam or other irrigation works*

(e)

(f) *a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act; (omitted by Notification No. 6/2015-ST dated 01.03.2015 w.e.f. 01.04.2015.)*

"12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -



(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

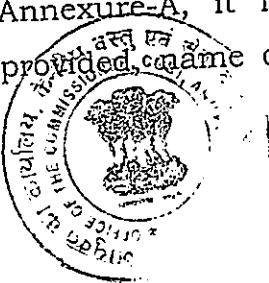
(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

Provided that nothing contained in this entry shall apply on or after the 1st April, 2020;] (Inserted vide Notification No. 9/2016- ST dated, 1.3.2016 w.e.f.1.3.2016.)”

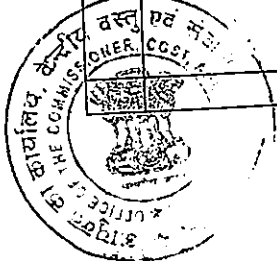
41.3 From the above legal position, it is apparent that the Items/services described at (a), (c) and (f) under Entry No. 12 of Notification No. 25/2012-ST dated 20.06.2012, were omitted vide Notification 06/2015-ST dated 01.03.2015, thereby making these services taxable. Notification No. 25/2012-ST dated 20.06.2012 was amended vide Notification No. 09/2016-ST dated 01.03.2016, to insert the new entry No. 12A to Notification No. 25/2012-ST. The new entry allowed the exemption to said services which was withdrawn vide notification no. 06/2015-ST, subject to the condition that the contract under which the services had been provided, had been entered into prior to 01.03.2015 and appropriate stamp duty had been paid prior to 01.03.2015. Therefore, the exemption to construction services provided to the Government, a local authority or a governmental authority is available under E.No. 12A ibid, only if the contract for provision of service had been entered into prior to 01.03.2015 and appropriate stamp duty had been paid prior to 01.03.2015. In view of the above legal position, it is quite clear that the provisions under Entry No. 12A of Notification No. 25/2012-ST, clearly emphasised upon the “date of Contract” entered into for provision of service. Therefore, the arguments put forth by the assessee for considering the date of tender/ date of opening of tender instead of date of contract, is devoid of merit and the same is not acceptable being not sustainable in view of the above legal position.

41.4 In view of the above legal position and documents gathered by the DGGI, the service tax liability short paid by the assessee, has been worked out as per Annexure -A of the SCN dated 05.11.2020. On going through the Annexure-A, it is observed that the same contains the detail of service provided, name of the recipient of service, bill details and the date of work



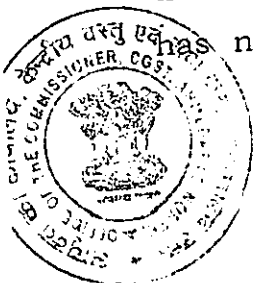
order and agreement. The relevant extract of Annexure-A is reproduced as under for ease of reference.

Sr. No.	Date of Work Order/ Contract Agreement	Details of Bill			Name of the Govt. Department/Authority /Body/Private Entity to whom services provided	Name of Work	Rate of Abatement	Taxable value	Rate of service tax (inclusive of Cess)	Service tax payable (inclusive SBC & KKC)	
		Bill No.	Date	Amount							
1	19-01-2014	1	20-05-2015	34706	Gujarat University	Construction of steel Roof Truss	60%	13882	12.36%	1716	
2	Not available		01-07-2015	3953771	R & B patan	Construction of academic block in K D Polytechnic at Patan	60%	1581508	14.00%	221411	
			20-09-2015	4001420			60%	1600568	14.00%	224080	
			25-10-2015	3574149			60%	1429660	14.00%	200152	
			12-01-2016	2789589			60%	1115836	14.50%	161796	
			05-03-2016	3939286			60%	1575714	14.50%	228479	
			30-03-2016	934470			60%	373788	14.50%	54199	
			30-03-2016	2534920			60%	1013968	14.50%	147025	
			3	Not available				13-08-2015	4387866	PIU Sankeda	Construction of CHC Building Vill-Sankheda
15-10-2015	4294921	60%	1717968		14.00%	240516					
20-02-2016	6731060	60%	2692424		14.50%	390401					
28-03-2016	1429370	60%	571748		14.50%	82903					
4	Not available		20-10-2015	102020	Ankleshwar Industrial Association	Color Work	0%	89491	14.00%	12529	
5	19-08-2015		19-03-2016	104135	Gir Foundation	Additional Anodized Aluminum Partition inside of Central Research Lab	30%	72895	14.50%	10570	
6	Not available		5	14-06-2016	PIU Sankeda	Construction of CHC Building Vill-Sankheda	60%	5880318	15.00%	882048	
			6	30-03-2017			475988	60%	190395	15.00%	28559
7	26-05-2016		1	11-08-2016	PIU Bavla	New Construction of School Building	60%	985233	15.00%	147785	
			2	24-10-2016			3573774	60%	1429510	15.00%	214426
			3	16-02-2017			6533344	60%	2613338	15.00%	392001
8	20-05-2016		1	15-09-2016	Gir Foundation	Additional Anodized Aluminum Partition	30%	22952	15.00%	3443	
			2	25-10-2016			4500	30%	3150	15.00%	473
9	20-05-2016		1	24-10-2016	UGVCL Ladol	Construction of Ladol Sub division Office Building	60%	136631	15.00%	20495	
			2	04-03-2017			829591	60%	165918	15.00%	24888
			3	20-03-2017			892715	60%	178543	15.00%	26781
10	20-05-2016		1	24-10-2016	UGVCL Limbhoi	Construction of Office and Store Building	60%	255167	15.00%	38275	
			2	21-03-2017			3487184	60%	697437	15.00%	104616



11	Not available		25-10-2016	1711128	R&B Patan	Construction of academic block in K D Polytechnic at Patan	60%	684451	15.00%	102668
			01-11-2016	2268311			60%	907324	15.00%	136099
12	15-06-2016	1	29-10-2016	2813248	R&B Nadiad	Construction of Residential Quarters for staff Members	60%	1125299	15.00%	168795
			20-02-2017	3971626			60%	1588650	15.00%	238298
			25-03-2017	3024026			60%	1209610	15.00%	181442
13	30-09-2016	1	24-11-2016	441596	Chansama Nagarpalika	New Work at Chanasma Nagar Palika Naveen Seva Sadan	60%	176638	15.00%	26496
			20-12-2016	458750			60%	183500	15.00%	27525
			28-12-2016	461332			60%	184533	15.00%	27680
			23-01-2017	499401			60%	199760	15.00%	29964
			31-01-2017	497831			60%	199132	15.00%	29870
			10-03-2017	499990			60%	199996	15.00%	29999
14	27-07-2016	1	10-03-2017	2071852	PIU Vadali	New Construction of staff Quarters	60%	828741	15.00%	124311
15	16-02-2017	1	25-04-2017	840741	Mansa Nagar Palika	Construction of town hall	60%	336296	15.00%	50444
			20-05-2017	1233489			60%	493396	15.00%	74009
			25-06-2017	1536956			60%	614782	15.00%	92217
			27-06-2017	403893			60%	161557	15.00%	24234
16	26-05-2016	1	25-05-2017	1848249	PIU Bavla	New Construction of School Building	60%	739300	15.00%	110895
17	20-05-2016	1	09-06-2017	1973985	UGVCL Limbhoi	Construction of Office and Store Building	60%	789594	15.00%	118439
18	23-01-2017	1	15-06-2017	2588573	Thasara Panchayat	Construction of New Taluka Panchayat Gate	60%	1035429	15.00%	155314
19	15-06-2016	4	30-06-2017	4017730	R&B Nadiad	R & B Nadiad	60%	1607092	15.00%	241064
									Total	6095050

On perusing the above and on scrutiny of documents relied upon under SCN dated 05.11.2020, it is apparent that the date of work order/agreement is after 01.03.2015, except in respect of service provided to M/s. Gujarat University (Sr. No. 1 of the above table). It is pertinent to mention here that as apparent from the statement of Shri Chintul Patel, Partner of the firm, recorded under Section 70 of the CGST Act, 2017 and SCN dated 05.11.2020, the said entry for Rs. 34706/- is pertaining to differential amount on which the service tax was short paid by the assessee for provision of service to Gujarat University. The assessee had already paid service tax on provision of the services amounting to Rs. 12,54,326/- (para 8.8 of the SCN) to Gujarat University. In other cases, the date of work order /agreement is after 01.03.2015, hence the condition stipulated/envisaged under Entry No. 12A of the Notification No. 25/2012-ST is clearly not satisfied. Further, the assessee has not produce any evidences /documents in support of their defence.



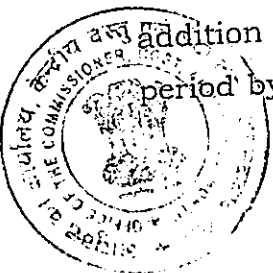
Therefore, in view of the above legal position and documents relied upon by the department, the benefit of the exemption from the service tax to the above cases, is not available under Entry No. 12A of Notification No. 25/2012-ST dated 20.06.2012. Hence, I find that the assessee is liable to pay service tax of Rs. 60,95,050/- under the provision of section 66B read with Section 67 & 68 of the Finance Act, 1994, as demanded vide SCN dated 05.11.2020 for FY 2015-16 to 2017-18 (upto June 2017).

41.5 I find that the assessee has also contested that the taxable value of service considered in the SCN is inclusive of service tax. Thus, they vide letter dated 13.06.2022 have requested to consider this aspect and to reduce the demand to Rs. 56,30,129/- instead of Rs. 60,95,050/-. They have provided the calculation as under:

FY	Turnover As per Books inclusive of ST	Exempted Turnover	Taxable Turnover	Service Tax (inclusive of cess)
15-16	6,64,34,873	2,76,23,190	3,67,09,636	21,02,047
16-17	7,47,16,890	2,15,21,036	5,03,80,309	28,15,545
17-18 (upto June 17)	3,48,85,399	2,04,41,783	1,37,31,078	7,12,537
Total	17,60,37,162	6,95,86,009	10,08,21,023	56,30,129

As per Section 67(2) of Finance Act, "67(2) *Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged*". Accordingly, if any amount charged by the service provider for provision service is inclusive of service tax then only benefit of cum tax can be granted. I find that the assessee has not provided any evidences in support of the argument put forth by them. They have not provided any documents/tangible evidence to establish that the gross amount charged by them is inclusive of service tax. In absence of such evidence, their plea can not be acceded to. Hence, I am constrained to hold that the assessee is liable to pay service tax amounting to Rs. 60,95,050/- as demanded vide SCN dated 05.11.2020 for FY 2015-16 to 2017-18 (upto June 2017) and thus the same is liable to be recovered under the provision of Section 73(1) of the Finance Act, 1994.

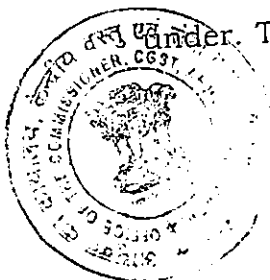
41.6 I also find that the provisions of Section 75 of the Finance Act, 1994 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate for the period by which the crediting of the tax or any part thereof is delayed. I, thus



hold that the assessee is also liable to pay the interest on Service Tax of Rs. 60,95,050/-. I also find that the SCN has proposed to appropriate the amount of Rs. 27,42,342/- (inclusive of Cess) and interest Rs. 2,30,362/- (total Rs. 29,72,704/-) already paid by the assessee as detailed in para 12 of the SCN dated 05.11.2020, against their service tax and interest liability. In view of this fact, I hold that the said amount of Rs. 27,42,342/- and Rs. 2,30,362/- is liable to be appropriated against the service tax and interest liability of the assessee.

41.7 From the above facts and discussion, I find that assessee has contravened that provision of (i) Section 67 of the Finance Act, 1994 in as much as they had failed to determine the correct taxable value of taxable service and declare the same to the department (ii) Section 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they had failed to pay appropriate service tax on the taxable services provided by them (iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they had failed to furnish correct and proper periodical returns in form ST-3 mentioning the particulars of the aforesaid taxable service provided by them, correct value of taxable service provided and other particulars in the manner as provided therein.

41.8 From the facts and discussion aforementioned, I find that in the instant case the assessee had failed to assess the actual taxable income in the ST-3 Returns filed by them and had not paid appropriate Service Tax despite the fact that they were engaged in providing taxable services and had wrongly availed the benefit of exemption from Service tax. Thus, the assessee had suppressed the material facts from the Department by not showing their actual taxable income in the ST-3 Returns by way of incorrectly claiming exemptions, by not paying the Service Tax due to them and had also suppressed the taxable value in the ST-3 Returns. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax payers' behaviour. The responsibility on the tax payer to voluntarily make information disclosures is much greater in the system of self-assessment. The omission or commission on the part of the assessee has clearly demonstrated their intention to evade payment of service tax, as they were very much aware of the unambiguous provisions of Finance Act, 1994 and Rules made there under. They have failed to disclose to the department at any point of time, the



fact regarding the claiming of exemption without being eligible under Notification No. 25/2012-ST as discussed in forgoing paras during FY 2015-16 to 2017-18 (upto June 2017). These facts would not have come to light but for the investigation conducted by DGGI officers. Moreover, 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 excise & Service tax laws. Moreover, returns are also filed online without any supporting documents. All these operates 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 assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is also evident that such fact of contravention and short/non paying the service tax by short declaring /under reporting taxable value of the service provided, as discussed earlier, on the part of the assessee came to the notice of the department only when the DGGI initiated the investigation against them. 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 vs. 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 proviso to Section 73(1) of the Finance Act, 1994. By invoking the extended period of time of 5 years, service tax totally amounting to Rs 60,95,050/- (including cess) is required to be recovered along with applicable interest under Section 75 of the Finance Act, 1994 from the assessee. For the same reasons, all ingredient for imposing penalty on the assessee under Section 78 exists, therefore, the assessee is also liable for penal action under the provisions of Section 78 of the Finance Act, 1994.

41.9 As regards proposal to levy of late fees under Rule 7C of Service Tax Rules 1994, I find that the assessee had filed ST-3 Return for the period from April 2015 to June 2017 as detailed under.



Period of ST-3 Returns	Date of filing ST-3 Returns	Due date for filing ST-3 Returns	Delay in days
Apr-15 to Sep-15	22/10/2015	25/10/2015	0
Oct-15 to Mar-16	21/04/2016	29/04/2016	0
Apr-16 to Sep-16	27/10/2016	25/10/2016	2
Oct-16 to Mar-17	28/04/2017	30/04/2017	0
Apr-17 to Jun-17	12/08/2017	15/08/2017	0

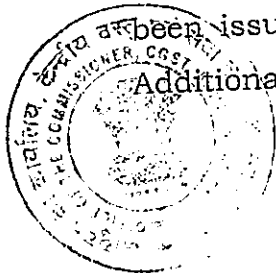
From the above, it is apparent that there was a delay of 2 days in filing of the return by the assessee. I find that the Rule 7C of Service Tax Rules 1994 mandates late fees of Rs. 500/- for the delay of first fifteen days from the due date for filing the ST-3 Return. Therefore, the assessee assessee is liable to pay late fees of Rs. 500/- for filing the return late by 2 days under the provisions of Rule 7C of Service Tax Rules 1994 read with Section 70 of the Finance Act, 1994.

42. As far as the Second SCN No. STC/15-25/OA/2021 dated 23.04.2021 issued to the assessee is concerned, my observation on the same are as follows:

42.1 On going through the SCN, I find that basically the essence of the case in this SCN is that data of Sales /Gross receipt from services/ Total Amount Paid/Credited under 194C, 194H, 194I, 194J" were shared by the CBDT with CBIC for FY 2015-16 & 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. 14,11,91,809/- in value was observed for FY 2015-16 & 2016-17, therefore, it appeared that the assessee had short paid the service tax of Rs. 2,08,41,344/- on such differential value, for providing the taxable service. Accordingly, I find that the issue which requires determination in the subject SCN as of now is whether the assessee is liable to pay service tax of Rs. 2,08,41,344/- on the taxable value of value of Rs. 14,11,91,809/- for the Financial Year 2015-16 & 2016-17 under Section 66B read with Section 668 of the Finance Act, 1944 and the same is liable to be recovered under proviso to section 73(1) of Finance Act, 1994 or not.

42.2. I find that the assessee vide their letter dated 22.04.2022 has contested that they had already been issued SCN No. DGGI/SZU/36-72/2020-21 dated 05.11.2020 by the DGGI, Surat Zonal Unit, Surat. In view of the same, they have requested to drop the subject SCN dated 23.04.2021.

42.3 From the records available in case file, I find that the assessee has been issued SCN No. DGGI/SZU/36-72/2020-21 dated 05.11.2020 by the Additional Director General, DGGI, SZU, Surat for demanding of Service Tax of



Rs. 60,95,050/- covering the period from FY 2015-16 and 2017-18 (upto June 2017). On going through the said SCN dated 05.11.2020, it is evident from para 7, 7.1, 7.2 and 7.3 of the said SCN that the same has been issued for demanding service tax of Rs. 60,95,050/- after thorough examination and verification of financial records viz. Balance Sheet, P &L Accounts, Form 26AS, ST-3 Returns, Service tax Challans, work orders/ RA bills for the period FY 2015-16 to 2017-18 (upto June 2017). Relevant images of the SCN dated 05.11.2020 are reproduced for ease of reference.

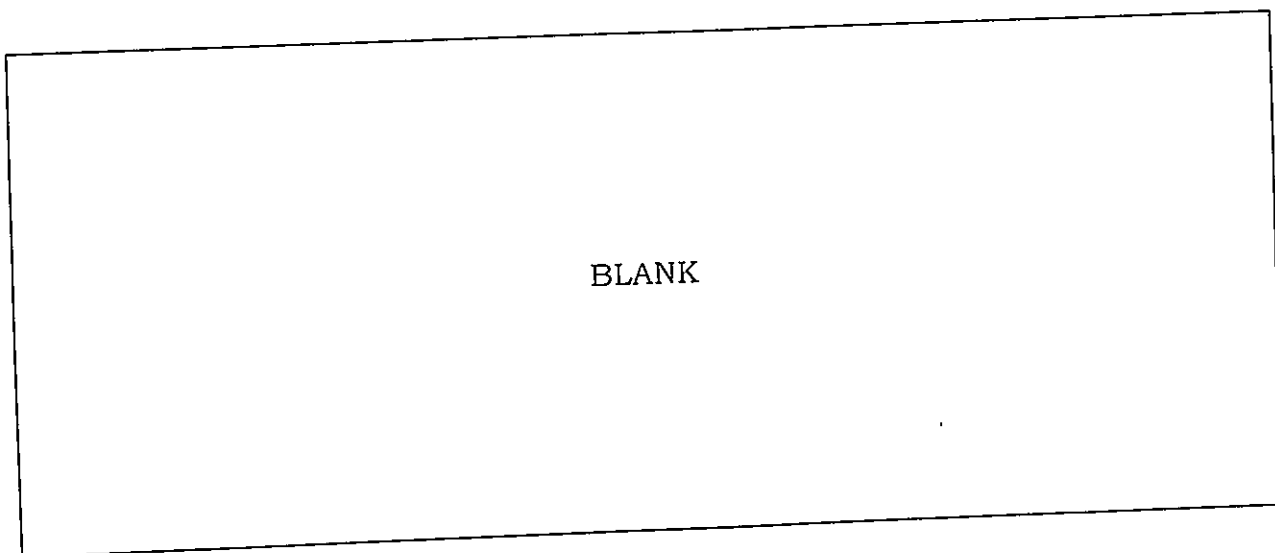
7. SCRUTINY OF DOCUMENTS

7.1 In light of above legal changes, an investigation was initiated under summons mode against M/s Shree Ji Construction to check its Service Tax payment. In response to various summons/letter/e-mail issued to the noticee, M/s. Shreeji Construction, 16, New Kalptaru Society, Navarangpura Ahmedabad - 380014 submitted following documents, which were scrutinized with reference to the Intelligence.

- (i) Copy of Form ST-2 issued on 06.06.2014
- (ii) Service Tax Return for the Period 2015-16, 2016-17 & 2017-18 (Up-to June)
- (iii) Copy of Form 26AS for the year 2015-16 to 2017-18 (Upto June-17).
- (iv) Copies of Profit and Loss of Balance Sheet for the year 2015-16 & 2016-17 & trial balance sheet for the period April-2017 to June-2017.

2

- (v) Copies of available Work Orders/RA bills for the period 2015-16 to 2017-18 (up to June 2017).
- (vi) Copy of partial payment challans.



7.2. On perusal of the above records/documents, it is seen that M/s Shreeji Construction, Ahmedabad are engaged in the business of providing works contract services like Construction of buildings etc as detailed in the attached annexure to the Government, Local Authority, Government Bodies and also to some private entities. They have provided construction services to the following entities as mentioned below:-

- (i) Project Implementation Unit, Gandhinagar
- (ii) Ahmedabad Municipal Corporation
- (iii) DY FA & CAO & W Rly, Ahmedabad
- (iv) Executive Engineer R & B Division
- (v) Gujrat University E
- (vi) Gujrat Pollution Control Board
- (vii) Gujrat Ecological Education & Research (Geer) Foundation
- (viii) Ankleshwar Industries Association
- (ix) Sardar Sarovar Narmada Nigam limited
- (x) Chanasma Municipal Borough
- (xi) Uttar Gujrat Vij Company Limited
- (xii) Ex Engineer Kheda R & B Division Nadiad
- (xiii) Laxmi Construction Co
- (xiv) Mansa Municipal Baro

7.3. Scrutiny of Balance Sheet & 26AS for the period 2015-16, 2016-17 & 2017-18 (upto-June 2017), indicate that M/s Shreeji Construction, Ahmedabad has received contract income as mentioned hereunder:-

Year	Service Receiver	As per Balance Sheet/Trial Balance sheet	As per 26AS (194C)
2015-16	Ahmedabad Municipal Corporation	6,64,34,873	4724663
	DY FA & CAO & W Rly, Ahmedabad		2174163
	Executive Engineer R & B Division		21727605
	Gujrat University E		1285229
	Gujrat Pollution Control Board		244956
	Gujrat Ecological Education & Research		104135
	Project Implementation Unit		31813085
	Ankleshwar Industries Association		102020
	Sardar sarovar Narmada Nigam limited		5309600
	Total		6,64,34,873
2016-17	Ahmedabad Municipal Corporation	7,47,16,890	2085899
	Chanasma Municipal Borough		9434167
	DY FA & CAO & W Rly, Ahmedabad		1875663
	Executive Engineer R & B Division		3979439
	Gujrat Pollution Control Board		13025
	Gujrat Ecological Education & Research		37289
	Project Implementation Unit		30793810
	Uttar Gujrat Vij Company Limited		1512748
	Uttar Gujrat Vij Company Limited		4763006
	Ex Engineer Kheda R & B Division Nadiad		9691166
	Sardar Sarovar Narmada Nigam limited		7570200
	Laxmi Construction Co		1950000
	Total		7,47,16,890
2017-18 (up-to June)	Chanasma Municipal Borough	3,48,85,399	1424736
	DY FA & CAO & W Rly, Ahmedabad		6899768
	Project Implementation Unit		1848249
	Uttar Gujrat Vij Company Limited		892715
	Mansa Municipal Baro		4015079
Total	3,48,85,399	1,50,80,547	
Grand Total		17,60,37,162	15,62,72,355

In view of the above table, calculation & quantification for the period 2015-16 has been done as per the income of balance sheet. The notice has explained the reason why income as per 26AS is showing higher than balance sheet in the F.Y. 2015-16, that the TDS deducted by Gujrat University (E) on amount of Rs. 12,85,229/- is reflecting in 26AS. Out of Rs. 12,85,229/-, the amount of Rs. 12,54,326/- has been accounted for in previous financial year i.e. in the year 2014-15 & TDS deducted in the year 2015-16. Since, they have already paid service tax on income of Rs 12,54,326/-, therefore, remaining amount i.e. Rs. 34,706/- has been considered as taxable income for computing assessable

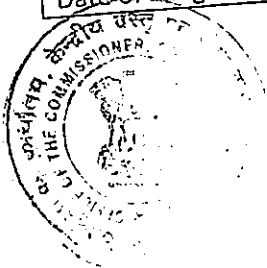


value for demand service tax & Gujrat Pollution Control Board has deducted TDS on Rs 2,44,956/- in place of Rs 4,44,956/- as per books. Explanation is acceptable so the calculation & quantification has been done as per income of the balance sheet for 2015-16. The calculation & quantification has been done as per income of the balance sheet 2016-17 & 2017-18 (up-to June) as the income received as per balance sheet is on higher side.

42.4 I find that the subject SCN dated 23.04.2021 has been issued solely on the basis of data of income mentioned in ITR/Form 26AS, which were shared by Income tax Department with the CBIC. The said income was considered and the same was assumed to be Total Taxable Value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994. The department has not adduced any evidence other than the difference in taxable value to substantiate the charges levelled against the assessee in the subject SCN dated 23.04.2021. I also find the assessee has already filed service tax returns in Form ST-3 Returns for the period FY 2015-16 to 2017-18 (upto June 2017), but the data of the same has not been taken into consideration while computing the service tax liability of the assessee by the department. The value of service rendered as per ST-3 Returns have been considered to be zero for FY 2015-16 and 2016-17, which is totally at variance with the facts on records. The details of ST-3 Returns filed by the assessee are as under for ready reference.

AS per ST-3 Return	Service provided -- Works Contract service		Total
	April - Sept	Oct-March	
FY 2015-16			
Gross amt of service	23460808	43629379	67090187
Less: Exempt service	23460808	43629379	67090187
Net taxable value	0	0	0
Tax paid	0	0	0
Date of filing Return	22/10/2015	21/04/2016	

AS per ST-3 Return	Service provided -- Works Contract service		Total
	April - Sept	Oct-March	
FY 2016-17			
Gross amt of service	24713844	41305504	66019348
Add: Amount on which ST is payable under partial RCM	0	7168469	7168469
Less: Exempt service	22874221	17860906	40735127
Less: Abatement	1103774	18367840	19471614
less: Partial RCM	0	1433694	1433694
Net taxable value	735849	10811533	11547382
Tax paid	110377	1621731	1732108
Date of filing Return	27/10/2016	28/04/2017	



AS per ST-3 Return	Service provided -- Works Contract service
FY 2017-18	April -June
Gross amt of service	32560509
Add: Amount on which ST is payable under partial RCM	1973985
Less: Exempt service	27045435
Less: Abatement	4493436
less: Partial RCM	394797
Net taxable value	2600826
Tax paid	390125
Date of filing Return	12/08/2017

42.5 From the above factual matrix and documents available on record, I find that the huge difference in the value of service as alleged in the subject SCN dated 23.04.2021 is on account of the taxable value of service disclosed in ST-3 returns filed by the assessee being not taken into consideration by the department while computing the service tax liability for FY 2015-16 and 2016-17. Therefore, I find that the entire demand has been raised on the presumption that the amount received by the assessee as per Form 26AS/ITR was the differential value of taxable service. I also find that no primary verification appears to have been carried out by the department at the Divisional or Commissionerate level. I also find that apart from the differences noticed in the figures reported in ST-3 returns and in Form 26AS/ITR, 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 am of the view that the SCN is a 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 is unsustainable in the 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 assessee 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 consequence. 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, the subject SCN dated 23.04.2021 is found liable to be dropped on merits the same being incorrect and legally not sustainable. I accordingly drop the SCN dated 23.04.2021 as the same is found to be incorrect and unsustainable.

43. In view of the above discussion and findings, I pass the following order vis-à-vis the two SCNs:

ORDER

SCN No. DGGI/SZU/36-72/2020-21 dated 05.11.2020

- (i) I confirm the demand of Service Tax amounting to Rs. 60,95,050/- (including SBC & KKC), (Rupees Sixty Lakh Ninety Five Thousand Fifty Only) and order to recover the same from the assessee under the proviso to section 73(1) of the Finance Act 1994. Further, I order to appropriate the service tax amount of Rs. 27,42,342/- already paid by the assessee against their service tax liability of Rs. Rs.60,95,050/-.
- (ii) I order to charge Interest and recover the same from the assessee under Section 75 of the Finance Act, 1994 on the service tax amount of Rs. 60,95,050/-. Further, I order to appropriate the amount of interest of Rs.2,30,362/- paid by them against their interest liability.
- (iii) I impose penalty of Rs. 60,95,050/- (Rupees Sixty Lakh Ninety Five Thousand Fifty Only) on the assessee, under Section 78(1) of the Finance Act, 1994, for their failure to pay Service Tax.
- (iv) I order to levy late fees of Rs. 500/- (Rs. Five hundred only) on the assessee under Section 70 read with Rule 7C of the Service Tax Rules, 1994, for the delay in filing the ST-3 Return for the period April 2016 to September 2016.

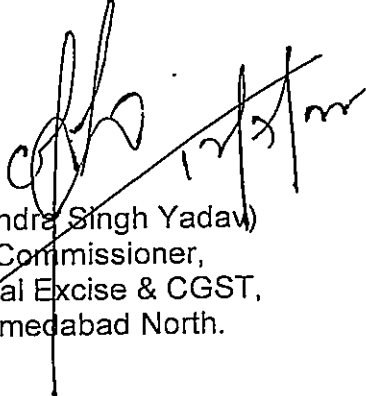


However, in view of clause (ii) of the second proviso to Section 78 (1), if the amount of Service Tax confirmed and interest thereon is paid within a period of thirty days from the date of receipt of this Order, the penalty shall be twenty five percent of the said amount, subject to the condition that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

ORDER

SCN No. STC/15-25/OA/2021 dated 23.04.2021

I drop the proceedings initiated against M/s. Shreeji Construction, 16, New Kalptaru Society, Nr. Ishwar Bhuvan, Navrangpura Ahmedabad-380014, vide Show Cause Notice F.No. STC/15-25/OA/2021 dated 23.04.2021.


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

By Regd. Post AD./Hand Delivery
F.No. STC/15-25/OA/2021

Date: .07.2022.

To
M/s. Shreeji Construction,
16, New Kalptaru Society,
Nr. Ishwar Bhuvan,
Navrangpura Ahmedabad-380014

Copy to:

- 1 The Principal Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
- 2 The Additional Director, DGGI, Surat Zonal Unit, Surat.
- 3 The Deputy/Assistant Commissioner, CGST & C.Ex., Division-VII, Ahmedabad North.
- 4 The Superintendent, Range-I, Division-VII, Ahmedabad North.
- 5 The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- 6 Guard File.

