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

**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा .सं/ F.NO. STC/15-79/OA/2021

DIN : 20221064WT0000818768

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- 22 & 23 /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 हैं।

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-22&23/2022-23**

M/s. Masum Narendrakumar Patel, 59, Vaibhav Bunglows, Nr. Sun N Step Club, Nr. Sattadhar Cross Road, Ghatlodia, Ahmedabad -380061, were issued two SCNs (1) F. No. STC/15-79/OA/2021 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad and (2) F.No. STC/15-156/OA/2020 dated 22.10.2020 (in the name of M/s. Krushna Construction, having same Service tax Registration Number) by the Additional Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

**BRIEF FACTS OF THE CASE PERTAINING TO TWO SCNs ISSUED TO M/S. MASUM NARENDRAKUMAR PATEL (KRUSHNA CONSTRUCTION), ARE AS FOLLOWS:**

**SCN No. STC/15-79/OA/2021 dated 23.04.2021**

M/s. Masum Narendrakumar Patel, 59, Vaibhav Bunglows, Nr. Sun N Step Club, Nr. Sattadhar Cross Road, Ghatlodia, Ahmedabad -380061 (hereinafter referred to as the 'assessee' for the sake of brevity) were engaged in providing taxable services, and were holding Service Tax Registration No. BBPPP2906PSD001.

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

3. As per the records available with the Divisional Office of Division-VII and on going through the Third Party Data provided by CBDT of the said assessee for the F.Y. 2015-16 and 2016-17, the total sales of service (Value from ITR/Form 26) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return for F.Y. 2015-16 and 2016-17. Therefore, it appeared that the said assessee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for F.Y. 2015-16 and 2016-17 as compared to the Service related taxable value declared in their ITR/Form 26AS ("Sales/Gross Receipts from Services OR Total Amount paid /Credited Under 194C, 194H, 194I, 194J") for 2015-16 and 2016-17. The difference in value as observed for F.Y. 2015-16 and 2016-17, was as under:



Sr. No.	FY	Taxable Value as per ST-3 Returns (in Rs.)	Gross Receipts from services (Value from ITR/26AS) (in Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service tax provided (in Rs.)	Resultant Service tax short paid (in Rs.)
1	2015-16	0	10,03,91,208	10,03,91,208	1,45,56,725
2	2016-17	0	17,03,68,686	17,03,68,686	2,55,55,303
			27,07,59,894	27,07,59,894	4,01,12,028

Therefore, it appeared that the said assessee had short / not paid service tax to the extent of Rs. 4,01,12,028/- (including Cess) on the differential value of Rs. 27,07,59,894/-.

4. Accordingly, the service tax liability of M/s. Masum Narendrakumar Patel was worked out solely on the basis of income mentioned in ITR/Form 26AS, which were shared by Income tax Department. The said income was considered as the Total Taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.

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

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

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

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

7. As per the provisions of Section 73(1) of the Finance Act, 1994 where any Service Tax has not been levied or paid or has been short levied or short paid by reasons of willful mis-statement or suppression of facts with intent to evade payment of Service Tax, the Central Excise Officer may within five years from the relevant date, serve a notice on the person chargeable with Service Tax which



has not been levied or paid or which has been short levied or short paid requiring him to show cause why he should not pay the amount specified in the notice.

8. As per Rule 6 of the Service Tax Rules, 1994, the Service Tax shall be paid to the credit of the Central Government by 5<sup>th</sup> day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that the assessee shall submit their Service Tax returns in the form ST-3 within the prescribed time.

9. From the documentary evidence available at the relevant time, it appeared that the said assessee had failed to pay/short paid/deposit Service Tax to the extent of Rs. 4,01,12,028/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns filed during the Financial Year 2015-16 and 2016-17 vis-à-vis "Sales /Gross Receipts from Services (ITR)" OR "Total Amount paid /Credited Under 194C, 194H, 194I, 194J" (as per Form 26AS). The said short payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 4,01,12,028/- (including Cess) worked out on value of Rs. 27,07,59,894/- and therefore, the said Service Tax was required to be demanded/recoverable from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

10. Therefore, it appeared that the said assessee had (i) failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994; (ii) failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994; (iii) failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they had not paid service tax as worked out in the Table for Financial Year 2015-16 and 2016-17; (iv) contravened the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 which appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (vi) made themselves liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the

date of actual payment as per the provisions of Section 75 of the Finance Act, 1994; (vii) also contravened the provision of Rule 7 read with Section 70 of the Finance Act, 1994 in as much as they failed to assess their service tax liability and failed to file correct ST-3 Returns.

11. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value, that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 and 2016-17. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 4,01,12,028/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the assessee which were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

12. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (at such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appeared that the said assessee had short paid/not-paid Service Tax of Rs. 4,01,12,028/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 ibid not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee had suppressed the facts from the department and had contravened the provisions with an intent to evade payment of Service Tax. The said assessee had not discharged their Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.

13. No data was shared by the CBDT, for the period FY 2017-18 (upto June-2017) and the assessee as well had failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of

issuance of SCN it was not possible to quantify short payment of Service Tax, if any, for the period FY 2017-18 (upto June-2017).

Unquantified demand at the time of issuance of SCN.

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

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

14. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax and they appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of Service Tax as discussed in the foregoing paras and therefore, the Service Tax amounting to Rs. 4,01,12,028/- (inclusive of Cess) not paid was required to be demanded and recoverable from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

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

In addition to the contravention, omission and commission, on the part of the said assessee as stated in the foregoing paras, it appeared that the said assessee had willfully suppressed the facts, nature and value of service



provided by them with an intent to evade the payment of Service Tax thus rendering them liable for penalty under Section 78 of the Finance Act, 1994.

17. The assessee was given opportunity to appear for pre-SCN consultation on 22.04.2021, but the same was not attended by them.

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

- (i) Service Tax amounting to Rs. 4,01,12,028/- (Rupees Four Crore One Lakh Twelve Thousand Twenty Eight Hundred Only) short/ not paid towards provision of those services, should not be confirmed and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (ii) Interest at the appropriate rate should not be demanded and recovered from them under Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994.
- (iv) Penalty should not be imposed upon them under the provision of Section 77(2) of the Finance Act, 1994, for failure to assess their correct Service Tax Liability and for failure to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

**SCN No. STC/15-156/OA/2020 dated 22.10.2020 TO M/s. KRUSHNA CONSTRUCTION BY the Additional Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad**

19. As per the aforesaid SCN dated 22.10.2020, an analysis of Data (ITR/26AS) in respect of M/s. Krushna Construction, was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and details of the said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

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

for F.Y. 2015-16 as compared to the Service related taxable value declared in Income Tax Return (ITR) / Form 26AS . The difference in value as observed for F.Y. 2015-16, was as under:

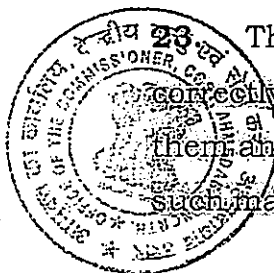
Sr. No.	FY	Total Sale of services as per ITR	Gross value of service provided (STR)	Total value for TDS (including 194C,194Ia, 194Ib,194J, 194H)	Value Difference in ITR and STR	Value Difference in ITR and STR	Higher Value (value difference ITR&STR) or (value difference TDS & STR)	Duty @ 14.5%
1	2015-16	5,01,95,604	0	5,01,95,604	5,01,95,604	5,01,95,604	5,01,95,604	72,78,362

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. 72,78,362/- (including Cess) on the differential value of Rs. 5,01,95,604/-.

21. A Letter dated 06.10.2020 was issued to the assessee to explain the difference and to submit documents in support thereof viz. Balance Sheet, Profit and Loss Account, Income Tax Return, Form 26AS, etc. for FY 2015-16, However, the assessee neither submitted the details nor submitted any explanation for the same. Therefore, the service tax liability of the assessee was worked out solely on the basis of income mentioned in ITR /Form 26AS, which were shared by Income tax Department. The said income was considered as the Total Taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.

22. From the documentary evidence available at the relevant time, it appeared that the said assessee had failed to pay/short paid/deposit Service Tax to the extent of Rs. 72,78,362/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 2015-16 vis-à-vis "Sales /Gross Receipts from Services (ITR)" OR "Total Amount paid /Credited Under 194C, 194H, 194I, 194J" (as per Form 26AS). The said short payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 72,78,362/- (including Cess) worked out on value of Rs. 72,78,362/- and therefore, the said Service Tax was required to be demanded/recoverable from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

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; (iv) contravened the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 which appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (vi) made themselves liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994; (vii) contravened the provision of Rule 7 read with Section 70 of the Finance Act, 1994 in as much as they failed to file ST-3 Returns by due date; (viii) also contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data / documents as called for, from them.

24. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value, that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 72,78,362/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the assessee which were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

25. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest at appropriate rate, as is for the time being fixed by the Central Government, by Notification in the Official Gazette, for the period by which such crediting of the tax or any part thereof is delayed. It appeared that the said assessee had short paid/not-paid Service Tax

of Rs. 72,78,362/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 ibid not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee had suppressed the facts from the department and had contravened the provisions with an intent to evade payment of Service Tax. The said assessee had not discharged their Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.

26. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax and they appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of Service Tax as discussed in the foregoing paras and therefore, the Service Tax amounting to Rs. 72,78,362/- (inclusive of Cess) not paid was required to be demanded and recoverable from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

27. No data was shared by the CBDT, for the period FY 2016-17 & 2017-18 (upto June-2017) and the assessee had failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of issuance of SCN it was not possible to quantify short payment of Service Tax, if any, for the period FY 2017-18 (upto June-2017).

Unquantified demand at the time of issuance of SCN.

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

*'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the 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.'*

28. The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the FY 2016-17 & 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 department. The assessee had also failed to provide the required information even after the issuance of letters and summons from the Department and the assessable value for the FY 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 FY 2017-18 (upto June-2017) covered under subject Show Cause Notice, was to be recovered from the assessee.

**29.** All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time.

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

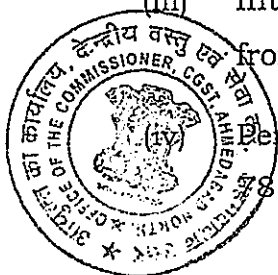
**31.** Therefore, Show Cause Notice dated 22.10.2020 was issued to the assessee asking them as to why:

(i) Differential amount of Service Tax of Rs. 72,78,362/- (Rupees Seventy Two Lakh Seventy Eight Thousand Three Hundred Sixty Two Only) short/ not paid, should not be confirmed and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.

(ii) Service Tax liability for the FY 2016-17 & 2017-18 (upto June 2017) to be ascertained, 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 under Section 75 of the Finance Act, 1994;

Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994.



- (v) Penalty should not be imposed upon them under the provision of Section 77(1)(C) & 77(2) of the Finance Act, 1994, for failure to assess their correct Service Tax Liability and for failure to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

**DEFENCE REPLY:**

32. The assessee vide their letter dated 29.10.2020 submitted their written submission with reference to SCN F.No. STC/15-156/OA/ 2020 dated 22.10.2020 wherein they have inter alia stated that:

• They have earned income with respect to services attributable to negative list services contained in Section 66D. They have paid service tax on GTA services.

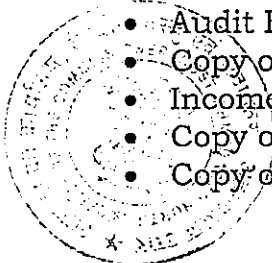
- Their services of Road Construction were fully exempted under Notification No. 25/2012-ST Entry No. 13. Further, the Sub Contract Work of exempt road work was also exempt under Notification No. 25/2012-ST Entry No. 29(h).

The assessee vide their letter dated 07.05.2021 submitted written submission with reference to SCN F.No. STC/15-79/OA/2021 dated 23.04.2021, wherein they have stated that:

- They have already replied on the subject matter to the department vide their letter dated 29.10.2020 and they reiterated the same arguments forwarded earlier.

The assessee again submitted letter dated 15.09.2021, wherein they had again reiterated their plea of their service being exempt service under Notification No. 25/2012-ST vide Entry No. 13 and 29(h). They furnished the copy of SCN issued by the Additional Commissioner, CGST, Ahmedabad North, Ahmedabad. They submitted the following documents for FY 2016-17, in support of their defence.

- Form 26AS
- Income Tax Return
- Audit Report
- Copy of Work Order and RA Bill
- Income Ledgers
- Copy of ST-2
- Copy of earlier reply dated 29.10.2020



The assessee vide their letter dated 26.04.2022 also submitted the documents for the FY 2015-16 and FY 2016-17 as follows and sought extension of time limit for personal hearing till 07.05.2022:

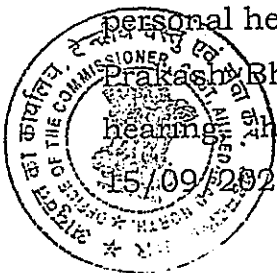
- Form 26AS
- Income Tax Return
- Audit Report
- Copy of Work Order and RA Bill
- Income Ledgers
- Service tax Returns

The assessee further submitted a detailed defence reply dated 02.06.2022, wherein they have interalia stated that:

- They had carried out construction of road work for use by general public, on subcontract basis for various parties. The said work was exempt under Notification No. 25/2012-ST vide Entry No. 13(a) and Entry No. 29(h). Hence, they were not liable to pay service tax on such work.
- During FY 2016-17, they had undertaken work for BAPS SWAMINARAYANA MANDIR which is a charitable trust registered under Section 12AA of the Income Tax Act. They further stated that Entry No. 13(c) of Notification No. 25/2012-ST provided exemption from service tax on services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a building owned by an entity registered under Section 12AA of the Income Tax Act, 1961. Hence, they were not liable to pay service tax on work done for BAPS SWAMINARAYANA MANDIR.

**PERSONAL HEARING:**

33. Personal Hearings were granted to the assessee on 17.12.2021, 18.01.2022, 26.04.2022, 19.05.2022, 16.06.2022, 22.07.2022 and 02.09.2022. The assessee had sought extension of time vide their letters dated 16.12.2021, 18.01.2022 and 26.04.2022 for personal hearing granted on 17.12.2021, 18.01.2022, 26.04.2022 respectively. The personal hearing granted on 19.05.2022 was not attended by them. The personal hearing granted on 16.06.2022 and 22.07.2022 were not held. Thereafter, the assessee was granted personal hearing on 02.09.2022 for both the SCNs, which was attended by Shri Prakash Bhavsar, CA as authorized by the assessee. During the course of hearing, she referred to their written submissions dated 07/05/2021, 15/09/2021, 26/04/2022 and 02/06/2022. The crux of the arguments put



forth by him was that they had provided construction of roads services, and the same was exempted from service tax.

**DISCUSSION AND FINDINGS:**

34. I have carefully gone through the facts of the case and records available in the case file, which include both the SCNs, the defence replies dated 07/05/2021, 15/09/2021, 26/04/2022 and 02/06/2022 submitted by the assessee and oral submission made during the course of hearing by the authorized representative of the assessee.

35. I observe that two SCNs have been issued to the assessee. The SCN dated 23.04.2021 has been issued in the name of M/s. Masum Narendrakumar Patel by the Commissioner, CGST, Ahmedabad North, Ahmedabad, whereas the SCN dated 22.10.2020 has been issued in the name of M/s. Krushna Construction, by the Additional Commissioner, CGST, Ahmedabad North, Ahmedabad. On perusing Form ST-2, it is apparent that M/s. Masum Narendrakumar Patel and M/s. Krushna Construction are one and the same entity and M/s. Krushna Construction is the business name /trade name of the proprietorship firm and Masum Narendrakumar Patel is the proprietor of the firm (to be referred to as "assessee" for M/s. Masum Narendrakumar Patel and M/s. Krishan Construction as well) and they are having the Service Tax Registration No. BBPPP2906PSD001)

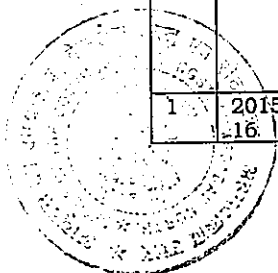
The tables below show the service tax demanded from the assessee in the two SCNs.

**Service tax demanded under SCN dated 23.04.2021**

Sr. No.	FY	Taxable Value as per ST-3 Returns (in Rs.)	Gross Receipts from services (Value from ITR/26AS) (in Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service tax provided (in Rs.)	Resultant Service tax short paid (in Rs.)
1	2015-16	0	10,03,91,208	10,03,91,208	1,45,56,725
2	2016-17	0	17,03,68,686	17,03,68,686	2,55,55,303
			27,07,59,894	27,07,59,894	4,01,12,028

**Service tax demanded under SCN dated 22.10.2020**

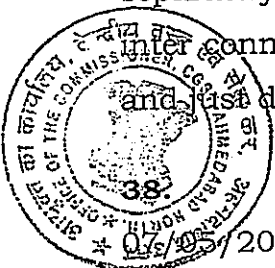
Sr. No.	FY	Total Sale of services as per ITR	Gross value of service provided (STR)	Total value for TDS (including 194C,194Ia, 194Ib,194J, 194H)	Value Difference in ITR and STR	Value Difference in ITR and STR	Higher Value (value difference ITR&STR) or (value difference TDS & STR)	Duty @ 14.5%
1	2015-16	5,01,95,604	0	5,01,95,604	5,01,95,604	5,01,95,604	5,01,95,604	72,78,362



**36.** On going through the SCN dated 23.04.2021, I find that basically the essence of the case here is that data of "Sales /Gross Receipts from Services (ITR)" / "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" (as per TDS Statement-Form 26AS) were shared by the CBDT with CBIC for FY 2015-16 and 2016-17. The difference in taxable value was worked out after comparing the income declared in Form 26AS/ITR vis-à-vis taxable value disclosed in ST-3 Returns. As per SCN dated 23.04.2021, the difference of Rs. 27,07,59,894/- 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. 4,01,12,028/- on such differential value, for providing the taxable service. However, on perusing the SCN dated 20.10.2020 issued by the Additional Commissioner, CGST Ahmedabad North, Ahmedabad, I find that the difference of Rs. 5,01,95,604/- in value was observed for FY 2015-16 and, therefore, demand of Service tax amounting to Rs. 72,78,362/- was issued to the assessee. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay (1) service tax of Rs. 4,01,12,028/- short/not paid on the differential taxable value of Rs. 27,07,59,894/- for the Financial Year 2015-16 and 2016-17 as demanded in SCN dated 23.04.2021 and (2) Service tax of Rs. 72,78,362/- short/non paid on the differential taxable value of Rs. 5,01,95,604/- for the Financial Year 2015-16, under proviso to section 73(1) of Finance Act, 1994 or not.

**37.** I find that the SCN dated 23.04.2021 seeks demand of service tax purely on differential value of service as reflected in ITR /26AS vis-a-vis the value declared in ST-3 Returns for FY 2015-16 to 2016-17. On the other hand, the SCN dated 22.10.2020 also seeks demand of Service Tax short/not paid on differential value of services in ITR/26AS vis-à-vis value declared in ST-3 Returns for FY 2015-16 and also seeks demand of service tax of FY 2016-17 and 2017-18 (upto June 2017) in case of subsequent receipt of data, which could not be ascertained at the time of issuance of SCN. Therefore, both the SCNs seek the demand on differential amount/ incomes on which tax has not been paid by the assessee. Further, I find that the period covered under both the SCNs is almost coterminous and for the same period and the same can not be decided separately in the interest and uniformity of the decision, as both the SCNs are inter connected. Therefore, I am taking up the matter simultaneously for a fair and just decision in the matter.

I find that the assessee vide their defence replies dated 07/05/2021, 15/09/2021 and 02/06/2022 has admittedly stated about the



provision of Road Construction Services to various parties on subcontract basis. They have not raised any contention about the provision of service by them. Further, the assessee has contested that the service provided by them by way of "Road Construction for use by general public" and "construction, repair, maintenance of a building owned by the entity registered under 12AA of IT Act for religious use general public" were exempt services under Notification 25/2012-ST vide E.No. 13(a) & 13(c) read with E.No. 29(h). Therefore, I am of the opinion that there is no dispute regarding provision of services by the assessee. Therefore, the issue which needs to be decided is whether the services provided by the assessee were eligible for exemption under Notification No. 25/2012-ST vide Entry No. 13(a) & 13(c) read with Entry No. 29(h) or otherwise.

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

- o Form 26AS
- o Income Tax Return
- o Audit Report
- o Copy of Work Order and RA Bill
- o Income Ledgers
- o Service tax Returns in Form ST-3.

**40.** I find that both the SCNs mention the sharing of data from ITR/26AS, however, it does not mention specifically, which data i.e. ITR data or 26AS data, has been considered for computing the tax liability upon the assessee. However, on comparing the demand of service tax and value of service considered for computation of service tax liability of the assessee, in both the SCNs, the same is found to be not tallying with each other. Therefore, in order to verify the value of service considered in both the SCNs vis-à-vis the relevant figures of value of services appearing in the different financial records/ IT returns/ 26AS and ST-3 are compared and reproduced herein below.

<b>Figures / value of services considered in the SCN dated 22.10.2020</b>			
Sr. No.	Financial Year	Taxable Value as per ST-3 Returns (in Rs.)	Gross receipt from services (Value as per ITR/Form 26AS) (in Rs.) OR Differential value of service
1	2015-16	0	5,01,95,604
	<b>Total</b>	0	5,01,95,604

<b>Figures / value of services considered in the SCN dated 23.04.2021</b>			
Sr. No.	Financial Year	Taxable Value as per ST-3 Returns (in Rs.)	Gross receipt from services (Value as per ITR/Form 26AS) (in Rs.) OR Differential value of service
1	2015-16	0	10,03,91,208
2	2016-17	0	17,03,68,686
	<b>Total</b>	0	27,07,59,894



ST-3 details						
FY 2015-16	Apr-15 to Sep-15		Oct-15 to Mar-16		Total	
	GTA Service (under RCM)	Works Contract Service	GTA Service (under RCM)	Works Contract Service	GTA Service (under RCM)	Works Contract Service
Gross Amount of service	769464	0	7149971	0	7919435	0
Less: Exempt Service	0	0	0	0	0	0
Less: Abatement	538625	0	5004980	0	5543605	0
Net Taxable Value	230839	0	2144991	0	2375830	0
				0		
Service Tax Paid	32317	0	311024	0	343341	0

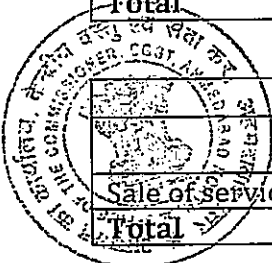
ST-3 details						
FY 2016-17	Apr-16 to Sep-16		Oct-16 to Mar-17		Total	
	GTA Service (under RCM)	Works Contract Service	GTA Service (under RCM)	Works Contract Service	GTA Service (under RCM)	Works Contract Service
Gross Amount of service	9914702	0	9235090	0	19149792	0
Less: Exempt Service	0	0	0	0	0	0
Less: Abatement	6940292	0	6464563	0	13404855	0
Net Taxable Value	2974410	0	2770527	0	5744937	0
Service Tax Paid	446161	0	415579	0	861740	0

FY 2015-16 - Details of Form 26AS			
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	ASHISH INFRACON PVT LTD	4,93,31,405	194C
2	SUN DEVELOPERS	8,64,199	194C
	<b>Total</b>	<b>5,01,95,604</b>	

FY 2016-17 - Details of Form 26AS			
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	ASHISH INFRACON PVT LTD	8,19,56,325	194C
2	BOCHANSANWASI AKSHAR PURUSHOTAM SWAMINARAYAN SANSTHA	26,27,474	194C
3	VIJAY M MISTRY CONSTRUCTION PVT LTD	6,00,544	194C
	<b>Total</b>	<b>8,51,84,343</b>	

Turnover as per Profit and Loss Account (in Rs.)			
	FY 2015-16	FY 2016-17	Total
Contract Income	5,01,95,604	8,51,93,614	13,53,89,218
<b>Total</b>	<b>5,01,95,604</b>	<b>8,51,93,614</b>	<b>13,53,89,218</b>

Value of service as per ITR (in Rs.)			
	FY 2015-16	FY 2016-17	Total
Sale of service	5,01,95,604	8,51,93,614	13,53,89,218
<b>Total</b>	<b>5,01,95,604</b>	<b>8,51,93,614</b>	<b>13,53,89,218</b>



**40.1** The details of above tables are summarized herein below for comparison of value of services rendered by the assessee, as appearing in different records.

Summarized Details of above details					
FY	Amount paid as per Form 26AS (in Rs.) on which TDS has been deducted under 194C of Income tax Act.	Turnover as per P&L Accounts (Contract Income) (Rs.)	Sale of service as per ITR	Value of services considered in the SCN dated 22.10.2020 (in Rs.) for computation of service tax liability of the assessee.	Value of services considered in the SCN dated 23.04.2021 (in Rs.) for computation of service tax liability of the assessee
2015-16	5,01,95,604	5,01,95,604	5,01,95,604	5,01,95,604	10,03,91,208
2016-17	8,51,84,343	8,51,93,614	8,51,93,614	---	17,03,68,686
Total	13,53,79,947	13,53,89,218	13,53,89,218	5,01,95,604	27,07,59,894

**40.2** On perusing the summarized details, it is quite clear that the value of service considered in the SCN dated 22.10.2020, in which demand has been quantified for FY 2015-16 only, is found to be tallying with records of FY 2015-16. However, the values of the service considered in SCN dated 23.04.2021 for computation of service tax liability for FY 2015-16 and 2016-17 are found to be not matching with ITR/P&L/26AS, rather the said values are exactly double of the relevant value appearing in Form 26AS. Therefore, the base of the SCN could be Form 26AS. Therefore, the computation of service tax carried out in the SCN dated 23.04.2021 is evidently not correct. Hence, it is apparent that the data shared by the Income Tax department were not from the ITR, but from the Form 26AS only. Accordingly, I will now have to 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.

**41.** To appreciate the issue in the correct perspectives, relevant extracts from the legal provisions contained the Finance Act, 1994/ Notification issued thereunder/ Rules made there under are reproduced as follows:

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

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) .....

[(ba) .....

(bb) .....

(c) *a building owned by an entity registered under section 12AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;*

(d) .....

(e) .....

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

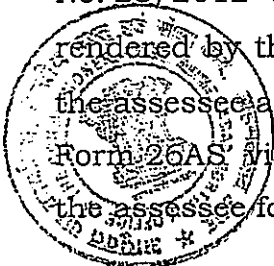
(a) .....

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

41.1 From the above legal position, it is quite clear that the *Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of (i) a road, bridge, tunnel, or terminal for road transportation for use by general public and (ii) a building owned by an entity registered under section 12AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public* is exempt services under Notification No. 25/2012 -ST dated 20.06.2012. In support of the arguments of the provision of service by them being exempt service, the assessee has provided the following documents for FY 2015-16 & 2016-17:

- o Form 26AS
- o Income Tax Return
- o Audit Report
- o Copy of Work Order and RA Bill
- o Income Ledgers
- o Service tax Returns

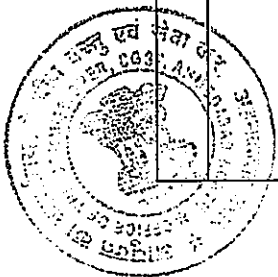
42. I find that the department has not adduced any documentary/tangible evidences to substantiate the allegation other than the difference in value worked out on the basis of data shared by the Income Tax Department. Therefore, the documents produced by the assessee are the only source for me to determine the nature of service and taxability thereupon. Therefore, relying on the said documents, I have to proceed further to decide the matter. In order to ascertain the availability of the exemption from payment of service tax under Notification No. 25/2012- ST (E.No. 13(a) & 13(c) read with 29(h)) or otherwise to the services rendered by the noticee, I would like to examine the documents submitted by the assessee alongwith their various written submissions. On going through the Form 26AS vis-à-vis work orders, Sub contract agreements, RA Bills issued by the assessee for services rendered by them, the following facts are emerging:



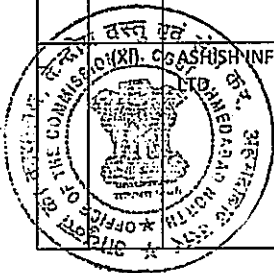
FY 2015-16					
Sr. No.	As per Form 26AS statement				Documents produced and Nature of work done by the assessee as per RA Bills /other documents
	Name of the TDS deductor	Transaction date	Amount paid /credited (In Rs.) and on which TDS has been deducted under 194C of IT Act.		
1	(I)	ASHISH INFRACON PVT LTD	01/08/2015	5860256	<ul style="list-style-type: none"> <li>RA Bill No. 05 dated 05.04.2015 issued to M/s. Ashish Infracon P L by the assessee for Construction of Flyover at Bopal Junction, Ahmedabad</li> <li>Income ledger</li> <li>Work Order No. 07960 dated 05.08.2014 issued by Ahmedabad Urban Development Authority (AUDA) issued to M/s. Vijay M Mistry Construction Pvt Ltd for awarding work of Construction of Fly Over Bridge on Bopal Junction along SP Ring Road (Job No. 63/2013-14)</li> <li>Work Order No. 0366 dated 01.09.2014 issued to M/s. Ashish Infracon Pvt Ltd by M/s. Vijay M Mistry Construction Pvt Ltd for subcontracting the work of "Construction of Fly Over Bridge at Bopal"</li> <li>Letter of Acceptance /agreement dated 05.10.2014 made between M/s. Ashish Infracon Pvt Ltd and M/s. Krushna Construction for Road Work of Flyover Bridge at Bopal, Ahmedabad</li> </ul>
	(II)	ASHISH INFRACON PVT LTD	01/08/2015	258516	<ul style="list-style-type: none"> <li>RA Bill No. 4 dated 02.07.2015 issued to M/s. Ashish Infracon Pvt Ltd by the assessee for Widening &amp; Strengthening of Khambhat Dhuvaran Road Km 0/0 to 16/06 [Widening from 7.00 to 10 m]</li> <li>Income Ledger</li> <li>Work Order No. AB/ TC/ 1205/2014 dated 26.02.2014 issued to M/s. Ashish Infracon Pvt Ltd by the Executive Engineer, R &amp; B Division, Ananad for Widening &amp; Strengthening of Khambhat Dhuvaran Road Km 0/0 to 16/06 [Widening from 7.00 to 10 m width, improvement of Jn-curve, Asphaltic work, Cross drainage &amp; Other work].</li> <li>Letter of Acceptance /agreement dated 12.03.2014 made between M/s. Ashish Infracon Pvt Ltd and M/s. Krushna Construction for Widening &amp; Strengthening of Khambhat Dhuvaran Road Km 0/0 to 16/06 [ Widening from 7.00 to 10 m width, improvement of Jn-curve, Asphaltic work, Cross drainage &amp; Other work]</li> </ul>
	(III)	ASHISH INFRACON PVT LTD	01/03/2016	638816	<ul style="list-style-type: none"> <li>RA Bill No. 06 dated 08.05.2015 issued to M/s. Ashish Infracon P L by the assessee for Construction of Flyover at Bopal Junction, Ahmedabad</li> <li>Work Order/ Sub contract agreement, further subcontract agreement are as per Sr. No. 1(I) above</li> </ul>
	(IV)	ASHISH INFRACON PVT LTD	01/03/2016	301183	<ul style="list-style-type: none"> <li>Work Bill No. 01 dated 01.11.2015 issued to M/s. Ashish Infracon P L by the assessee for Construction of Flyover at Bopal Junction, Ahmedabad.</li> <li>Work Order/ Sub contract agreement, further subcontract agreement are as per Sr. No. 1(I) above</li> </ul>
	(V)	ASHISH INFRACON PVT LTD	15/03/2016	126785	<ul style="list-style-type: none"> <li>RA Bill No. 5 dated 10.09.2015 issued to M/s. Ashish Infracon Pvt Ltd by the assessee for Widening &amp; Strengthening of Khambhat Dhuvaran Road Km 0/0 to 16/06 [ Widening from 7.00 to 10 m].</li> <li>Work Order and Sub contract agreement are as per Sr. No. 1(II) above.</li> </ul>
	(VI)	ASHISH INFRACON PVT LTD	15/03/2016	3130747	<ul style="list-style-type: none"> <li>RA Bill No. 07 dated 25.10.2015 issued to M/s. Ashish Infracon P L by the assessee for Construction of Flyover at Bopal Junction, Ahmedabad</li> <li>Work Order/ Sub contract agreement, further subcontract agreement are as per Sr. No. 1(I) above</li> </ul>
	(VII)	ASHISH INFRACON PVT LTD	31/03/2016	1101154	<ul style="list-style-type: none"> <li>RA Bill No. 6 dated 31.03.2016 Issued to M/s. Ashish Infracon Pvt Ltd by the assessee for Widening &amp; Strengthening of Khambhat Dhuvaran Road Km 0/0 to 16/06 [ Widening from 7.00 to 10 m]</li> <li>Work Order and Sub contract agreement are as per Sr. No. 1(II) above.</li> </ul>
	(VIII)	ASHISH INFRACON PVT LTD	31/03/2016	37913948	<ul style="list-style-type: none"> <li>RA Bill No. 05 dated 30.03.2016 issued to M/s. Ashish Infracon P L by the assessee for Sabarmati Riverfront Development Corporation Limited Work -Interim payment Certificate no. 5</li> </ul>

					<ul style="list-style-type: none"> <li>Income ledger</li> <li>Work Order No. 462 dated 28/29.07.2015 issued to M/s. Ashish Infracon Pvt Ltd by M/s. Sabarmati River Front Development Corporation Limited for Work of Construction of Road and Retaining wall with infrastructure services like electrical, storm water, drainage works from Sardar Bridge to Ambedkar Bridge on East Bank of River Sabarmati for Sabarmati River Front Development Project.</li> <li>Letter of Acceptance /agreement dated 12.03.2014 made between M/s. Ashish Infracon Pvt Ltd and M/s. Krishna Construction for Work of Construction of Road and Retaining wall with infrastructure services like electrical, storm water, drainage works from Sardar Bridge to Ambedkar Bridge on East Bank of River Sabarmati for Sabarmati River Front Development Project. Date of agreement appears not appropriate /correct, as it appears prior to original WO but the work details are same as per original work order</li> </ul>
		Sub total		49331405	
2	(i)	SUN DEVELOPER	19/10/2015	864199	<ul style="list-style-type: none"> <li>RA Bill No. 1 dated 02.09.2015 issued to M/s. Sun Developers by the assessee for Road Development at Ambavadi Site</li> <li>Income ledger</li> </ul>
		Sub Total		864199	
		Grand total		50195604	

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.)	
1	(i)	ASHISH INFRACON PVT LTD	15/04/2016	10311248	<ul style="list-style-type: none"> <li>RA Bill No. 6 dated 15.04.2016 issued to M/s. Ashish Infracon P L by the assessee for Sabarmati Riverfront Development Corporation Limited Work -Interim payment Certificate no. 6</li> <li>Income ledger</li> <li>Work Order No. 462 dated 28/29.07.2015 Issued to M/s. Ashish Infracon Pvt Ltd by M/s. Sabarmati River Front Development Corporation Limited for Work of Construction of Road and Retaining wall with infrastructure services like electrical, storm water, drainage works from Sardar Bridge to Ambedkar Bridge on East Bank of River Sabarmati for Sabarmati River Front Development Project.</li> <li>Letter of Acceptance /agreement dated 12.03.2014 made between M/s. Ashish Infracon Pvt Ltd and M/s. Krishna Construction for Work of Construction of Road and Retaining wall with infrastructure services like electrical, storm water, drainage works from Sardar Bridge to Ambedkar Bridge on East Bank of River Sabarmati for Sabarmati River Front Development Project. Date of agreement appears not appropriate /correct, as it appears prior to original WO but the work details are same with original work order</li> </ul>
	(ii)	ASHISH INFRACON PVT LTD	15/06/2015	841683	<ul style="list-style-type: none"> <li>RA Bill No. 8 dated 14.06.2016 issued to M/s. Ashish Infracon P L by the assessee for Construction of Flyover at Bopal Junction, Ahmedabad</li> <li>Income ledger</li> <li>Work Order No. 07960 dated 05.08.2014 issued by Ahmedabad Urban Development Authority (AUDA) issued to M/s. Vijay M Mistry Construction Pvt Ltd for awarding work of Construction of Fly Over Bridge on Bopal Junction along SP Ring Road (Job No. 63/2013-14)</li> <li>Work Order No. 0366 dated 01.09.2014 issued to M/s. Ashish Infracon Pvt Ltd by M/s. Vijay M Mistry Construction Pvt Ltd for subcontracting the work of "Construction of Fly Over Bridge at Bopal"</li> <li>Letter of Acceptance /agreement dated 05.10.2014 made between M/s. Ashish Infracon Pvt Ltd and M/s. Krishna Construction for Road Work of Flyover Bridge at Bopal, Ahmedabad</li> </ul>



(III)	ASHISH INFRACON PVT LTD	12/07/2016	2127144	<ul style="list-style-type: none"> <li>• RA Bill No. 9 dated 12.07.2016 issued to M/s. Ashish Infracon P L by the assessee for Construction of Flyover at Bopal Junction, Ahmedabad</li> <li>• Work Order, Sub Contract, further subcontract are as per Sr. No. 1(II) above.</li> </ul>
(IV)	ASHISH INFRACON PVT LTD	29/07/2016	12328080	<ul style="list-style-type: none"> <li>• RA Bill No. 7 dated 20.05.2016 issued to M/s. Ashish Infracon P L by the assessee for Sabarmati Riverfront Development Corporation Limited Work -Interim payment Certificate no. 7</li> <li>• Income Ledger</li> <li>• Work order, Sub Contract and further sub contract details are as per Sr. No. 1(I) above.</li> </ul>
(V)	ASHISH INFRACON PVT LTD	01/10/2016	1671533	<ul style="list-style-type: none"> <li>• RA Bill No. 10 dated 12.08.2016 issued to M/s. Ashish Infracon P L by the assessee for Construction of Flyover at Bopal Junction, Ahmedabad</li> <li>• Work Order, Sub Contract, further subcontract are as per Sr. No. 1(II) above.</li> </ul>
(VI)	ASHISH INFRACON PVT LTD	21/10/2016	9250250	<ul style="list-style-type: none"> <li>• RA Bill No. 01 Final dated 20.11.2016 issued to M/s. Ashish Infracon P L by the assessee for Dhansura -Malpur -Meghraj (ROAD)</li> <li>• Income Ledger</li> <li>• Work Order No. AB-TC/ 642/2013 dated 20/11/2013 issued to M/s. Ashish Infracon Pvt Ltd. by the Executive Engineer, State Road Project, Vadodara for the Construction of Widening &amp; Strengthening of Dhansura-Meghraj Road Km 38+501 to 64+583 and Km 67+711 to 84+986 (Malpur to Meghraj) SH No. 145 GSHP</li> <li>• Letter of Acceptance /agreement dated 09.12.2013 made between M/s. Ashish Infracon Pvt Ltd and M/s. Krushna Construction for the Construction of Widening &amp; Strengthening of Dhansura-Meghraj Road Km 38+501 to 64+583 and Km 67+711 to 84+986 (Malpur to Meghraj) SH No. 145 GSHP</li> </ul>
(VII)	ASHISH INFRACON PVT LTD	01/11/2016	1185539	<ul style="list-style-type: none"> <li>• RA Bill No. 12 dated 25.10.2016 issued to M/s. Ashish Infracon P L by the assessee for Construction of Flyover at Bopal Junction, Ahmedabad</li> <li>• Work Order, Sub Contract, further subcontract are as per Sr. No. 1(II) above.</li> </ul>
(VIII)	ASHISH INFRACON PVT LTD	01/11/2016	2122007	<ul style="list-style-type: none"> <li>• RA Bill No. 11 dated 01.10.2016 issued to M/s. Ashish Infracon P L by the assessee for Construction of Flyover at Bopal Junction, Ahmedabad</li> <li>• Work Order, Sub Contract, further subcontract are as per Sr. No. 1(II) above.</li> </ul>
(IX)	ASHISH INFRACON PVT LTD	01/12/2016	6466669	<ul style="list-style-type: none"> <li>• RA Bill No. 8 dated 20.06.2016 issued to M/s. Ashish Infracon P L by the assessee for Sabarmati Riverfront Development Corporation Limited Work -Interim payment Certificate no. 8</li> <li>• Work order, Sub Contract and further sub contract details are as per Sr. No. 1(I) above.</li> </ul>
(X)	ASHISH INFRACON PVT LTD	12/12/2016	1922747	<ul style="list-style-type: none"> <li>• RA Bill No. 13 dated 12.12.2016 issued to M/s. Ashish Infracon P L by the assessee for Construction of Flyover at Bopal Junction, Ahmedabad</li> <li>• Work Order, Sub Contract, further subcontract are as per Sr. No. 1(II) above.</li> </ul>
	ASHISH INFRACON PVT LTD	15/12/2016	8212055	<ul style="list-style-type: none"> <li>• RA Bill No. 9 dated 20.07.2016 issued to M/s. Ashish Infracon P L by the assessee for Sabarmati Riverfront Development Corporation Limited Work -Interim payment Certificate no. 9</li> <li>• Work order, Sub Contract and further sub contract details are as per Sr. No. 1(I) above.</li> </ul>

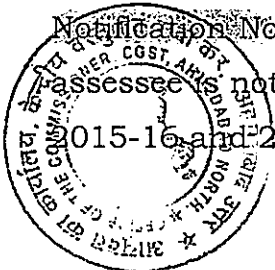


	(XII)	ASHISH INFRACON PVT LTD	31/12/2016	6059004	<ul style="list-style-type: none"> <li>RA Bill No. 10 dated 20.07.2016 issued to M/s. Ashish Infracon P L by the assessee for Sabarmati Riverfront Development Corporation Limited Work -Interim payment Certificate no.10</li> <li>Work order, Sub Contract and further sub contract details are as per Sr. No. 1(I) above.</li> </ul>
	(XIII)	ASHISH INFRACON PVT LTD	01/03/2017	3266095	<ul style="list-style-type: none"> <li>RA Bill No. 14 dated 21.01.2017 issued to M/s. Ashish Infracon P L by the assessee for Construction of Flyover at Bopal Junction, Ahmedabad</li> <li>Work Order, Sub Contract, further subcontract are as per Sr. No. 1(II) above.</li> </ul>
	(XIV)	ASHISH INFRACON PVT LTD	01/03/2017	8726788	<ul style="list-style-type: none"> <li>RA Bill No. 11 dated 20.10.2016 issued to M/s. Ashish Infracon P L by the assessee for Sabarmati Riverfront Development Corporation Limited Work -Interim payment Certificate no. 11</li> <li>Work Order, Sub Contract, further subcontract are as per Sr. No. 1(II) above.</li> </ul>
	(XV)	ASHISH INFRACON PVT LTD	30/03/2017	6905211	<ul style="list-style-type: none"> <li>RA Bill No. 15 dated 03.03.2017 issued to M/s. Ashish Infracon P L by the assessee for Construction of Flyover at Bopal Junction, Ahmedabad</li> <li>Work Order, Sub Contract, further subcontract are as per Sr. No. 1(II) above.</li> </ul>
	(XVI)	ASHISH INFRACON PVT LTD	30/03/2017	560272	<ul style="list-style-type: none"> <li>RA Bill No. 16 dated 31.03.2017 issued to M/s. Ashish Infracon P L by the assessee for Construction of Flyover at Bopal Junction, Ahmedabad</li> <li>Work Order, Sub Contract, further subcontract are as per Sr. No. 1(II) above.</li> </ul>
				81956325	
2	(I)	BOCHANSANWASI AKSHAR PURUSHOTAM SWAMINARAYAN SANSTHA	25/10/2016	2026809	<ul style="list-style-type: none"> <li>RA Bill No. 1 dated 21.10.2016 for Rs. 2047077/- issued by M/s. Krushna Construction to BAPS Swaminarayan Mandir, Sahibag, Ahmedabad for Road and Flooring work at Sahibag</li> </ul>
	(II)	BOCHANSANWASI AKSHAR PURUSHOTAM SWAMINARAYAN SANSTHA	28/12/2016	550000	<ul style="list-style-type: none"> <li>RA Bill No. 2 dated 24.10.2016 for Rs. 522962/- issued by M/s. Krushna Construction to BAPS Swaminarayan Mandir, Sahibag, Ahmedabad for Road and Flooring work at Sahibag</li> </ul>
	(III)	BOCHANSANWASI AKSHAR PURUSHOTAM SWAMINARAYAN SANSTHA	29/12/2016	50665	<ul style="list-style-type: none"> <li>RA Bill No. 3 dated 24.12.2016 for Rs. 50665/- issued by M/s. Krushna Construction to BAPS Swaminarayan Mandir, Sahibag, Ahmedabad for Road and Flooring work at Sahibag.</li> </ul>
		Sub Total		2627474	
3	(I)	VIJAY M MISTRY CONSTRUCTION PVT LTD	31/03/2017	600544	<ul style="list-style-type: none"> <li>Work Bill No. 1 dated 16.02.2017 issued to M/s. Vijay Mistry Construction Pvt Ltd. by the assessee for Bopal Fly Over - arranging and fixing of temporary barricading as per SOR of 2.0 high using GI corrugated sheets &amp; Wooden Planks etc...</li> <li>Work Order WO/Barricading /917-A/ Krushna-VMC dated 01.02.2017 issued by M/s. Vijay M Mistry Construction Pvt Ltd, subcontracting the work of arranging and fixing of temporary barricading at BOPAL FOB Site, to M/s. Krishan Construction.</li> <li>Work Order No. 07960 dated 05.08.2014 issued by Ahmedabad Urban Development Authority (AUDA) issued to M/s. Vijay M Mistry Construction Pvt Ltd for awarding work of Construction of Fly Over Bridge on Bopal Junction along SP Ring Road (Job No. 63/2013-14)</li> </ul>
		Sub Total		600544	
		Grand Total		85184343	

On going through the above tabularized details of services rendered and consideration received by the assessee during FY 2015-16 and 2016-17, it is discerned that during FY 2015-16 and 2016-17, the assessee has provided services to M/s. Ashish Infracon Pvt Ltd, M/s. Vijay M Mistry Construction Pvt

Ltd, BOCHANSANWASI AKSHAR PURUSHOTAM SWAMINARAYAN SANSTHA and Sun Developer.

**42.1** As regards services provided by the assessee to M/s. Ashish Infracon Pvt Ltd and M/s. Vijay M Mistry Construction Pvt Ltd as is apparent from the documents, the same were by way of Construction, repairs maintenance of roads/ flyover bridge and its allied/ancillary works ( for M/s. Vijay M Mistry Construction P Ltd with respect to Construction of Fly Over Bridge) on subcontract basis. The said works of Construction/Flyover Bridge were originally awarded by AUDA (*As per Website, AUDA has been established by the State Government and is directly under control of the state government and they undertake the functions of carrying out the sustained planned development of the area falling outside the periphery of Ahmedabad Municipal Corporation as entrusted to them by the government*), Government Department and Sabarmati Riverfront Development Corporation Limited (as per Website- a SPV/ a company launched by Ahmedabad Municipal Corporation). Therefore, the services of Road Construction/FOB and its allied works were provided ultimately to Governmental Authority, Local Authority (AMC) and Government; hence, the construction of Road /FOB and its allied works can be construed as for use of general public. Evidently, in the instant case, the services provided were in nature of Works Contract Service as the same involved supply of goods alongwith services. The said services are squarely found to be covered under E.No. 13(a) of Notification No. 25/2012-ST. Now, as per Sr. No. 29(h) of Notification No. 25/2012-ST dated 20.06.2012, the services provided by the subcontractor by way of works contract to another contractor is exempt service, if provision of the said works contract services by the contractor, are exempt. Therefore, the service provided by the assessee to M/s. Ashish Infracon Pvt Ltd and M/s. Vijay M Mistry Construction Pvt Ltd, as a subcontractor are squarely covered under Sr.No. 13(a) read with E.No. 29(h) of Notification 25/2012-ST. Therefore, in view of legal position and documentary evidences, I hold that the services provided by the assessee to M/s. Ashish Infracon Pvt Ltd and M/s. Vijay M Mistry Construction Pvt. Ltd are exempt service as the same are covered under Notification No. 25/2012-ST vide E.No. 13(a) read with 29(h). Accordingly, the assessee is not liable to pay service tax on services rendered by them during FY 2015-16 and 2016-17.





**42.2** As regards services provided by the assessee to BOCHANSANWASI AKSHAR PURUSHOTAM SWAMINARAYAN SANSTHA, it is apparent from the bills/invoices raised by the assessee, that the assessee had provided service of Road and Flooring work to BAPS Swaminarayan Mandir, Sahibag. I find that the assessee has claimed the exemption from service tax under Entry No. 13(C) of Notification No. 25/2012-ST, for provision of service to BOCHANSANWASI AKSHAR PURUSHOTAM SWAMINARAYAN SANSTHA. As per the legal provision as reproduced herein above, I find that the *Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a building owned by an entity registered under section 12AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public* is a exempt service under E.No. 13(C) of Notification No. 25/2012-ST. As evident from the invoices raised, the service provided by the assessee were not pertaining to the "building", accordingly, the service is not covered under E.No. 13(C) of Notification No. 25/2012-ST. Therefore, I find that the exemption claimed by the assessee is not available for service provided to BOCHANSANWASI AKSHAR PURUSHOTAM SWAMINARAYAN SANSTHA. I find that the assessee is liable to pay service tax on services rendered by them to BOCHANSANWASI AKSHAR PURUSHOTAM SWAMINARAYAN SANSTHA during FY 2016-17.

**42.3** I also find from the invoices/bill issued to M/s. SUN DVELOPER that the same were for Road Development at Ambavadi Site. However, nothing else is forthcoming as to whether the Road Developed by the assessee were meant for use by General Public or otherwise. Since it is not ascertainable from the documents submitted by the assessee that the Road Developed by them was meant for use by General Public, I am constrained to hold that the same is not covered under the service described under E.No. 13(a) of Notification No. 25/2012-ST. Accordingly, the assessee is found to be eligible for exemption from service tax on services provided to M/s. SUN DVELOPER. I therefore, hold that the assessee is liable to pay service tax on services provided to M/s. SUN DVELOPER during FY 2015-16.

**42.4** In view of the above discussion and legal position, the work carried out *vis-a-vis* availability of exemption or otherwise under Notification No. 25/2012-ST, is summarized as under:

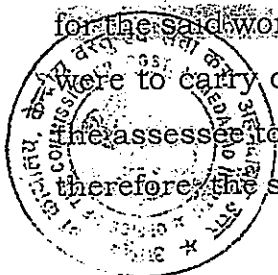
Summary of work carried out during FY 2015-16				
Sr.No	Services provided to/Payment received from	Work Carried out	Amount received for work	E.No. of the notification above table
1	ASHISH INFRACON PVT LTD	The work of Construction of Fly Over Bridge on Bopal Junction along SP Ring Road (Job No. 63/2013-14) was awarded to M/s. Vijay Mistry Construction Pvt Ltd by AUDA (Govt. Authority). The said work was subcontracted to M/s. Ashish Infracon Pvt Ltd by the awardee. M/s. Ashish further subcontracted the Road work of Flyover Bridge to the Assessee.	9931002	13(a) & 29(h)
		The work of Widening & Strengthening of Khambhat Dhuvaran Road was awarded to M/s. Ashish Infracon Pvt Ltd by R&B Department, Anand. The said work was further subcontracted to the Assessee by the awardee.	1486455	13(a) & 29(h)
		The work of "Construction of Road and Retaining wall with infrastructure services like electrical, storm water, drainage works from Sardar Bridge to Ambedkar Bridge on East Bank of River Sabarmati for Sabarmati River Front Development Project" was awarded to M/s. Ashish Infracon Pvt Ltd by M/s. Sabarmati River Front Development Corporation Limited. The awardee further subcontracted the work to the assessee.	37913948	13(a) & 29(h)
2	SUN DEVELOPER	The work of Road development at Ambawadi site.	864199	Not covered
		Total	50195604	

Summary of work carried out during FY 2016-17				
Sr.No	Services provided to/Payment received from	Work Carried out	Amount received for work	E.No. of the notification above table
1	ASHISH INFRACON PVT LTD	The work of Construction of Fly Over Bridge on Bopal Junction along SP Ring Road (Job No. 63/2013-14) was awarded to M/s. Vijay Mistry Construction Pvt Ltd by AUDA (Govt. Authority). The said work was subcontracted to M/s. Ashish Infracon Pvt Ltd by the awardee. M/s. Ashish further subcontracted the Road work of Flyover Bridge to the Assessee.	20602231	13(a) & 29(h)
		The work of "Construction of Road and Retaining wall with infrastructure services like electrical, storm water, drainage works from Sardar Bridge to Ambedkar Bridge on East Bank of River Sabarmati for Sabarmati River Front Development Project" was awarded to M/s. Ashish Infracon Pvt Ltd by M/s. Sabarmati River Front Development Corporation Limited. The awardee further subcontracted the work to the assessee.	52103844	13(a) & 29(h)
		The work of Widening & Strengthening of Dharsura-Meghraj Road Km 38+501 to 64+583 and Km 67+711 to 84+986 (Malpur to Meghraj) SH No. 145 GSHP was awarded to M/s. Ashish Infracon Pvt Ltd by the Executive Engineer, State Road Project, Vadodara. The said work was further subcontracted to the Assessee by the awardee.	9250250	13(a) & 29(h)
2	VIJAY MISTRY CONSTRUCTION PVT LTD	The work of Construction of Fly Over Bridge on Bopal Junction along SP Ring Road (Job No. 63/2013-14) was awarded to M/s. Vijay Mistry Construction Pvt Ltd by AUDA (Govt. Authority). The awardee subcontracted	600544	13(a) & 29(h)

		the work of arranging and fixing of temporary barricading at BOPAL FOB Site to the assessee.		
3	BOCHANSANWASI AKSHAR PURUSHOTAM SWAMINARAYAN SANSTHA	Road and Flooring work at Sahibag was carried out by the assessee.	2627474	Not Covered
			89184343	

From the above summarized details, it find that the assessee is liable to pay service tax on services provided to BOCHANSANWASI AKSHAR PURUSHOTAM SWAMINARAYAN SANSTHA and M/s. SUN DVELOPER only. I also find from the invoices raised that the services included providing of materials alongwith services. The Road Construction services provided by the assessee also qualifies to be Works Contract Services in nature. Therefore, the abatement available with respect to works Contract Service under Service Tax (Determination of Value) Rules, 2006, needs to be taken into consideration while computing the service tax liability of the assessee.

43. 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 to BOCHANSANWASI AKSHAR PURUSHOTAM SWAMINARAYAN SANSTHA and M/s. SUN DVELOPER is to be determined according to the Valuation Rules. As per the Invoices issued to BOCHANSANWASI AKSHAR PURUSHOTAM SWAMINARAYAN SANSTHA by the assessee, they were to carry out "Road and Flooring work" at Sahibag Temple site. The service provided by the assessee 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 BOCHANSANWASI AKSHAR PURUSHOTAM SWAMINARAYAN SANSTHA for the said work. Now, in case of Service provided to Sun Developer, the assessee were to carry out Road Development at Ambavadi site, The service provided by the assessee to M/s. Sun Developer 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 in the instant case. Therefore, I find that the assessee is required to pay service tax on 40% of the amount charged by them from M/s. Sun Developer for the said work.

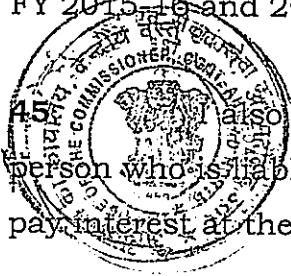
**43.1** Having considered the above legal and factual position, the service tax liability has been worked out herein under on the basis of amount paid to the assessee as per Form 26AS, for providing service:

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	Service Tax Paid as per ST-3 Returns	Difference Payable
	Dt. of transaction	Amount paid to the assessee (Value of service provided)						
FY 2015-16								
By M/s. Sun Developer								
1	19-10-2015	864199	60%	345680	14%	48395		
Total For FY 2015-16				345680		48395	0	48395
FY 2016-17								
By BAPS Sanstha								
1	25-10-2016	2026809	60%	810724	15%	121609		
2	28-12-2016	550000	60%	220000	15%	33000		
3	29-12-2016	50665	60%	20266	15%	3040		
Total For FY 2016-17				1050990		157648	0	157648
Grand Total								206044

From the above computation, it is seen that the assessee has not paid service tax amounting to Rs. 2,06,044/- (Rs. 48,395/- for FY 2015-16 and Rs. 1,57,648/- for FY 2016-17) on the taxable services rendered by them.

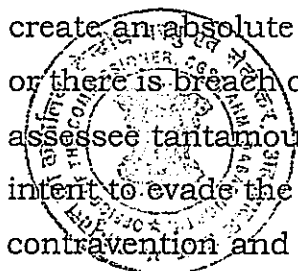
**44.** Based on above facts and circumstances, discussion and documents available on records, I hold that assessee is liable to pay the service tax amounting to Rs. Rs. 2,06,044/- for the period from FY 2015-16 & 2016-17. Therefore, I find that the assessee has contravened the provisions of Section 68 and 66B of the Finance Act, 1994 read with Rules 2 and 6 of the Service Tax Rules 1994, in as much as they have not paid service tax to the tune of Rs.2,06,044/- though they were liable to pay the same; they have also contravened the provision of 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 correct ST-3 Returns for the FY 2015-16 and 2016-17.

**45.** 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. 2,06,044/-.

46. From the facts and discussion aforementioned, I find that in the instant case the assessee had failed to assess the actual taxable income in the ST-3 Returns filed by them and had not paid appropriate Service Tax despite the fact that they were engaged in providing taxable services and had wrongly availed the benefit of exemption from Service tax. Thus, the assessee had suppressed the material facts from the Department by not showing their actual taxable income in the ST-3 Returns by way of incorrectly claiming exemptions, by not paying the Service Tax due on them and had also suppressed the taxable value in the ST-3 Returns. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax payers' behaviour. The responsibility on the tax payer to voluntarily make information disclosures is much greater in the system of self-assessment. The omission or commission on the part of the assessee has clearly demonstrated their intention to evade payment of service tax, as they were very much aware of the unambiguous provisions of Finance Act, 1994 and Rules made there under. They have failed to disclose to the department at any point of time, the fact regarding the claiming of exemption without being eligible under Notification No. 25/2012-ST as discussed in forgoing paras during FY 2015-16 to 2016-17 (upto June 2017). These facts would not have come to light if the department had not initiated inquiry on the basis of data shred 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 provisions is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is also evident that such fact of contravention and 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 2,06,044/- (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.

**47.** I find that the SCN dated 22.10.2020 demands Service tax of Rs. 72,78,362/- for FY 2015-16 and also demands service tax for FY 2016-17 and 2017-18 (upto June 2017), but the demand for the same was not quantified in the said SCN as the data was not shared by CBDT with CBIC at the time of issuance of SCN. As discussed herein above, the assessee is liable to pay service of Rs. 48,395/- for FY 2015-16 against the total demand of service tax of Rs. 72,78,362/-, accordingly, I find that the rest of demand of service tax of Rs. 72,29,967/- is liable to be dropped being not sustainable on merit in view of exemption from payment of service tax available to the assessee. I also find that the assessee was served with another SCN dated 23.04.2021 for FY 2015 & 2016-17, therefore, I refrain from discussing the issue of demand of service tax for FY 2016-17 in the subject SCN dated 22.10.2020, as the said demand of service tax for FY 2016-17, has been covered under SCN dated 23.04.2021.

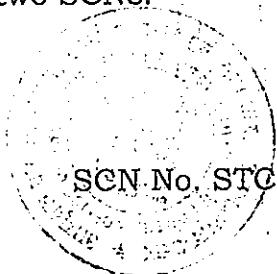
**47.1.** As regards the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the SCN dated 22.10.2020, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated 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 reason for the non disclosure has 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.

48. I find that the assessee was served with the SCN dated 23.04.2021 for demanding service tax of Rs. 4,01,12,028/- (Rs. 1,45,56,725/- for FY 2015-16 and Rs. 2,55,55,303/- for FY 2016-17) for FY 2015-16 and 2016-17. As discussed above, the assessee was issued SCN dated 22.10.2020 for FY 2015-16, prior to the impugned SCN dated 23.04.2021, therefore, demand of service tax of Rs. 1,45,56,725/- for FY 2015-16 under SCN dated 23.04.2021 is not sustainable in law the same being not correct, thus unsustainable. I find that in view of the legal position and documentary evidences produced by assessee, the assessee is liable to pay service tax of Rs. 1,57,648/- for FY 2016-17, out of the total demand of Rs. 2,55,55,303/- for FY 2016-1, Accordingly, I find that the rest of demand of service tax of Rs. 2,53,97,655/- for FY 2016-17, is liable to be dropped being not sustainable on merit and in view of exemption from payment of service tax available to the assessee.

49. As regards, the proposal for imposition of penalty under Section 77(1) (C) and 77(2) of the Finance Act, 1994, I find that the assessee had failed to assess their service tax liability and had 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; I also find that the assessee has also failed produce documents as called for vide letter dated 06.10.2020, thus they have also rendered themselves liable to penal action under Section 77(1)(C) of the Finance Act, 1994 as well.

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



**ORDER**

SCN No. STC/15-156/OA/2020 dated 22.10.2020

(i) I hereby confirm the demand of service tax of Rs. 48,395/- (Rs. Forty Eight Thousand Three Hundred Ninety Five only) out of the total demand of

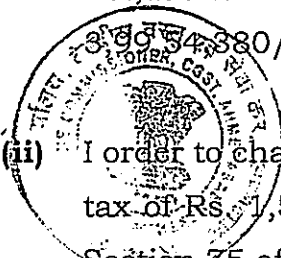
service tax of Rs. 72,78,362/- for FY 2015-16, not paid by the assessee for FY 2015-16 and order to recover the same from the assessee under proviso to Sub-section (1) of Section 73 of Finance Act,1994. I further drop the rest of the demand of Service Tax of Rs. 72,29,967/- accordingly.

- (ii) I refrain from demanding service tax for FY 2016-17 and 2017-18 for the reasons discussed hereinabove.
- (iii) I order to charge Interest at the appropriate rate on the demand of Service tax of Rs. 48,395/-and to recover the same from the assessee under Section 75 of the Finance Act,1994;
- (iv) I impose penalty of Rs. 48,395/- on the assessee under the provision of Section 78 of the Finance Act, 1994.
- (v) 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 correct ST-3 Returns.
- (vi) I impose penalty of Rs. 10,000/- on the assessee under the provision of Section 77(1) (C ) of the Finance Act, 1994 for failure to produce the documents called for.

**ORDER**

SCN No. STC/15-79/OA/2021 dated 23.04.2021

- (i) I hereby confirm the demand of service tax of Rs. 1,57,648/- (Rs. One Lakh Fifty Seven Thousand Six Hundred Forty Eight only), out of the total demand of service tax of Rs. 4,01,12,028/- for FY 2015-16 & 2016-17, not paid by the assessee for FY 2016-17 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. 3,99,54,380/- accordingly.
- (ii) I order to charge Interest at the appropriate rate on the demand of Service tax of Rs. 1,57,648/-and to recover the same from the assessee under Section 75 of the Finance Act,1994;





(iii) I impose penalty of Rs. 1,57,648/- 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 correct ST-3 Returns.

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

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

By Regd. Post AD./Hand Delivery  
F.No. STC/15-79/OA/2021

Date: .10.2022.

To  
M/s. Masum Narendrakumar Patel,  
(M/s. Krushna Construction)  
59, Vaibhav Bunglows,  
Nr. Sun N Step Club,  
Nr. Sattadhar Cross Road,  
Ghatlodia,  
Ahmedabad -380061



Copy to:

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