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<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 &amp; Services Tax &amp; Central Excise, Ahmedabad North, Custom House(1<sup>st</sup> Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- <a href="mailto:aaahmedabad2@gmail.com">aaahmedabad2@gmail.com</a></p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO. STC/15-228/OA/2021-22

DIN : 20221064WT0000414314

आदेश की तारीख

/ Date of Order : 18.10.2022

जारी करने की तारीख

/ Date of Issue : 19.10.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव

/ UPENDRA SINGH YADAV

आयुक्त

/ COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 21 /2022-23

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

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

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

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

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

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

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 21 /2022-23**

M/s. Hemantkumar Kantilal Shah, situated at C/703, Gaurav Appartment, Prabhat Chowk, Ghatlodiya, Ahmedabad, Gujarat-380061, were issued SCN F. No. STC/15-228/OA/2021-22 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad, having PAN No. AIRPS4033J.

**BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S. HEMANTKUMAR KANTILAL SHAH, ARE AS FOLLOWS:**

M/s. Hemantkumar Kantilal Shah, situated at C/703, Gaurav Appartment, Prabhat Chowk, Ghatlodiya, Ahmedabad, Gujarat-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 AIRPS4033J was not registered with Service tax department.

2. As per the data shared by CBDT with the Central Board of Indirect Taxes (CBIC) for F.Y.2015-16 and 2016-17, it appeared that the assessee had earned substantial service income by way of providing taxable services, however they had not obtained service tax registration and had not paid service tax thereon.

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

4. Therefore, the service tax liability of the assessee was to be ascertained on the basis of income mentioned in the ITR returns /Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax department were considered as the total taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act,1994. By considering the said amount as taxable income, service tax liability was calculated as detailed given below:-

Sr. No.	F.Y.	Total Value for TDS (including 194C, 194Ia, 194Ib, 194J 194)	Service Tax rate	Service Tax Payable
	2015-16	3,89,55,652	14.5%	56,48,570/-
	2016-17	9,63,00,133	15%	1,44,45,020/-
	Total	13,52,55,785		2,00,93,590/-

5. It appeared that the assessee had contravened the provisions of (i) Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004 in as much as they had failed to obtain Service Tax Registration under Section 69(1) of the Finance Act, 1994 read with Notification No.33/2012-Service Tax dated 20.06.2012; (ii) Section 67 of the Finance Act, 1994 in as much as they had failed to determine the correct value of taxable service provided by them; (iii) Section 70 of the Finance Act, 1994 read with Rule 6&7 of the Service Tax Rules, 1994 in as much as they had failed to assess their tax liability and also failed to furnish returns, in such form i.e. ST3 returns in such manner and at such frequency as prescribed; (iv) Section 66B and Section 68 of the Finance Act, 1994 read with Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they had failed to pay the Service Tax at the appropriate rate within the prescribed time and in such manner as provided under the said provision; and (v) Section 77 of the Finance Act, 1994, in as much as they had failed to file correct and true ST-3 returns.

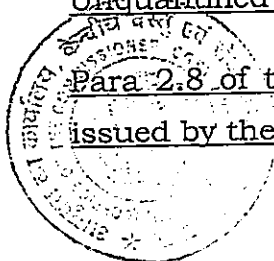
6. All the above acts of contravention on the part of the said assessee appeared to have been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid was required to be demanded and recoverable from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years.

7. All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appeared to be publishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time. The said assessee appeared 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.

8. No data was shared by the CBDT, for the period FY 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 FY 2017-18 (upto June-2017).

Unquantified demand at the time of issuance of SCN.

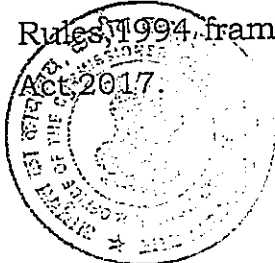
Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified that:



*'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.'*

9. The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2017-18 (upto June-2017) had not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. The assessee had also failed to provide the required information even after the issuance of letter from the Department in view of which the assessable value for the year 2017-18 (upto June-2017) was not ascertainable at the time of issuance of this Show Cause Notice. If any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action was to be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with 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 (upto June-2017) covered under subject Show Cause Notice, was to be recovered from the assessee.

10. It appeared that the assessee had not obtained Service Tax Registration from the department for the services provided by them during FY 2015-16 to FY 2017-18 (up to June,2017). It appeared that the assessee had not paid actual service tax by way of willful suppression of facts and in contravention of provision of the Finance Act, 1994 and rules made there under relating to levy and collection of service tax, with intent to evade payment of service tax. Hence, the service tax amounting to Rs.2,00,93,590/- appeared to be recoverable from the assessee, under the provisions of Section 73(1) of the Finance Act,1994 by invoking extended period of time, alongwith interest thereof at appropriate rate under the provisions of section 75 of the Finance Act,1994. The provisions of Finance Act,1994 read with Service Tax Rules,1994 framed there under, were saved by the Section 174(2) of the CGST



11. It appeared that as the assessee had failed to obtain service tax registration/furnish the information called for and contravened various provision of Finance Act, 1994 and Rules made thereunder, thus, they had rendered themselves liable to penalty under Section 77(1)(a), 77(1)(c) and 77(2) of the Finance Act, 1994.

12. Therefore, a Show Cause Notice No. STC/15-228/OA/2021-22 dated 23.04.2021 was issued by the Commissioner, Central GST & Central Excise, Ahmedabad North to M/s. Hemantkumar Kantilal Shah, asking them as to why;

- (i) Service Tax of Rs.2,00,93,590/- which was not paid for the financial year 2015-16 & 2016-17, should not be demanded and recovered from them under the proviso to Sub- Section (1) of Section 73 of Finance Act, 1994;
- (ii) Service Tax liability not paid during the Financial Year 2017-18 (upto June, 2017), ascertained in future, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994;
- (iii) Interest at the appropriate rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;
- (iv) Penalty under the provisions of Section 77(1)(a), 77(1)(c) & 77(2) of the Finance Act, 1994 as amended, should not be imposed on them ;
- (v) Penalty under Section 78 of the Finance Act, 1994, as amended, should not be imposed upon them for suppressing the full value of taxable services and material facts from the department resulting into non-payment of Service Tax as explained herein above.

### 13. DEFENCE REPLY:

> The assessee vide their letter dated 26.07.2022 tendered written submission, wherein they have interalia stated that during the year 2014-15, 2015-16 & 2016-17 their main business was carrying out construction of road/highway for general use of the public assigned by the government directly and the main nature of work included:

- constructing food storage godown for state government
- constructing, modernizing and up-gradation of assistant electrical inspector's office for the government
- construction for providing infrastructure facility for water supply and drainage and its related campus development alongwith complete set up of government
- construction of primary school building of state government.



The assessee has submitted the attached the copy of contract entered with:

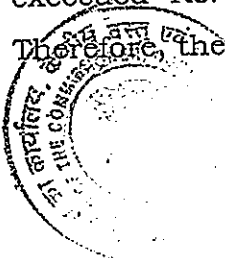
(It is to mention here that the documents submitted are copy of work orders- not contracts)

- a) Gujarat State Civil Supplies Corporation Limited ( 13<sup>th</sup> August,2015)
- b) Office of the Executive Engineer (dated 13<sup>th</sup> April,2015, )
- c) Executive Engineer office (dated 17<sup>th</sup> May,2016 & 14<sup>th</sup> July,2016 )
- d) Main contract entered by the Jyoti Infratech company with Executive Engineer office (Dated 22<sup>nd</sup> September,2015)
- e) Sub-contract agreement entered between District Project Officer in Kheda District on 29<sup>th</sup> May,2015.

➤ The assessee further contested that all the activities which they had carried out were covered under Mega Exemption Notification No.25/2012 dated 1<sup>st</sup> July,2012 as amended from time to time. They have stated that the nature of work is covered under Entry No. (13)(a) of Notification i.e. services provided by way of construction , erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of - construction of a road, bridge, tunnel, or terminal for road transportation for use by general public; Entry No. 12 (e ) i.e. 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 - pipeline, conduit or plant for (i) water supply (ii)water treatment, or (iii) sewerage treatment or disposal; and Entry No. 12A(a) i.e. Services provided to 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 civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession.

➤ They have further stated that all the transactions were entered directly with government or through entering into sub contract with main contractor, and the same is also exempt under mega exemption notification no.25/2012 dated 1<sup>st</sup> July,2012 under clause 29(h). Lastly they have submitted that all activities were covered under the exempt income as classified in the mega exemption notification.

➤ The assessee further contested that their aggregate turnover never exceeded Rs. 9 /10 lakh, which was required for purpose of registration. Therefore, they had not obtained Service tax registration.



**14. PERSONAL HEARING:**

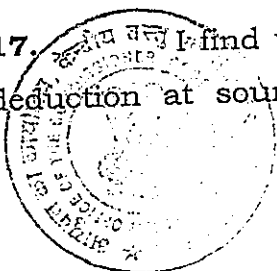
Personal hearings were granted to the assessee on 05.05.2022, 24.05.2022, 20.06.2022, 26.07.2022 and 27.09.2022. The letters sent for personal hearings fixed on 05.05.2022 & 24.05.2022 were not delivered and returned back by the postal authority. The assessee did not appear for personal hearing fixed on 20.06.2022 and 26.07.2022. However, the personal hearing fixed on 07.09.2022 was attended by Shri Hemantkumar Kantilal Shah, Proprietor. During the course of personal hearing he reiterated their written submission dated 26.07.2022. He submitted that the service provided by the assessee are exempted vide Notification NO.25/2012-ST, as the assessee was engaged in construction of food godown, infrastructure for water supply, primary school for government. Lastly, he requested to drop the proceedings in the interest of justice.

**DISCUSSION AND FINDINGS:**

15. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 26.07.2022, the documents submitted and oral submission made by the assessee during the course of personal hearing.

16. On going through the SCN dated 23.04.2021, I find that basically the essence of the case here 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 CBIC for FY 2015-16 and 2016-17. The difference in taxable value was worked out after comparing the income declared in Form 26AS (i.e. "Total Amount Paid/Credited under 194C, 194H, 194I, 194J") vis-à-vis taxable value disclosed in ST-3 Returns. As per SCN dated 23.04.2021, the difference of Rs. 13,52,55,785/- 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. 2,00,93,590/- on such differential value, for providing the taxable service. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 2,00,93,590/- short/not paid on the differential taxable value of Rs. 13,52,55,785/- for the Financial Year 2015-16 and 2016-17 as demanded in SCN dated 23.04.2021 under proviso to section 73(1) of Finance Act, 1994 or not.

17. I find that Section 194C of the Income Tax Act deals with the tax deduction at source (TDS) that is to be compulsorily deducted from any



payments that have been made to any person who is a resident contractor or a subcontractor. Therefore, any amount paid/credited on which TDS has been deducted under Section 194C from such amount, the amount paid/credited is a contract income from contractual activities carried out. Therefore, such activity is covered under the definition of "Service" under Section 65(44), accordingly, it is subject to the service tax under section 66B of the Finance Act, unless the services provided are covered under negative list of service or exemption notification or exclusion clause provided under definition of "Service" as per 65B(44). I find that there is no dispute as far as the receipt of the consideration for provision of service by the assessee is concerned. The assessee has admittedly stated in their defence reply dated 26.07.2022 that they had provided construction services to government. Accordingly, I find that there is no dispute as far as the question of provision of services by the assessee is concerned.

18. I find that the assessee vide their defence reply dated 26.07.2022 has contested that they had provided service by way of construction of food storage godown, modernization of Government office, construction of primary school, infrastructure facility of water supply and drainage for government and also contended that the services provided were covered under Sr. No. 12(e), 12A(a), 13(a) and 29(h) of Notification No. 25/2012-ST dated 20.06.2012, accordingly they were not liable to pay service tax on provision of such services during FY 2015-16 and 2016-17. Therefore, I am of the opinion that there is no dispute regarding provision of services by the assessee. Therefore, the issue needs to be decided is whether the services provided by the assessee were eligible for exemption under Notification No. 25/2012-ST vide Entry 12(e), 12A(a), 13(a) and 29(h) or otherwise as claimed by the assessee.

19. The assessee, in support of the arguments put forth by them, has submitted the following documents.

- o Form 26AS
- o Profit & Loss Account / Balance Sheet
- o Copy of Five Work Orders and RA Bills or part thereof (12 for FY 2015-16 and 14 for FY 2016-17)
- o Subcontract agreement entered by the assessee with M/s. Malalni Construction
- o Nine Payment voucher issued by M/s. Jyoti Infratech Company (unsinged) with respect to Payment made to M/s. H.K. Construction (the assessee)





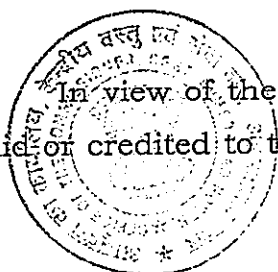
20. I find that the SCNs mentions about sharing of data of amount paid/credited to the assessee and on which TDS has been deducted under Section 194C and computation of service tax liability is based solely upon such data. On comparing the value of service considered in the impugned SCN and relevant data contained in Form 26AS, the same is found to be tallying for FY 2015-16 and 2016-17. The value of service considered in the SCN and the relevant figures of value of services appearing in Form 26AS are reproduced herein below for ready reference:

<b>Value of services considered in the subject SCN dated 23.04.2021</b>				
Sr. No.	F.Y.	Total Value for TDS (including 194C, 194Ia, 194Ib, 194J 194)	Service Tax rate	Service Tax Payable
1	2015-16	3,89,55,652	14.5%	56,48,570/-
2	2016-17	9,63,00,133	15%	1,44,45,020/-
	Total	13,52,55,785		2,00,93,590/-

<b>FY 2015-16 - Details of Form 26AS</b>			
Sr. No.	As per Form 26AS, Name of TDS Deductor (by whom, the amount paid/credited to the assessee)	As per Form 26AS, amount paid/credited to the assessee (in Rs.)	Section of IT Act, under which TDS deducted
1	ARVINDBHAI M PRAJAPATI	10233834	194C
2	JYOTI INFRA TECH COMPANY	12850964	194C
3	OFFICE OF THE EXE ENGINEER CAPITAL PROJECT DIVISION-4	1411364	194C
4	SUPERINTENDENT ENGINEER (MECH), GUJARAT MARITIME BOARD	70027	194C
5	THE GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD	1169844	194C
6	EXECUTIVE ENGINEER KHEDA R&B DIVISION - NADIAD	1018532	194C
7	MALANI CONSTRUCTION CO.	12201087	194C
	TOTAL	38955652	

<b>FY 2016-17 - Details of Form 26AS</b>			
Sr. No.	As per Form 26AS, Name of TDS Deductor (by whom, the amount paid/credited to the assessee)	As per Form 26AS, amount paid/credited to the assessee (in Rs.)	Section of IT Act, under which TDS deducted
1	ARVINDBHAI M PRAJAPATI	4494518	194C
2	JYOTI INFRA TECH COMPANY	87027817	194C
3	OFFICE OF THE EXE ENGINEER CAPITAL PROJECT DIVISION-4	2402034	194C
4	THE GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD	938833	194C
5	EXECUTIVE ENGINEER VALSAD R&B DIVISION - VALSAD	1436931	194C
	TOTAL	96300133	

In view of the above, I would proceed with data of Form 26AS (amount paid or credited to the assessee by the recipient of service and on which TDS



under Section 194C of IT Act has been deducted by the recipient of service), for deciding the matter as the same is basis of the SCN.

21. To appreciate the issue in the correct perspectives, relevant extracts / Entries of Notification No. 25/2012-ST are reproduced as follows:

**Relevant Entry Numbers of Notification No. 25/2012-ST dated 20.06.2012:**

**"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 1.3.2015 w.e.f.1.4.2015.)**

(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 1.3.2015 w.e.f.1.4.2015.)**

(d) canal, dam or other irrigation works

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(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 1.3.2015 w.e.f.1.4.2015.)**

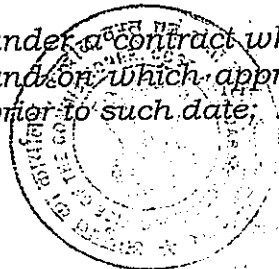
**"[12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -**

(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.)”

**“Special provision for exemption in certain cases relating to construction of Government buildings**

**“SECTION 102. . — (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable 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 establishment;
  - (ii) a clinical establishment; or
  - (iii) an art or cultural establishment;
- (c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act,

under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.”

**(This Section was inserted by the Finance Act, 2016, w.e.f.14-05-2016)**

**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;

.....  
(e) .....

**29. Services by the following persons in respective capacities -**

(a) .....

.....  
(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt

**21.1.** From the above legal position, it is seen that the E.No. 12(a) was omitted w.e.f. 01.04.2015 vide Notification No. 6/2015-ST dated 1.3.2015. However, by virtue of insertion of new Entry No. 12A(a) to the Notification 25/202-ST vide Notification 09/2016-ST dt. 01.03.2016 and insertion of



Section 102 vide Finance Act, 2016 dated 14.05.2016, the exemption was again restored for "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 civil structure or any other original works for use other than the commercial, Industry or business or profession" with condition that the contract had been entered prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

22. The assessee has provided some RA Bills and work orders as under, in support of their arguments for the service rendered by them being exempt service. The said documents and the relevant information emerging from the said documents are given below:

Details Contained in RA Bills /Bills Produced by the assessee for FY 2015-16					
Sr. No.	Documents detail/ Bill details	Name of Contractor	Name of the Work as per the documents/Bill	Work order date as per RA Bill/Documents	Amount in Rs.
1	1st RA Bill Issued by R&B Valsad Division	M/s. Jyoti Infratech Company	Lowering down the 3rd floor & Strengthening Beautification of block No. A to X Class III Colony at Valsad.	as per RA Bill, WO dated 22-09-2015	4616142
2	Bill dated 19.02.2016 issued by Gujarat State Civil Supplies Corporation Ltd (GSCSCL)	M/s. Jyoti Infratech Company	Constructing work of Godown and Ancillary work at chikhli- Sanjan	WO dated 13.08.2015 issued by M/s. GSCSCL to M/s Jyoti Infratech Co. for Constructing Godowns and ancillary work	2968975
3	Bill dated 12.2015 issued by Gujarat State Civil Supplies Corporation Ltd (GSCSCL)	M/s. Jyoti Infratech Company	Constructing work of Godown and Ancillary work at chikhli- Sanjan	WO dated 13.08.2015 issued by M/s. GSCSCL to M/s Jyoti Infratech Co. for Constructing Godowns and ancillary work	3447742
4	Bill dated 05.11.2015 issued by Gujarat State Civil Supplies Corporation Ltd (GSCSCL)	M/s. Jyoti Infratech Company	Constructing work of Godown and Ancillary work at chikhli- Sanjan	WO dated 13.08.2015 issued by M/s. GSCSCL to M/s Jyoti Infratech Co. for Constructing Godowns and ancillary work	2215558
5	Bill No. 148 dated 10.09.2015 issued by Gujarat Maritime Board And relevant work order	H.K. Construction	For Repair & Maintenance - Electrical	WO No. EE (M) /W-O/471 dt.04/08/2015	13376
6	Bill No. 104 dated 03.08.2015 issued by Gujarat Maritime Board And relevant work order	H.K. Construction	For Repair & Maintenance - Electrical	WO No. EE (M) /W-O/385 dt.10/07/2015	14834
7	Bill No. 69 dated 02.07.2015 Issued by Gujarat Maritime Board And relevant work order	H.K. Construction	For Repair & Maintenance - Electrical	WO No. EE (M) /W-O/193 dt. 27/05/2015	14511
8	Bill No. 39 dated 30.05.2015 issued by Gujarat Maritime Board And relevant work order	H.K. Construction	For Repair & Maintenance - Electrical	WO No. EE (M) /W-O/81 dt. 29/04/2015	12795
9	Memorandum of payment issued by Kheda R&B, Nadiad	No details available	No details available	No details available	1042255
10	1st RA Bill dated 09.10.2015 issued by Assistant Engineer, SSAM SPO, Gandhinagar (Sera Siksha Abhiyan Mission)	M/s. Malani Construction Co	Construction of Class Room (Package No. SSA /ACR/ KHD/1098)	Package No. SSA /ACR/ KHD/1098	303888
11	2nd RA Bill dated Nil issued by Assistant Engineer, SSAM SPO, Gandhinagar (Sera Siksha Abhiyan Mission)	M/s. Malani Construction Co	Construction of Class Room (Package No. SSA /ACR/ KHD/1098)	Package No. SSA /ACR/ KHD/1098	4558979
12	3rd and Final RA Bill	M/s. Malani	Construction of Class Room	Package No. SSA /ACR/	5064804

dated Nil issued by Assistant Engineer, SSAM SPO, Gandhinagar (Serva Siksha Abhiyan Mission)	Construction Co	(Package No. SSA /ACR/ KHD/1098)	KHD/1098	
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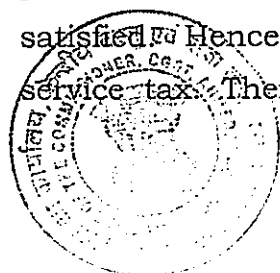
Details Contained in RA Bills / Bills Produced by the assessee for FY 2016-17					
Sr. No.	Documents detail/ Bill details	Name of Contractor	Name of the Work as per the documents/Bill	Work order date as per RA Bill/Documents	Amount in Rs.
1	Bill dated .04.2016 issued by Gujarat State Civil Supplies Corporation Ltd (GSCSCL)	M/s. Jyoti Infratech Company	Constructing work of Godown and Ancillary work at chikhli- Sanjan	WO dated 13.08.2015 issued by M/s. GSCSCL to M/s Jyoti Infratech Co. for Constructing Godowns and ancillary work	4274549
2	2nd RA Bill issued by R&B Valsad Division	M/s. Jyoti Infratech Company	Lowering down the 3rd floor & Strengthening Beautification of block No. A to X Class III Colony at Valsad.	as per RA Bill, WO dated 22-09-2015	10812893
3	3rd RA Bill issued by R&B Valsad Division	M/s. Jyoti Infratech Company	Lowering down the 3rd floor & Strengthening Beautification of block No. A to X Class III Colony at Valsad.	as per RA Bill, WO dated 22/09/2015	7561192
4	1st RA Bill issued by Capital Project, Div-4, Gandhinagar	M/s. Jyoti Infratech Company	Construction of various Building at VGEC Chandkheda ( Expansion of Girls Hostel and Mechanical Block)	as per RA Bill, WO dated 21/05/2016	2393557
5	Bill dated 28.09.2016 issued by Gujarat State Civil Supplies Corporation Ltd (GSCSCL)	M/s. Jyoti Infratech Company	Constructing work of Godown and Ancillary work at chikhli- Sanjan	WO dated 13.08.2015 issued by M/s. GSCSCL to M/s Jyoti Infratech Co. for Constructing Godowns and ancillary work	4117990
6	4th RA Bill issued by R&B Valsad Division	M/s. Jyoti Infratech Company	Lowering down the 3rd floor & Strengthening Beautification of block No. A to X Class III Colony at Valsad.	as per RA Bill, WO dated 22/09/2015	8080332
7	2nd RA Bill issued by Capital Project, Div-4, Gandhinagar	M/s. Jyoti Infratech Company	Construction of various Building at VGEC Chandkheda ( Expansion of Girls Hostel and Mechanical Block)	as per RA Bill, WO dated 21/05/2016	3232880
8	5th RA Bill issued by R&B Valsad Division	M/s. Jyoti Infratech Company	Lowering down the 3rd floor & Strengthening Beautification of block No. A to X Class III Colony at Valsad.	as per RA Bill, WO dated 22/09/2015	7043017
9	6th RA Bill issued by R&B Valsad Division	M/s. Jyoti Infratech Company	Lowering down the 3rd floor & Strengthening Beautification of block No. A to X Class III Colony at Valsad.	as per RA Bill, WO dated 22/09/2015	7316648
10	7th RA Bill issued by R&B Valsad Division	M/s. Jyoti Infratech Company	Lowering down the 3rd floor & Strengthening Beautification of block No. A to X Class III Colony at Valsad.	as per RA Bill, WO dated 22/09/2015	2322241
11	8th RA Bill issued by R&B Valsad Division	M/s. Jyoti Infratech Company	Lowering down the 3rd floor & Strengthening Beautification of block No. A to X Class III Colony at Valsad.	as per RA Bill, WO dated 22/09/2015	6495009
12	10th RA Bill issued by R&B Valsad Division	M/s. Jyoti Infratech Company	Lowering down the 3rd floor & Strengthening Beautification of block No. A to X Class III Colony at Valsad.	as per RA Bill, WO dated 22/09/2015	854712
13	15th RA Bill issued by R&B Valsad Division	M/s. Jyoti Infratech Company	Lowering down the 3rd floor & Strengthening Beautification of block No. A to X Class III Colony at Valsad.	as per RA Bill, WO dated 22/09/2015	4273907
14	4th RA Bill issued by Capital Project, Div-4, Gandhinagar	M/s. Jyoti Infratech Company	Construction of various Building at VGEC Chandkheda ( Expansion of Girls Hostel)	as per RA Bill, WO dated 21/05/2016	4210107

Sr. No.	Work Orders / Sub Contract agreement
1	Work Order No. GSCSC /CW/ 181/E-Tender Notice No. 3/ID 174656/15-16 dated 13/08/2015 issued by Gujarat State Civil Supplies Corporation Ltd to M/s. Jyoti Infratech Company for Constructing of Godowns and Ancillary Works at Sanjan Dist. Valsad Chikhli Dist. Navsari and Kim Dist. Surat
2	Work Order No. AB/ Tender/1685/ 2015 dated 13.04.2015 issued by Ex. Engr. Kheda R&B Division, Nadiad to M/s. H.K. Construction (the Assessee) for Modernisation of Assistant Electrical Inspector's Office at Nadiad (Modernisation & Upgradation of Office at Sardar Patel Bhawan Block-C)
	Work Order No. AB/TC/824/ 2016 dated 17.05.2016 issued by Ex. Engr, Capital Project Div- 4, Gandhinagar to M/s. Jyoti Infratech Company for Construction of various Building at VGEC Chandkheda ( Expansion of Girls Hostel and

	Mechanical Block)
4	Work Order No. AB/TC/1119/2016 dated 14.07.2016 issued by Ex. Engr, Capital Project Div- 4, Gandhinagar to M/s. H.K. Construction for Providing Infrastructure facility such as (external Water supply & Drainage, compound wall, campus development, internal road with separate entry gate, rain water harvesting)
5	Work Order No, AB/TC/Agreement/591/2015 dated 22.09.2015 issued by Ex. Engr, R&B Valsad Division to M/s. Jyoti Infratech Company for Lowering down the 3rd floor & Strengthening Beautification of block No. A to X Class III Colony at Valsad.
6	Sub Contract Agreement dated 30.05.2015 entered between M/s. H. K Construction (the assessee- Sub Contractor ) and M/s. Malani Construction Company (contractor), whereby sub contracting the work of Construction of (14) Additional Class Rooms in Kheda District (Package No. SSA/ACR/KHE/1098) as per Work Order No. Civil/ 2015-16/ 19289-291 dt. 29.05.2015, to the assessee.

**22.1** From the list of documents provided by the assessee, it is seen that RA Bills produced are pertaining to only three recipient of services i.e. M/s. Jyoti Infracon Company, M/s. Gujarat Maritime Board and M/s. Malani Construction. They have also provided copies of 5 work orders and One sub contract agreement. Out of total five work orders, three were issued to M/s. Jyoti Infratech Co for awarding different works/services and two were issued to the assessee i.e. M/s. H K Construction. It is also discerned from the said documents produced by the assessee that the services were to be provided by way of construction/ repair maintenance of a building or Civil structure and Repair Maintenance of Electrical Work for which the government authority/government had issued work orders to the assessee and other contractors as detailed above.

**23.** From the documentary evidences made available by the assessee, it is evidently seen that the assessee has not provided any services by way of Construction/repair maintenance of Road /Bridge for a general public or Construction /repair maintenance of pipeline for water supply/ drainage. Accordingly, the claim of assessee for exemption from service tax under Entry No. 12(e) and 13(a) of Notification No. 25/2012-ST on service rendered by them is not tenable as services rendered are not covered under the said Entry No. 12(e) and 13(a) ibid. As regards the claim of exemption from service tax under Entry No. 12A(a) of Notification No. 25/2012-ST, I find that the exemption is conditional exemption as discussed herein above. As apparent from the above documents produced by the assessee, the work orders have been issued after 01.03.2015, accordingly, the condition i.e. contracts should have been entered prior to 01.03.2015, as laid down under the said entry no. 12A(a), is not satisfied. Hence, I find that the services rendered by the assessee is liable to service tax. Therefore, I find that the assessee's claim for exemption from



service tax is not sustainable and tenable in law as the services rendered by them are also not covered under Entry No. 12A(a) of Notification No. 25/2012-ST.

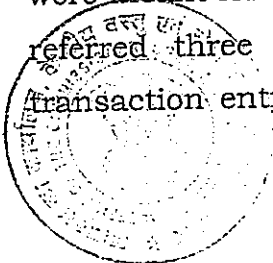
24. I find that the department has not adduced any documentary/tangible evidences to substantiate the allegation other than the difference in value worked out on the basis of data shared by the Income Tax Department. Therefore, the documents produced by the assessee are the only basis for deciding the matter, accordingly, I proceed to decide the matter on the basis of documents made available by the assessee.

24.1 From the above tabular details of documents, it is seen that the assessee has provided very limited documents/evidences. The documents produced do not cover all the payment entries as reflecting in Form 26AS. The amount shown in the documents (RA Bills) are also found to be not tallying with the amount paid/credited to the assessee as appearing in Form 26AS.

24.2 In support of claiming exemption on services rendered to M/s. Jyoti Infracon Co. on sub contract basis, the assessee has produced copies of 18 RA Bills and 03 Work Orders (as listed in forgoing para) issued to M/s. Jyoti Infracon Company. The said work orders are again listed below for ready reference.

Sr. No	Work Orders issued to M/s. Jyoti Infracon Co.
1	Work Order No. GSCSC /CW/ 181/E-Tender Notice No. 3/ID 174656/15-16 dated 13/08/2015 issued by Gujarat State Civil Supplies Corporation Ltd to M/s. Jyoti Infratech Company for Constructing of Godowns and Ancillary Works at Sanjan Dist. Valsad Chikhli Dist. Navsari and Kim Dist. Surat
2	Work Order No. AB/TC/824/ 2016 dated 17.05.2016 issued by Ex. Engr, Capital Project Div-4, Gandhinagar to M/s. Jyoti Infratech Company for Construction of various Building at VGEC Chandkheda ( Expansion of Girls Hostel and Mechanical Block)
3	Work Order No, AB/TC/Agreement/591/2015 dated 22.09.2015 issued by Ex. Engr, R&B Valsad Division to M/s. Jyoti Infratech Company for Lowering down the 3rd floor & Strengthening Beautification of block No. A to X Class III Colony at Valsad.

24.3 As regards services provided to M/s. Jyoti Infracon Co. (M/s. Jyoti), the assessee has not produced any documents evidencing that the work assigned under the said 03 work orders to M/s. Jyoti, was further subcontracted to them by M/s. Jyoti. Further, the amount shown in RA Bills are found to be not tallying with the payment made/credited (as per Form 26AS) to the assessee by M/s. Jyoti. The RA Bills produced by the assessee were meant for M/s. Jyoti for carrying out the said work awarded under above referred three work orders. I find that Form 26AS contains various transaction entries for payment made to assessee by M/s. Jyoti. However,

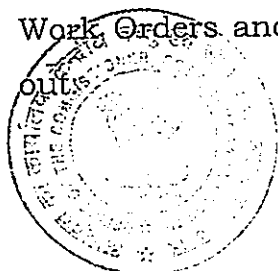


from the documents produced by the assessee, it is not possible to ascertain for which services/work, the payments were made to the assessee. It is not possible to link the payment with corresponding services. I find that the assessee has produced some payment vouchers prepared by M/s. Jyoti for making payments to the assessee for carrying out the work as per the work order dated 22.09.2015 (Sr. No.3). Accordingly, on the basis of payment vouchers, some payment entries appearing in Form 26AS and corresponding work carried out by the assessee, could be ascertained. Further, I find that there is no evidence available on records and records were also not made available to prove that the work awarded under work orders dated 13.08.2015 (Sr.No. 1) and dated 17.05.2016 (Sr.No. 2), were further subcontracted to the assessee by M/s. Jyoti Infracon Co. Accordingly, in absence of any direct evidences, I am not convinced that the rest of the payments received from M/s. Jyoti Infracon Co. were for carrying out the work as per the above referred work orders on subcontract basis.

**24.4** I find that the assessee has also submitted the copy of work order No. AB/TC/1119/2016 dated 14.07.2016 issued by Ex. Engr, Capital Project Div- 4, Gandhinagar in respect of payment received from the Ex. Engr, Capital Project Div- 4, Gandhinagar. It is also observed that the assessee has also received the payment from the Ex. Engr, Capital Project even before awarding the said work to them i.e. prior to 14.07.2016. Therefore, from the work order alone, it is not possible to ascertain as to whether the payments made to the assessee were for the said services or otherwise. Accordingly, I am not wholly convinced in the instant case as well that the payments received from the Ex. Engr, Capital Project were for services rendered under work order dated 14.07.2016.

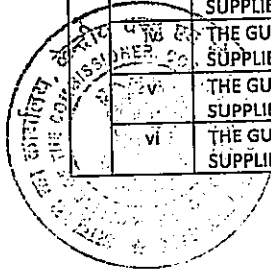
**24.5** The assessee has not provided any documents for claiming the exemption from service tax on services provided to M/s. Arvindhbai M Prajapati, Office of The Executive Engineer, Capital Project Division-4, The Gujarat State Civil Supplies Corporation Ltd., and Executive Engineer Valsad R&B, Division- Valsad during FY 2015-16 and 2016-17.

**24.6** Based on the above observations and discussion, the following facts are emerging when examination of transaction entries (payment made/credited to the assessee) as appearing in Form 26AS vis-à-vis RA Bills, Work Orders and payment vouchers as produced by the assessee, is carried





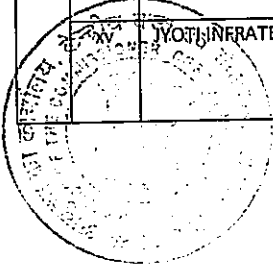
FY 2015-16		As per Form 26AS statement				Documents produced and Nature of work done by the noticee as per RA Bills /other documents
Sr. No.		Name of the TDS deductor	Transaction date	Amount paid /credited (Rs.)	TDS deducted under Section 194C (Rs.)	
1	i	ARVINDBHAI M PRAJAPATI	10-10-2015	831393	8314	No documents produced
	ii	ARVINDBHAI M PRAJAPATI	08-01-2016	554262	5543	No documents produced
	iii	ARVINDBHAI M PRAJAPATI	08-11-2015	3575700	35757	No documents produced
	iv	ARVINDBHAI M PRAJAPATI	30-03-2016	5272479	52725	No documents produced
		Sub total	10233834			
2	i	JYOTI INFRATECH COMPANY	08-10-2015	2149090	21491	The assessee has not provided any documents/evidences clearly establishing the nexus between payment received from M/s. Jyoti Infracon Co and Service rendered to M/s. Jyoti Infracon Company by them.
	ii	JYOTI INFRATECH COMPANY	09-01-2016	3344310	33443	The assessee has not provided any documents/evidences clearly establishing the nexus between payment received from M/s. Jyoti Infracon Co and Service rendered to M/s. Jyoti Infracon Company by them.
	iii	JYOTI INFRATECH COMPANY	23-02-2016	2879906	28799	The assessee has not provided any documents/evidences clearly establishing the nexus between payment received from M/s. Jyoti Infracon Co and Service rendered to M/s. Jyoti Infracon Company by them.
	iv	JYOTI INFRATECH COMPANY	29-02-2016	4477658	44777	<ul style="list-style-type: none"> <li>1st RA Bill issued by R&amp;B Valsad Division for Rs. 4616142/-</li> <li>Work Order No. AB/TC/Agreement/591/2015 dated 22.09.2015 issued by Ex. Engr, R&amp;B Valsad Division to M/s. Jyothi Infracon Company for Lowering down the 3rd floor &amp; Strengthening Beautification of block No. A to X Class III Colony at Valsad.</li> <li>Payment voucher for Rs. 4477658/- prepared by M/s. Jyoti Infracon Company</li> </ul>
		Sub total	12850964			
3	i	OFFICE OF THE EXE ENGINEER CAPITAL PROJECT DIVISION-4	10-11-2015	1217607	24353	No documents produced
	ii	OFFICE OF THE EXE ENGINEER CAPITAL PROJECT DIVISION-4	10-11-2015	193757	3876	No documents produced
		Sub total	1411364			
4	i	SUPERINTENDENT ENGINEER (MECH), GUJARAT MARITIME BOARD	30-05-2015	12795	256	<ul style="list-style-type: none"> <li>Bill No. 39 dated 30.05.2015 issued by Gujarat Maritime Board</li> <li>WO No. EE (M) /W-O/193 dt. 27.05.2015 issued to M/s. H K Construction for Repair &amp; Maintenance -Electrical</li> </ul>
	ii	SUPERINTENDENT ENGINEER (MECH), GUJARAT MARITIME BOARD	06-07-2015	14511	290	<ul style="list-style-type: none"> <li>Bill No. 69 dated 02.07.2015 issued by Gujarat Maritime Board</li> <li>WO No. EE (M) /W-O/81 dt. 29.04.2015 issued to M/s. H K Construction for Repair &amp; Maintenance -Electrical</li> </ul>
	iii	SUPERINTENDENT ENGINEER (MECH), GUJARAT MARITIME BOARD	07-08-2015	14511	293	No documents produced
	iv	SUPERINTENDENT ENGINEER (MECH), GUJARAT MARITIME BOARD	07-08-2015	14834	297	<ul style="list-style-type: none"> <li>Bill No. 104 dated 03.08.2015 issued by Gujarat Maritime Board</li> <li>WO No. EE (M) /W-O/385 dt.10.07.2015 issued to M/s. H K Construction for Repair &amp; Maintenance -Electrical</li> </ul>
	v	SUPERINTENDENT ENGINEER (MECH), GUJARAT MARITIME BOARD	15-09-2015	13376	268	<ul style="list-style-type: none"> <li>Bill No. 148 dated 10.09.2015 issued by Gujarat Maritime Board</li> <li>WO No. EE (M) /W-O/471 dt.04/08/2015 issued to M/s. H K Construction for Repair &amp; Maintenance -Electrical</li> </ul>
5		Sub total	70027			
	i	THE GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD	31-05-2015	114844	2297	No documents produced
	ii	THE GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD	31-10-2015	238007	4760	No documents produced
	iii	THE GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD	30-11-2015	146141	2923	No documents produced
	iv	THE GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD	31-01-2016	207451	4149	No documents produced
	v	THE GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD	29-02-2016	175231	3504	No documents produced
	vi	THE GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD	29-02-2016	42200	844	No documents produced



	vii	THE GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD	29-02-2016	137360	2748	No documents produced
	viii	THE GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD	31-03-2016	108610	2173	No documents produced
		Sub total	1169844			
6	i	EXECUTIVE ENGINEER KHEDA R&B DIVISION -NADIAD	10-03-2016	1018532	20845	<ul style="list-style-type: none"> <li>• Memorandum of payment issued by Kheda R&amp;B, Nadiad</li> <li>• Work Order No. AB/ Tender/1685/ 2015 dated 13.04.2015 issued by Ex.Engr. Kheda R&amp;B Division, Nadiad to M/s. H.K. Construction (the Assessee) for Modernisation of Assistant Electrical Inspector's Office at Nadiad (Modernisation &amp; Upgradation of Office at Sardar Patel Bhawan Block-C)</li> </ul>
		Sub total	1018532			
7	i	MALANI CONSTRUCTION CO.	01-02-2016	397017	3970	<ul style="list-style-type: none"> <li>• Sub Contract Agreement dated 30.05.2015 entered between M/s. H. K Construction (the assessee as Sub Contractor ) and M/s. Malani Construction Company (as main contractor), whereby sub contracting the work of Construction of (14) Additional Class Rooms in Kheda District (Package No. SSA/ACR/KHE/1098) as per Work Order No. Civil/ 2015-16/ 19289-291 dt. 29.05.2015 , to the assessee.</li> <li>• 1st RA Bill dated 09.10.2015 for Rs. 30,86,182/- issued to M/s. Malani Construction Co., by Assistant Engineer, SSAM SPO, Gandhinagar (Sewa Siksha Abhiyan Mission) for Construction of Class Room (Package No. SSA /ACR/ KHD/1098)</li> <li>• 2nd RA Bill dated Nil for Rs. 45,58,979/- issued M/s. Malani Construction Co.,by Assistant Engineer, SSAM SPO, Gandhinagar (Sewa Siksha Abhiyan Mission) for Construction of Class Room (Package No. SSA /ACR/ KHD/1098)</li> <li>• 3rd and Final RA Bill dated Nil for Rs. 50,64,804/- issued M/s. Malani Construction Co.,by Assistant Engineer, SSAM SPO, Gandhinagar (Sewa Siksha Abhiyan Mission) for Construction of Class Room (Package No. SSA /ACR/ KHD/1098)</li> </ul>
	ii	MALANI CONSTRUCTION CO.	08-02-2016	4862212	48622	
	iii	MALANI CONSTRUCTION CO.	30-03-2016	4136238	41362	
	iv	MALANI CONSTRUCTION CO.	30-03-2016	2805620	28056	
		Sub total	12201087			
		Grand total	38955652			

FY 2016-17		As per Form 26AS statement				Documents produced and Nature of work done by the noticee as per RA Bills /other documents
Sr. No.		Name of the TDS deductor	Transaction date	Amount paid /credited (Rs.)	TDS deducted under Section 194C (Rs.)	
1		ARVINDBHAI M PRAJAPATI	27-10-2016	4494518	44945	No documents
		Sub total	4494518			
2	i	JYOTI INFRA TECH COMPANY	27-04-2016	4146313	41463	<ul style="list-style-type: none"> <li>• 2nd RA Bill issued by R&amp;B Valsad Division for Rs. 1,08,12,893/-</li> <li>• Work Order No. AB/TC/Agreement/591/2015 dated 22.09.2015 issued by Ex. Engr. R&amp;B Valsad Division to M/s. Jyothi Infra tech Company for Lowering down the 3rd floor &amp; Strengthening Beautification of block No. A to X Class III Colony at Valsad.</li> <li>• Payment voucher for Rs. 1,04,88,506/- prepared by M/s. Jyoti Infracon Company</li> <li>• 3rd RA Bill issued by R&amp;B Valsad Division for Rs. 75,61,192/-</li> <li>• Work Order No. AB/TC/Agreement/591/2015 dated 22.09.2015 issued by Ex. Engr. R&amp;B Valsad Division to M/s. Jyothi Infra tech Company for Lowering down the 3rd floor &amp; Strengthening Beautification of block No. A to X Class III Colony at Valsad.</li> <li>• Payment voucher for Rs. 73,34,356/- prepared by M/s. Jyoti Infracon Company</li> </ul>
	ii	JYOTI INFRA TECH COMPANY	06-05-2016	10488506	104885	
	iii	JYOTI INFRA TECH COMPANY	15-07-2016	7334356	73344	
	iv	JYOTI INFRA TECH COMPANY	03-09-2016	2321750	23218	

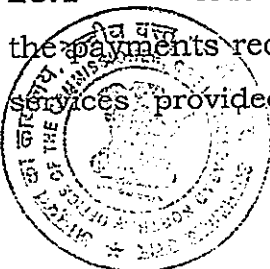
					nexus between payment received from M/s. Jyoti Infracon Co and Service rendered to M/s. Jyoti Infracon Company by them.
v	JYOTI INFRA TECH COMPANY	03-10-2016	3944450	39445	The assessee has not provided any documents/evidences clearly establishing the nexus between payment received from M/s. Jyoti Infracon Co and Service rendered to M/s. Jyoti Infracon Company by them.
vi	JYOTI INFRA TECH COMPANY	03-10-2016	50000	500	The assessee has not provided any documents/evidences clearly establishing the nexus between payment received from M/s. Jyoti Infracon Co and Service rendered to M/s. Jyoti Infracon Company by them.
vii	JYOTI INFRA TECH COMPANY	03-10-2016	7837922	78380	<ul style="list-style-type: none"> <li>• 4th RA Bill issued by R&amp;B Valsad Division for Rs. 8080332/-</li> <li>• Work Order No. AB/TC/Agreement/591/2015 dated 22.09.2015 issued by Ex. Engr, R&amp;B Valsad Division to M/s. Jyothi Infratech Company for Lowering down the 3rd floor &amp; Strengthening Beautification of block No. A to X Class III Colony at Valsad.</li> <li>• Payment voucher for Rs. 7837922/- prepared by M/s. Jyoti Infracon Company</li> </ul>
viii	JYOTI INFRA TECH COMPANY	26-10-2016	3135894	31359	The assessee has not provided any documents/evidences clearly establishing the nexus between payment received from M/s. Jyoti Infracon Co and Service rendered to M/s. Jyoti Infracon Company by them.
ix	JYOTI INFRA TECH COMPANY	27-10-2016	6831727	68317	<ul style="list-style-type: none"> <li>• 5th RA Bill issued by R&amp;B Valsad Division for Rs. 70,43,017/-</li> <li>• Work Order No. AB/TC/Agreement/591/2015 dated 22.09.2015 issued by Ex. Engr, R&amp;B Valsad Division to M/s. Jyothi Infratech Company for Lowering down the 3rd floor &amp; Strengthening Beautification of block No. A to X Class III Colony at Valsad.</li> <li>• Payment voucher for Rs. 68,31,727/- prepared by M/s. Jyoti Infracon Company</li> </ul>
x	JYOTI INFRA TECH COMPANY	23-12-2016	7097149	70971	<ul style="list-style-type: none"> <li>• 6th RA Bill issued by R&amp;B Valsad Division for Rs. 7316648/-</li> <li>• Work Order No. AB/TC/Agreement/591/2015 dated 22.09.2015 issued by Ex. Engr, R&amp;B Valsad Division to M/s. Jyothi Infratech Company for Lowering down the 3rd floor &amp; Strengthening Beautification of block No. A to X Class III Colony at Valsad.</li> <li>• Payment voucher for Rs. 70,97,149/- prepared by M/s. Jyoti Infracon Company</li> </ul>
xi	JYOTI INFRA TECH COMPANY	09-02-2017	2252574	22526	<ul style="list-style-type: none"> <li>• 7th RA Bill issued by R&amp;B Valsad Division for Rs. 2322241/-</li> <li>• work Order No. A9/TC/Agreement/591/2015 dated 22.09.2015 issued by Ex. Engr, R&amp;B Valsad Division to M/s. Jyothi Infratech Company for Lowering down the 3rd floor &amp; Strengthening Beautification of block No. A to X Class III Colony at Valsad.</li> <li>• Payment voucher for Rs. 2252574/- prepared by M/s. Jyoti Infracon Company</li> </ul>
xii	JYOTI INFRA TECH COMPANY	10-02-2017	5046224	50462	The assessee has not provided any documents/evidences clearly establishing the nexus between payment received from M/s. Jyoti Infracon Co and Service rendered to M/s. Jyoti Infracon Company by them.
xiii	JYOTI INFRA TECH COMPANY	02-03-2017	7760000	77600	The assessee has not provided any documents/evidences clearly establishing the nexus between payment received from M/s. Jyoti Infracon Co and Service rendered to M/s. Jyoti Infracon Company by them.
xiv	JYOTI INFRA TECH COMPANY	04-03-2017	6300159	63002	<ul style="list-style-type: none"> <li>• 8th RA Bill issued by R&amp;B Valsad Division for Rs. 6495009/-</li> <li>• work Order No. AB/TC/Agreement/591/2015 dated 22.09.2015 issued by Ex. Engr, R&amp;B Valsad Division to M/s. Jyothi Infratech Company for Lowering down the 3rd floor &amp; Strengthening Beautification of block No. A to X Class III Colony at Valsad.</li> <li>• Payment voucher for Rs.6300159/- prepared by M/s. Jyoti Infracon Company</li> </ul>
	JYOTI INFRA TECH COMPANY	28-03-2017	7567918	75679	The assessee has not provided any documents/evidences clearly establishing the nexus between payment received from M/s. Jyoti Infracon Co and Service rendered to M/s. Jyoti



						Infracon Company by them.
	xvi	JYOTI INFRA TECH COMPANY	31-03-2017	4083804	40838	The assessee has not provided any documents/evidences clearly establishing the nexus between payment received from M/s. Jyoti Infracon Co and Service rendered to M/s. Jyoti Infracon Company by them.
	xvii	JYOTI INFRA TECH COMPANY	31-03-2017	829071	8291	<ul style="list-style-type: none"> <li>• 10th RA Bill Issued by R&amp;B Valsad Division for Rs. 854712/-</li> <li>• work Order No. AB/TC/Agreement/591/2015 dated 22.09.2015 issued by Ex. Engr, R&amp;B Valsad Division to M/s. Jyoti Inftratech Company for Lowering down the 3rd floor &amp; Strengthening Beautification of block No. A to X Class III Colony at Valsad.</li> <li>• Payment voucher for Rs. 829071/- prepared by M/s. Jyoti Infracon Company</li> </ul>
		Sub total	87027817			
3	i	OFFICE OF THE EXE ENGINEER CAPITAL PROJECT DIVISION-4	24-06-2016	56014	1121	No documents
	ii	OFFICE OF THE EXE ENGINEER CAPITAL PROJECT DIVISION-4	30-08-2016	980304	19816	The assessee has not provided any documents/evidences clearly establishing the nexus between payment received from Capital Project Division and Service rendered to Capital Project Division
	iii	OFFICE OF THE EXE ENGINEER CAPITAL PROJECT DIVISION-4	26-10-2016	1365716	27315	The assessee has not provided any documents/evidences clearly establishing the nexus between payment received from Capital Project Division and Service rendered to Capital Project Division
		Sub total	2402034			
4	i	THE GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD	23-11-2016	120452	2409	No documents
	ii	THE GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD	28-11-2016	318848	6377	No documents
	iii	THE GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD	21-12-2016	29250	585	No documents
	iv	THE GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD	21-12-2016	470283	9407	No documents
		Sub total	938833			
5	i	EXECUTIVE ENGINEER VALSAD R&B DIVISION -VALSAD	20-10-2016	287091	5742	No documents
	ii	EXECUTIVE ENGINEER VALSAD R&B DIVISION -VALSAD	23-03-2017	286135	5723	No documents
	iii	EXECUTIVE ENGINEER VALSAD R&B DIVISION -VALSAD	23-03-2017	286367	5728	No documents
	iv	EXECUTIVE ENGINEER VALSAD R&B DIVISION -VALSAD	23-03-2017	285332	5707	No documents
	v	EXECUTIVE ENGINEER VALSAD R&B DIVISION -VALSAD	29-03-2017	292006	5841	No documents
		Sub total	1436931			
		Grand total	96300133			

25. It is also apparent from the documents that the services had also been rendered to the Government /Government Authority either directly or indirectly, and the same were in nature of composite service involving supply of materials alongwith services. Therefore construction/repair maintenances services provided by the assessee to government directly or indirectly, qualifies to be Works Contract Services in nature. Therefore, I find that the abatement available with respect to works Contract Service under Service Tax (Determination of Value) Rules, 2006 (Valuation Rules), needs to be taken care of while computing the service tax liability of the assessee.

25.1 It is also pertinent to mention here that, where correlation between the payments received by the assessee and RA Bill have been established, the services provided have been considered to be works contract service for



considering the abatement under Valuation Rules. The rest of cases have not been considered for granting abatement in absence of clear evidences.

**25.2** I find that the value of service portion in execution of works contract has to be determined as per Service Tax (Determination of Value) Rules, 2006 (Valuation Rules). Accordingly, in case of works contracts entered into for execution of "Original Works", service tax shall be payable on Forty Percent of the total amount charged for the works contract. In other case of works contract (i.e. other than Original Work, including repair, maintenance, finishing services), the service tax shall be payable on Seventy Percent of the total amount charged for the works contract. As discussed hereinabove, the services provided by the assessee is in nature of Works Contract service, therefore, valuation of service portion in respect of services provided is to be determined according to the Valuation Rules. As per the documents, the services to M/s. Malani Construction Company by way of Construction of 14 Additional Class Rooms appears to be "New Construction" in nature, therefore, the service appears to be covered under the meaning of "Original Work" as provided under Valuation Rules. Therefore, I find that the assessee is required to pay service tax on 40% of the amount charged by them from M/s. Malani Construction Company. As regards the services provided to M/s. Jyoti Infracon Co. by way of "Lowering down the 3rd floor & Strengthening, Beautification of block", services provided to M/s. Executive Engineer Kheda R&B Division by way of "Modernization of Assistant Electrical Inspector's Office at Nadiad" and services provided to M/s. Gujarat Maritime Board by way of "Repair & Maintenance -Electrical", appear to be not covered under the meaning of "Original Work" as provided under Valuation Rules as the same being Repair Maintenance /finishing services. Therefore, I find that the assessee is required to pay service tax on 70% of the amount charged by them from M/s. Jyoti Infracon Co., M/s. Gujarat Maritime Board and Executive Engineer Kheda R&B Division for the aforesaid services.

**25.3** Having considered the above legal and factual position/discussion, the service tax liability has been worked out herein under on the basis of amount paid to the assessee as per Form 26AS, for providing services by the



Service tax payable for FY 2015-16						
Sr.No.	As per Form 26AS		Abatement under valuation Rules (Rate)	Net Taxable Value (After abatement)	Service Tax Rate %	Service Tax Payable
	Dt. of transaction	Amount paid to the assessee (Value of service provided)				
	FY 2015-16					
BY ARVINDBHAI M PRAJAPATI						
1	10-10-2015	831393	0%	831393	14	116395
2	08-01-2016	554262	0%	554262	14.5	80368
3	08-11-2015	3575700	0%	3575700	14	500598
4	30-03-2016	5272479	0%	5272479	14.5	764509
BY JYOTI INFRATECH COMPANY						0
5	08-10-2015	2149090	0%	2149090	14	300873
6	09-01-2016	3344310	0%	3344310	14.5	484925
7	23-02-2016	2879906	0%	2879906	14.5	417586
8	29-02-2016	4477658	30%	3134361	14.5	454482
BY OFFICE OF THE EXE ENGINEER CAPITAL PROJECT DIVISION-4						0
9	10-11-2015	1217607	0%	1217607	14	170465
10	10-11-2015	193757	0%	193757	14	27126
BY SUPERINTENDENT ENGINEER (MECH), GUJARAT MARITIME BOARD						0
11	30-05-2015	12795	30%	8957	12.36	1107
12	06-07-2015	14511	30%	10158	14	1422
13	07-08-2015	14511	0%	14511	14	2032
14	07-08-2015	14834	30%	10384	14	1454
15	15-09-2015	13376	30%	9363	14	1311
BY THE GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD						0
16	31-05-2015	114844	0%	114844	12.36	14195
17	31-10-2015	238007	0%	238007	14	33321
18	30-11-2015	146141	0%	146141	14.5	21190
19	31-01-2016	207451	0%	207451	14.5	30080
20	29-02-2016	175231	0%	175231	14.5	25408
21	29-02-2016	42200	0%	42200	14.5	6119
22	29-02-2016	137360	0%	137360	14.5	19917
23	31-03-2016	108610	0%	108610	14.5	15748
BY EXECUTIVE ENGINEER KHEDA R&B DIVISION -NADIAD						0
24	10-03-2016	1018532	30%	712972	14.5	103381
BY MALANI CONSTRUCTION CO.						0
25	01-02-2016	397017	60%	158807	14.5	23027
26	08-02-2016	4862212	60%	1944885	14.5	282008
27	30-03-2016	4136238	60%	1654495	14.5	239902
28	30-03-2016	2805620	60%	1122248	14.5	162726
Total		38955652		29969488		4301677

Service tax Payable for FY 2016-17						
Sr.No.	As per Form 26AS		Abatement under valuation Rules (Rate)	Net Taxable Value (After abatement and Percentage Liability)	Service Tax Rate %	Service Tax Payable
	Dt. of transaction	Amount paid to the assessee (Value of service provided)				
	FY 2016-17					
	BY ARVINDBHAI M PRAJAPATI					
1	27-10-2016	4494518	0%	4494518	15	674178
	BY JYOTI INFRATECH COMPANY					
2	27-04-2016	4146313	0%	4146313	14.5	601215
3	06-05-2016	10488506	30%	7341954	14.5	1064583
4	15-07-2016	7334356	30%	5134049	15	770107
5	03-09-2016	2321750	0%	2321750	15	348263
6	03-10-2016	3944450	0%	3944450	15	591668
7	03-10-2016	50000	0%	50000	15	7500
8	03-10-2016	7837922	30%	5486545	15	822982
9	26-10-2016	3135894	0%	3135894	15	470384

10	27-10-2016	6831727	30%	4782209	15	717331
11	23-12-2016	7097149	30%	4968004	15	745201
12	09-02-2017	2252574	30%	1576802	15	236520
13	10-02-2017	5046224	0%	5046224	15	756934
14	02-03-2017	7760000	0%	7760000	15	1164000
15	04-03-2017	6300159	30%	4410111	15	661517
16	28-03-2017	7567918	0%	7567918	15	1135188
17	31-03-2017	4083804	0%	4083804	15	612571
18	31-03-2017	829071	30%	580349.7	15	87052
<b>BY OFFICE OF THE EXE ENGINEER CAPITAL PROJECT DIVISION-4</b>						
19	24-06-2016	56014	0%	56014	15	8402
20	30-08-2016	980304	0%	980304	15	147046
21	26-10-2016	1365716	0%	1365716	15	204857
<b>THE GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD</b>						
22	23-11-2016	120452	0%	120452	15	18068
23	28-11-2016	318848	0%	318848	15	47827
24	21-12-2016	29250	0%	29250	15	4388
25	21-12-2016	470283	0%	470283	15	70542
<b>EXECUTIVE ENGINEER VALSAD R&amp;B DIVISION -VALSAD</b>						
26	20-10-2016	287091	0%	287091	15	43064
27	23-03-2017	286135	0%	286135	15	42920
28	23-03-2017	286367	0%	286367	15	42955
29	23-03-2017	285332	0%	285332	15	42800
30	29-03-2017	292006	0%	292006	15	43801
		96300133				12183863

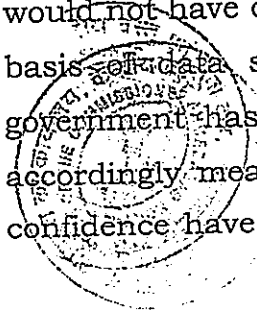
**25.4** Having considered these factual and documentary evidences available on record, I find that the assessee has failed to establish that the services rendered by them were exempt service as claimed by them. Accordingly, the assessee is liable to pay service tax of Rs. 1,64,85,540/- (Rs. 43,01,677/- for FY 2015-16 + Rs. 1,21,83,863/- for Rs. 2016-17) under section 66B read with Rule 2 of Service Tax Rules 1994 for rendering taxable services by them. Therefore, I hold that the assessee has failed to pay service tax amounting to Rs. 1,64,85,540/-, which was required to be paid under Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules 1994 for taxable services provided during FY 2015-16 and 2016-17 by them. Since, the assessee is liable to pay service tax of Rs. 1,64,85,540/ out of total demand of Service Tax of Rs. 2,00,93,590/-, the rest of demand of Service Tax of Rs. 36,08,050/- is liable to be dropped on merits being incorrect and legally not sustainable. Therefore, I hold that the assessee is required to pay service tax of Rs. 1,64,85,540/- and thus, the same is required to be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

**26.** Based on above facts and discussion, I find that the assessee has contravened the provisions of (i) Section 68 and 66B of the Finance Act, 1994 read with Rules 2 and 6 of the Service Tax Rules 1994, in as much as they have not paid service tax to the tune of Rs. 1,64,85,540/- though they were liable to pay the same on provision of taxable services (ii) Section 69 of Finance

Act, 1994 read with Rule 4 of Service Tax Rules in as much as they have failed to obtain service tax registration as required for the person liable to pay service tax and (iii) Section 70 of Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994 in as much as they have failed to assess their correct service tax liability and have failed to file ST-3 Returns for the FY 2015-16 and 2016-17.

**27.** I also find that Section 75 of Finance Act, 1994 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate for the period by which crediting of tax or part thereof is delayed. I thus hold that the assessee is also liable to pay the interest on the demand of service Tax of Rs. 1,64,85,540/-.

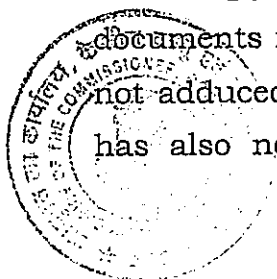
**28.** From the facts and discussion aforementioned, I find that in the instant case the assessee had not obtained the service tax registration though they were liable to pay service tax on taxable services rendered by them. Thus, the assessee had failed to pay legitimate service tax due to the government despite the fact that they were engaged in providing tax 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 obtaining service tax registration and not filing /showing their actual taxable income in the ST-3 Returns and also by not paying the Service Tax due to them. 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 2016-17. These facts would not have come to light if the department had not initiated inquiry on the basis of self data shared by the Income Tax Department. 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 provision 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 non paying the service tax by not declaring 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 inquiry was initiated by the department. 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 1,64,85,540/- (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.

29. As regards the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the SCN dated 23.04.2021, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. Since, the assessee has not provided any details/information/documents for the F.Y.2017-18 (upto June,2017) and the department has also not adduced any information/evidence and the reason for the non disclosure has also not been made known to the department, I refrain myself from

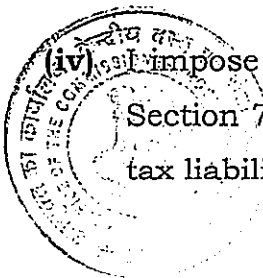


entering in to the said period to determine liability as otherwise of assessee for service tax.

**30.** As regards, the proposal for imposition of penalty under Section 77(1)(a), 77(1)(C) and 77(2) of the Finance Act, 1994, as discussed herein above, I find that the assessee had failed to obtain the service tax registration as required under Section 69(1) of the Finance Act, 1994 as they were liable to pay service tax, thus, the assessee have rendered themselves liable to penal action under Section 77(1)(a) of the Finance Act, 1994; I also find that the assessee has failed to assess their service tax liability and has failed to file correct service tax returns as required under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994, as discussed at length hereinabove, thus, they have rendered themselves liable to penal action under Section 77(2) of the Finance Act, 1994. As regards penal action under Section 77(1)(c), I find that the SCN has not brought out any facts of non furnishing of records/information which were called for by the department from the assessee. Thus, I find that the assessee is not liable to penal action under Section 77(1)(c), as the allegation levelled in the SCN, being not correct.

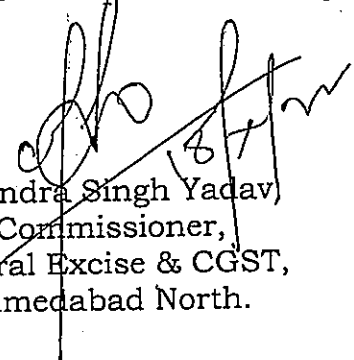
**31.** In view of the above discussion and findings, I pass the following order:

- (i) I hereby confirm the demand of service tax of Rs. 1,64,85,540/- (Rs. One Crore Sixty Four Lakh Eighty Five Thousand Five Hundred Forty only) out of the total demand of service tax of Rs. 2,00,93,590/- for FY 2015-16 & 2016-17, not paid by the assessee and order to recover the same from the assessee under proviso to Sub-section (1) of Section 73 of Finance Act, 1994. I further drop the rest of the demand of Service Tax of Rs. 36,08,050/- accordingly.
- (ii) I order to charge Interest at the appropriate rate on the demand of Service tax of Rs. 1,64,85,540/- and to recover the same from the assessee under Section 75 of the Finance Act, 1994;
- (iii) I impose penalty of Rs. 1,64,85,540/- on the assessee under the provision of Section 78 of the Finance Act, 1994.
- (iv) I impose penalty of Rs. 10,000/- on the assessee under the provision of Section 77(2) of the Finance Act, 1994, for failure to assess their service tax liability and also for failure to file ST-3 Returns.



- (v) I impose penalty of Rs. 10,000/- on the assessee under the provision of Section 77(1)(a) of the Finance Act, 1994, for failure to obtain service tax registration under Section 69 of the Finance Act, 1994.
- (vi) I refrain from imposing penalty under Section 77(1)(c) of Finance Act, 1994 for the reasons discussed hereinabove.

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

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

By Regd. Post AD./Hand Delivery  
F.No. STC/15-228/OA/2021-22

Date: .10.2022.

To

M/s. Hemantkumar Kantilal Shah,  
(M/s. H. K. Constrction)  
C/703, Gaurav Appartment,  
Prabhat Chowk, Ranna Park,  
Ghatlodiya, Ahmedabad, Gujarat-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.