


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
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निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/ STC/15-227/OA/2021-22.

DIN-20220764WT0000999EC6

आदेश की तारीख / Date of Order : 13.07.2022
जारी करने की तारीख / Date of Issue : 13.07.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV
आयुक्त / COMMISSIONER

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-12 /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)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियाँ में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से क) प्रतियाँ संलग्न की जाएंगीम एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00 रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु.4 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice No. STC/15-227/OA/2021-22 dated 23.04.2021 issued to M/s. Bharatbhai Amratlal Patel, 601, Shyamrath tower, K.K. Nagar, Ghatlodiya, Ahmedabad-380061.

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

M/s. Bharatbhai Amratlal Patel, 601, Shyamrath Tower, K.K. Nagar, Ghatlodiya, Ahmedabad - 380061 were issued SCN F. No. STC/15-227/OA/21-22 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

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

M/s. Bharatbhai Amratlal Patel, 601, Shyamrath Tower, K.K. Nagar, Ghatlodiya, Ahmedabad - 380061 (hereinafter referred to as the 'assessee' for the sake of brevity) were engaged in providing taxable services. It also appeared that the assessee having PAN No. ACDPP5530F was not registered with Service Tax department.

2. Analysis of "Sales/Gross Receipts from Services (Value from ITR/Form 26AS)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" in respect of M/s. Bharatbhai Amratlal Patel was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the data shared by the CBDT, it appeared that, the said assessee had earned substantial amount of service income from "sales of service" (as per ITR/Form 26AS) during FY 2015-16 and 2016-17, however, the assessee had not obtained the service tax registration and had not paid service tax thereon.

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

Sr. No.	Financial Year	Total Value for TDS (including 194C,194Ia,194Ib,194J,194)	Service rate	Tax	Service Tax (in Rs.)
01	2015-16	56998074	14.50%		8264721/-
02	2016-17	114790497	15%		17218575/-
	TOTAL	171788571/-			25483296/-

Therefore, it appeared that the said assessee had not paid service tax to the extent of Rs. 2,54,83,296/- (including Cess) on the Gross receipts from Services.

5. The activities carried out by the assessee for a consideration appeared to be falling under the definition of service and the said services appeared to be not covered under the negative list of services provided under Section 66D of the Finance Act, 1994, as well as not covered under mega exemption notification NO.25/2012-ST dated 20.06.2012. Hence, the said services provided by the assessee, appeared to be subject to Service Tax under Section 66B of the Finance Act, 1994.

6. The Service Tax liabilities of the assessee has been worked out on the basis of limited data/information received from the Income Tax department for the financial year 2015-16 & 2016-17, the present SCN is related exclusively to the information received from the Income Tax Department.

7. It appeared that the said assessee had not obtained the Service Tax registration form the department for the services provided by them for the period 2015-16 & 2016-17. Therefore, it appeared that the assessee had not paid service tax by way of willful suppression of facts and in contravention of provision of the Finance Act,1994 and rules made thereunder relating to levy and collection of Service Tax, 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. 2,54,83,296/- (including Cess) and therefore, the said Service Tax was required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994, interest under Section 75 of the Finance Act,1994 was also to be demanded and recoverable from the assessee and assessee was liable for penalty under Section 78 of the Finance Act,1994. The assessee was also liable to penalty under the provisions of Section 77(1)(a), 77(1)(c) & 77(2) of the Finance Act,1994, for failure to take registration in accordance with the provisions of Section 69; and for failure to furnish information/documents called for from them.

8. 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 Section 77 of the Finance Act, 1994 in as much as they did not provide required data/documents as called for, from them (vii) also contravened the provision of section 69(1) in as much as they did not obtain the service tax registration.

9. No data was available with the divisional office for the period 2017-18 (upto June-2017), therefore, at the time of issuance of SCN it was not possible to quantify short payment of Service Tax, if any, for the period 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 issue 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 noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'

It appeared that the "Total Amount paid/credited under section 194C,194H,194I,194J" for F.Y. 2017-18 (up to june,2017) had not been disclosed by the income tax department. The assessable value for the year

2017-18 (up to June-2017) was not ascertainable at the time of issuance of SCN, consequently, if any other amount was to be disclosed by the income tax department or any other source/agencies, against the assessee, action was to be initiated against the assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with the para 2.8 of the Master Circular NO. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future for the period 2017-18 (up to June 2017) was to be recovered from the assessee.

10. The proceedings proposed and action that may be taken against the assessee, under the aforementioned provisions of Finance Act, 1994 read with Service Tax Rules, 1994 framed there under, are saved by the Section 174(2) of the CGST Act, 2017.

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

- (i) Service Tax of Rs.25483296/- which was not paid for the financial year 2015-16 & 2016-17, should not be demanded and recovered from them under proviso to sub-section (1) of Section 73 of the Finance Act, 1994.
- (ii) Service Tax liability not paid during the Financial Year 2017-18 (up to June, 2017), ascertained in future, should not be demanded and recovered from them under proviso to sub-section (1) of Section 73 of the Finance Act, 1994
- (iii) Interest at the appropriate rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;
- (iv) Penalty should not be imposed upon the noticee under the provision of Section 77(1)(a), 77(1)(c) & 77(2) of the Finance Act, 1994, as amended;
- (v) Penalty should not be imposed upon the noticee under the provision of Section 78 of the Finance Act, 1994 for suppressing the full value of taxable services and material facts from the department resulting into non-payment of Service Tax.

DEFENCE REPLY:

12. The assessee vide their letter dated 02.06.2021 received in the Commissionerate on 09.06.2021 and 10.05.2022 received in the Commissionerate on 11.05.2022 tendered their written submission, wherein they inter alia have stated that;

- they are engaged in work of providing construction services. During F.Y. 2015-16 and 2016-17 they have entered into contracts with Rakesh Construction who had sub-contracted the work of (i) Construction of

Railway over Bridge in lieu of Railway Crossing at LC NO.119 along the Morbi Road, Rajkot and (ii) Construction of 4 lane (2 lane + 2 lane) fly over bridge at Raiya Road Crossing on 150 ft. Ring Road at Rajkot City.

- the service tax liability has been ascertained on the basis of income mentioned in ITR Returns and Form 26AS filed with the Income Tax Department. They have stated that on perusal of form 26AS, the additions is made as follows;

	F.Y.2015-16	F.Y.16-17
Value of Services as per 194C from Rajkesh Construction Co.	56783826	114576249
Value of Services as per 194I Ensure Support Services (India) Limited	214248	214248
Total Value	5998074	114790497
Service Tax Rate	14.5%	15%
Service Tax Payable	8264721	17218575

- that during F.Y.2015-16 & 2016-17, they have been awarded sub-contract work by M/s. Rakesh Construction Co., for construction of Bridge and Road. They have submitted that as per Clause 13 of Mega Exemption Notification NO.25/2012- dated 20th June,2012 as amended, construction of road or bridge was covered under Mega Exemption Notification, hence, no service tax is leviable on it.
- they have let out a commercial property situated at Second Floor at 201/B, City Pride, Behind Nalanda Hotel, Mithakali Six Road, Navrangpura, Ahmedabad to Ensure support services (india) limited for Rs.2,14,218 /- and at First Floor at 201/A, City Pride, Behind Nalanda Hotel, Mithakali Six Road, Navrangpura, Ahmedabad to Bharati Airtel for Rs.49200/-. They submitted that the aggregate amount of rent from said services being less than the basis exemption limit of service tax of Rs.10 Lacs, the same was not liable to Service Tax.
- The assessee have submitted that the question of willful suppression of facts and intention to evade payment of tax does not arise. They have requested to quash the demand of Rs.25483296/-
- The assessee have submitted the following documents in support of their say/contentions;
 - Copy of Form 26AS for F.Y.2015-16, 2016-17 & 2017-18.
 - Extract of clause 13 of mega exemption notification no.25/2012 dated 20th June,2012.
 - Receipt showing work allotted by Rajkot Mahanagar Palika to Rakesh Construction Co.
 - Agreement showing work sub-contracted by Rakesh Construction company to the assessee.

- v. Leger account of rent income.
- vi. Audited Financial statements for the F.Y. 2015-16, 2016-17 & 2017-18.
- vii. Details of Accounts of the other income for F.Y. 2015-16, 2016-17 & 2017-18.
- viii. R.A Bills for the F.Y. 2015-16, 2016-17 & 2017-18

PERSONAL HEARING:

13. Personal Hearing was granted to the assessee on 23.05.2022, which was attended by Shri Palak B. Pavagadhi, CA as authorized by the assessee. During the course of hearing, they made reference to their earlier written submission dated 10.05.2022. They have submitted that the service rendered by the assessee are covered under the Mega Exemption Notification NO.25/2012-ST, that they had provided services to M/s. Rakesh Construction who were involved in providing services of construction of railway bridges/road bridges to the government. He submitted that though the assessee had provided rental services, the same was within the service tax exemption limit, hence no Service Tax was payable on the same.

DISCUSSION AND FINDINGS:

14. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply submitted on 09.06.2021 & 11.05.2022, the documents submitted by the assessee and oral submission made during the course of hearing by the authorized representatives of the assessee.

15. On going through the SCN, I find that basically the essence of the case is that data of "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" (as per TDS Statement-Form 26AS) was shared by the CBDT with the CBIC for FY 2015-16 and 2016-17. It was observed from the data that the assessee had Sales/ Gross Receipt of Rs.17,17,88,571/- for FY 2015-16 and 2016-17 from providing services, however they had not paid service tax on it. Therefore, it was alleged that the assessee had not paid the service tax of Rs. 2,54,83,296/- on such sales, gross receipts, for providing the taxable service. Therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 2,54,83,296/- on the sales/gross receipts of Rs. 17,17,88,571/- as per the

data shared by the CBDT for the Financial Year 2015-16 and 2016-17 under proviso to section 73(1) of Finance Act, 1994 or not.

16. I find that the assessee vide their letter dated 02.06.2021 & 11.05.2022 has tendered their written submission along with supporting documents. The assessee has contended that they have provided services of bridge for use by general public and the said service was exempt from levy of service tax vide Entry No. 13 (a) of Notification No. 25/2012-ST dated 20.06.2012. In support of their defence, they have submitted the documents i.e. copy of Audited P&L and Balance Sheet, Form 26AS for 2015-16, 2016-17 & 2017-18, income ledgers, department RA bills, sub contract agreement with main contractors and work orders issued to the main contractor.

17. I find from the data shared by the CBDT that the assessee were paid/credited the amount of Rs. 5,69,98,074/- and Rs. 11,47,90,497/- during FY 2015-16 and 2016-17 respectively, as disclosed by the tax deductor under section 194C & 194I(b) of the Income Tax Act. I find that Section 194C of the Income Tax Act deals with the tax deducted at source (TDS) which is to be compulsorily deducted from any payments that have been made to any person who is a resident contractor or a subcontractor and Section 194I(b) deals with the Rent on other than plant and machinery. I find that in form 26AS TDS had been deducted under Section 194C and 194I(b) of the Income Tax Act. Section 194C & 194I(b) of the Income Tax Act, 1961 are reproduced herein below:

194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to---

(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family, of such sum as income-tax on income comprised therein.

194-I. Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of rent, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of---

(a) two per cent for the use of any machinery or plant or equipment; and

(b) ten per cent for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings:

It is clear from the above that any amount paid/credited to the assessee on which TDS has been deducted under Section 194C is a contract income, the same falls under category of "Works Contract Service" of the Finance Act, 1994. I also find that amount paid/credited to the assessee on which TDS been deducted under Section 194I(b) is a rent income for use of land or building (including factory building) or land appurtenants to building (including factory building) or furniture or fittings, and the same falls under category of Finance Act, 1994. I find that the assessee has admittedly stated in their written submission that they had provided the service of construction of bridge to government & let out a commercial property; therefore, there is no dispute as to regard the provision of service by the assessee.

18. I find that the SCN mentions about the sharing of data from ITR, however, on going through the data shared by the CBDT, it is seen the value of service is taken from the amount paid/ credited to the assessee as disclosed by the tax dedutor (service recipients) under Section 194C & 194I(b) of the Income Tax Act, and the said amount are found tallying with Form 26AS for FY 2015-16 and 2016-17. Further, the department has not provided data for the period 2017-18 (up to June, 2017), however, the assessee has provided the Form 26AS for the F.Y. 2017-18 and Audit report for the F.Y. 2017-18. Accordingly, I proceed ahead with these data for deciding the matter.

19 Since the assessee has claimed the exemption from service tax under Sr. No. 13 (a) of Notification 25/2012-ST dated 20.06.2012 on construction service of Bridge, the relevant extracts of the said notification is reproduced as under for ready reference.

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

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely":-

.....

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

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

(b)

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

2015-16

Name of TDS deductor	Amount paid/credited (total Rs.)	Break up of amount paid credited (Rs.)	TDS deducted	Description of the work done by the assessee as per RA bill produced by the assessee	Remarks
CONSTRUCTION CO.	567839		567839		
		3608472		CONSTRUCTION OF RAILWAY OVER BRIDGE ON RAILWAY LINE AT WARD NO.5 (RAJKOT MUNICIPAL CORPORATION)	Original work allotted to M/s. Rakesh Construction Co., vide order NO.534 of Rajkot Municipal Corporation. The same was Sub contracted to the assessee vide agreement dated 20.03.2014
		9725895		-do-	-do-
		7988985		-do-	-do-
		4905110		-do-	-do-
		4420408		-do-	-do-
		7375930		-do-	-do-
		1688275		-do-	-do-
		17070751		-do-	-do-
Ensure Support Services (India) Limited	214248			21420	
194I(b)		17854			
		17854			
		17854			
		17854			
		17854			
		17854			
		17854			
		17854			
		17854			
		17854			
		17854			
		17854			
		17854			

2016-17

Name of TDS deductor	Amount paid/credited (total Rs.)	Break up of amount paid credited (Rs.)	TDS deducted	Description of the work done by the assessee as per RA bill produced by the assessee	Remarks
RAKESH CONSTRUCTION CO	114576249		1145763		
		45591000		CONSTRUCTION OF RAILWAY OVER BRIDGE ON RAILWAY LINE AT WARD NO.5 (RAJKOT MUNICIPAL CORPORATION)	Original work allotted to M/s. Rakesh Construction Co., vide order NO.534 of Rajkot Municipal Corporation. The same was Sub contracted to the assessee vide agreement dated 20.03.2014
		21436582		-do-	-do-
		17945402		-do-	-do-
		12958966		-do-	-do-
		16644299		-do-	-do-
Ensure Support Services (India) Limited	214248			21420	
1941(b)		17854			
		17854			
		17854			
		17854			
		17854			
		17854			
		17854			
		17854			
		17854			
		17854			
		17854			
		17854			

2017-18

Name of TDS deductor	Amount paid/credited (total Rs.)	Break up of amount paid credited (Rs.)	TDS deducted	Description of the work done by the assessee as per RA bill produced by the assessee	Remarks
BUILD INDIA CONSTRUCTION CO	16785800		167858		
30.06.17		35000		Construction of 4 lane fly over at mavdi road crossing (Rajkot Municipal Corporation)	Original work allotted to Rakesh Construction Company vide order no.68 of Rajkot Municipal Corporation. The same was sub-contracted to Build India Construction. M/s. Build India Construction has sub-contracted to assessee vide agreement dated 08.12.16.
30.06.17		13734500		-do-	-do-
30.06.17		3016300		-do-	-do-

RAKESH CONSTRUCTION CO	207241811		2072419		
31.03.18		44959260		Not applicable, as paid/received after 30.06.2017	After 30.06.2017
09.03.18		26171363		-do-	After 30.06.2017
05.01.18		31319909		-do-	After 30.06.2017
03.01.18		10838886		-do-	After 30.06.2017
30.06.17		12847705		CONSTRUCTION OF RAILWAY OVER BRIDGE ON RAILWAY LINE AT WARD NO.5 (RAJKOT MUNICIPAL CORPORATION)	Original work allotted to M/s. Rakesh Construction Co., vide order NO.534 of Rajkot Municipal Corporation. The same was Sub contracted to the assessee vide agreement dated 20.03.2014
30.06.17		24818391		CONSTRUCTION OF 4 LANE FLY OVER BRIDGE AT RAIYA CROSSING (RAJKOT MUNICIPAL CORPORATION)	Original work allotted to Rakesh Construction Co., vide order NO.67 of Rajkot Municipal Corporation. The same was sub-contracted to assessee vide agreement dated 28.03.17
30.06.17		27913383		CONSTRUCTION OF RAILWAY OVER BRIDGE (RAJKOT MUNICIPAL CORPORATION)	Original work allotted to M/s. Rakesh Construction Co., vide order NO.534 of Rajkot Municipal Corporation. The same was Sub contracted to the assessee vide agreement dated 20.03.2014
30.06.17		7146246		CONSTRUCTION OF 4 LANE FLY OVER BRIDGE AT RAIYA CROSSING (RAJKOT MUNICIPAL CORPORATION)	Original work allotted to Rakesh Construction Co., vide order NO.67 of Rajkot Municipal Corporation. The same was sub-contracted to assessee vide agreement dated 28.03.17
30.06.17		11002381		CONSTRUCTION OF 4 LANE FLY OVER BRIDGE AT RAIYA CROSSING (RAJKOT MUNICIPAL CORPORATION)	-do-
06.06.17		10224287		CONSTRUCTION OF 4 LANE FLY OVER BRIDGE AT RAIYA CROSSING (RAJKOT MUNICIPAL CORPORATION)	-do-
ACCL IT SERVICES LIMITED	214244		21421.6		
		17854			
		17854			
		17854			
		17850			
		17854			
		17854			
		17854			
		17854			

		17854		
		17854		
		17854		
		17854		

20.1 It is apparent from the above mentioned tables that the RA bill clearly describe the work carried out by the assessee to be "Construction of Bridge" and the same was originally awarded by the Rajkot Municipal Corporation to the main contractor and subsequently the same was sub-contracted to the assessee by the main contractor. It is also evident from the above that the assessee have been paid for the aforesaid work awarded to the assessee and the same was reflected in to the Form26 AS of the assessee. I find that assessee have submitted the copy RA bills issued by the Rajkot Municipal Corporation and sub-contract agreements with M/s. Rakesh Construction Company & Build India Construction Company for construction of over bridge on railway line at ward no.5, for construction of 4 lane fly over bridge at raiya crossing & for construction of 4 lane fly over bridge at Mavdi Road Crossing.

20.2 In case of the amount paid /credited by M/s. Rakesh Construction Co., it is discerned from the RA bill, subcontract agreement made between the main contractors and assessee, that main contractors were awarded the work of "Construction of Bridge " by Rajkot Municipal Corporation. The said main contractor sub-contracted the said work to the assessee as per details in the table above. In case of amount paid/credited by M/s. Build India Construction Co., the original work of construction of 4 lane flyover bridge at Mavdi Road Crossing was awarded to M/s. Rakesh Construction Co., by the Rajkot Municipal Corporation, the said work was sub-contracted to M/s. Build India Construction Co., and subsequently the said work was sub-contracted to the assessee by M/s. Build India Construction Co.

20.3 Therefore, from the above documentary evidences as submitted by the assessee, I find that they have rendered the services of Bridge Construction, directly or indirectly to the government/local authority for use of general public.

21 Therefore, on perusing the above legal position, I find that the services provided by the assessee by way of "Bridge" for use by general public are squarely covered under Sr. No. 13(a) of Notification No. 25/2015-ST dated

20.06.2012. Therefore, I find that the exemption is quite clearly available to the assessee for "Bridge" for use by general public, as claimed by them, and accordingly, they are not liable to pay service tax as demanded in the subject SCN, on provision of services during FY 2015-16, 2016-17 and 2017-18 (up to June,2017) by the assessee

21.1 I find that the assessee had contested that their taxable income is well below exemption limit of Rs.10 Lakh p.a. during the year 2015-16, 2016-17. I find that Notification No.33/2012-ST dated 20.06.2012, has been issued for basic exemption limit for payment of service tax. The said notification reads as under:

Notification No. 33/2012 – Service Tax, Dated- 20th June, 2012

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3. Sub-section (i), vide G.S.R. number 140(F), dated the 1st March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act: Provided that nothing contained in this notification shall apply to,-

(i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or (ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules,1994.

2. The exemption contained in this notification shall apply subject to the following conditions, namely:-

(i) the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;

.....

(B) "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification."

21.2 As regards deduction claimed by the assessee on account of taxable value of services upto Ten Lakh Rupees available for small services providers, it is apparent from the Form 26AS that that the service was mainly provided to M/s. Ensure Support Services (India) Limited during 2015-16 & 2016-17, and M/s. ACCL IT SERVICES LIMITED during 2017-18 (up to June,2017) and assessee has considered this service to be exempt service. I find that the SCN does not cover the period 2014-15, and as no other

documents or tangible evidence contrary to the claim of assessee is available on records or has been adduced by the department, I am constrained to hold that the claim of exemption upto ten lakh rupees by the assessee has to be accepted.

21.3 I find that the subject SCN was issued on the basis of data shared by CBDT with CBIC, and the subject SCN was issued on the total amount paid/credited under Section 194C, 194H, 194I, 194J of the Income Tax Act, 1961 for the F.Y. 2015-16 & 2016-17. Further, as discussed in para 18 above, the amount paid/credited to the assessee disclosed in Form 26AS, tallied with the total value of services taken for determination of Service Tax liability. Therefore, I am not entering into other issues which are outside the purview of the subject SCN.

I rely upon the order passed by the Hon'ble CESTAT in the case of M/s. Dhampur Sugar Mills Ltd., Vs. Commissioner of C.Ex., Meerut-II, reported in 2013(296)ELT (Tri.-Del.), where in the Hon'ble CESTAT in para 7 has held that;

7. I find that in the impugned order the cenvat credit has been denied on the ground that no evidence has also been produced regarding use of these items, which is not correct as this ground had not been taken in the show cause notice. The show cause notice only alleges that these items are not covered by the definition of capital goods. It is well settled law that show cause notice is the foundation of a case and the Adjudicating Authority cannot travel beyond the show cause notice. (Emphasis Supplied)

Further the Hon'ble CESTAT in the case of M/s. B. Girijapathi Reddy & Company Vs. Commissioner of C.Ex., Gunter, reported in 2016(244)ELT 923(Tri.-Hyd.), para 12 has held that;

12. The assessee has also appealed against the imposition of penalty. We find that in the SCN, penalty was proposed in terms of Rule 15 of CCR, 2004 read with Section 11AC of the Central Excise Act, 1944. However, the adjudicating authority did not find much force for imposing penalty under Section 11AC or Rule 15(2) ibid and limited penalty provisions to Rule 15(1) alone of Rs. 60,00,000/- on the assessee. We are not able to accept the 'tweaking' of the said proposals in the show cause notice by the adjudicating authority only to suit his findings and conclusion. Adjudicating authority did not find force in the grounds for proposal for levy of penalty under Rule 15 read with 11AC, he has held that no suppression, fraud are brought in and that intention to evade payment of tax in cash is not alone sufficient to levy penalties under Section 11AC or Rule 15(2). In the face of such findings, it would have been more legally appropriate for the adjudicating authority to drop the said proposal and desist from imposition of penalty. When the SCN has proposed imposition of penalty in terms of Rule 15 read with 11AC of the Act, (emphasis added), it is not open to the adjudicating authority to selectively impose penalty only under Rule 15 and that too under the more benign Rule 15(1). The proposal in the show cause notice for imposition of penalty should have been accepted and confirmed in toto or not at all. The adjudicating authority cannot travel beyond the SCN. This being the case, and especially taking note of the adjudicating authority's own findings that there is no suppression, fraud, etc., the said proposal in the notice for imposition of penalty under Rule 15 read with S. 11AC ibid will necessarily have to be dropped. In consequence the penalty of Rs. 60 lakhs imposed by adjudicating authority as aforesaid under Rule 15 of the Rules will require to be set aside, which we hereby do. We, however, do not interfere with the order of the adjudicating authority treating the

credit of Rs. 6,60,61,607/- taken by assessee as ineligible credit and ordering them to pay the same back. It is further clarified that as decided, above no interest liability will accrue on the assessee. We also do not interfere with the adjudicating authority's imposition of penalty of Rs. 1,000/- under Section 77 of the Act. The appeal filed by assessee is partly allowed as above. (Emphasis Supplied)

22. From the above factual, legal position and documents submitted by the assessee, I find that the difference in the value of service as alleged in the subject SCN is on account of the exemption claimed by the assessee. I further hold that apart from the differences noticed in the figures reported in ST-3 returns and in ITR/Form 26AS, the department has not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non payment of service tax by the assessee. Having considered these factual and documentary evidences available on records, I am of the considered view that there is no short payment of service tax by the assessee. Thus, the subject SCN is liable to be dropped on merits, and the same is found to be incorrect and legally not sustainable.

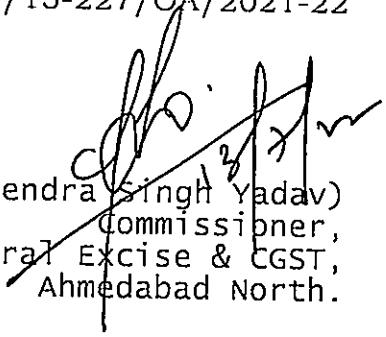
23. Since the service provided by the assessee during FY 2015-16, 2016-17 and 2017-18 (up to June,2017) was exempt service as discussed above, the assessee was not liable to pay service tax on provision of service by them, therefore, the assessee was not required to obtain service tax registration under Section 69(1) and 69(2) of the Finance Act, 1994, read with Notification No. 26/2005-ST dated 07.06.2005. In view of the above detailed discussion, the assessee was not required to file service tax returns under Section 70 of the Finance Act, 1994. Hence, I find that there is no contravention of the provisions of Section 69 and 70 of the Finance Act, 1994 on the part of the assessee. Therefore, I find that no penalty under section 77 is imposable on the assessee. Similarly, no late fees under Rule 7C of Service Tax Rules, 1994 is leviable on the assessee.

24. In view of the aforementioned detailed discussion and in view of the facts and circumstances pertaining to the subject case, the demand is not tenable in law. Accordingly, I do not consider it necessary to delve on the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise for imposing penalty.

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

ORDER

I drop the proceedings initiated against M/s. Bharatbhai Amratlal Patel, Ahmedabad vide Show Cause Notice F.No. STC/15-227/OA/2021-22 dated 23.04.2021.


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

By Regd. Post AD./Hand Delivery

F. No. STC/15-227/OA/2021-22

Date: 13.07.2022.

To

M/s.Bharatbhai Amratlal Patel
601, Shyamrath Tower,
K.K.Nagar,
Ghatlodiya
Ahmedabad -380061.

Copy to:

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