

<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:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>		

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

फा .सं./ F.NO. STC/15-257/OA/2021

DIN :

20221064 W5000 812E5

आदेश की तारीख /

Date of Order : 29.09.2022

जारी करने की तारीख /

Date of Issue : 06.10.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव /

UPENDRA SINGH YADAV

आयुक्त /

COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 17 /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- 17 /2022-23**

M/s. Yashanand Engineers and Contractors, 214/5, Khyati Complex, Mithakhali, Ellisbridge, Ahmedabad, were issued SCN F. No. DGGI/SZU/36-04/2021-22 dated 19.04.2021 by the Additional Director General, Directorate General of GST Intelligence, Vapi Regional Unit, Vapi.

**BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S. YASHANAND ENGINEERS AND CONTRACTORS, ARE AS FOLLOWS:**

M/s. Yashanand Engineers and Contractors, 214/5, Khyati Complex, Mithakhali, Ellisbridge, Ahmedabad [hereinafter referred to as "the Assessee" for the sake of brevity], were engaged in providing Works Contract Services to various Government Departments. They are registered with the Service Tax Department for providing taxable services having Service Tax Registration AAFY3210EST001.

2. An intelligence had been collected to the effect that certain civil contractors engaged in providing various taxable services such as construction services, consultancy services, maintenance, repair service, security service etc. to the Government authorities or Local authorities, were neither registered with service tax department nor paying service tax for the services provided to Government authorities or Local authorities. The services provided to the Govt. , which were earlier exempted by virtue of Notification No. 25/ 2012-S.Tax dated 20.06.2012 [ Entry No. 12, items (a), (c) and (f)] got omitted vide Notification No. 6/2015- S.Tax dated 01.03.2015. Therefore, certain categories of services thereby became taxable services w.e.f. 01.04.2015. Consequent upon the above changes in Service Tax law and based on the approval accorded by the then Additional Director General, DGCEI, Zonal Unit, Ahmedabad, inquiries against such Government Contractors were initiated.

3. Amongst other government contractors, an enquiry was also initiated against one Government contractor namely M/s. Yashanand Engineers and Contractors, 214/ 5, Khyati Complex, Mithakhali, Ellisbridge, Ahmedabad under Summons

mode.

4. Vide Notification No. 6/2015-Service Tax Dated 01.03.2015, certain categories of services which were earlier exempted from taxable services vide Notification No. 25/2012- Service Tax dated 20.06.2012 had been omitted thereby making them taxable services. The relevant portions of both the Notifications are reproduced here in as under:

NOTIFICATION NO.6/2015-Service Tax dated 01.03.2015.

G.S. R..... (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.25/ 2012- Service Tax, dated the 20th June, 2012, published in the Gazette of India, extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 467 (E), dated the 20th June, 2012, namely:-

1. In the said notification, -

(ii) in entry 12, items (a), (c) and (f) shall be omitted;

5. The relevant portion of Notification No.25/ 2012-St dated 20.06.2012, is reproduced herewith as under.

Notification No.25/2012-Service Tax  
New Delhi, the 20<sup>th</sup> June,2012.

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17<sup>th</sup> March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17<sup>th</sup> March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services leviable thereon under section 66B of the said Act, namely:-

12. Service provided to the Government, a local authority or a governmental authority by way of construction, erection, commtssioning, installation, completion, fittfng 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 historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and archaeological Sites and Remains Act, 1958 (24 of 1958);

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

(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 employes or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;

6. Subsequently Notification No.9/2016-Service Tax, dated 01.03.2016 was issued under which Notification No.25/2012-ST dated 20.06.2012 was again amended and the following entries were inserted as per which only those works were exempted which were entered before 01.03.2015, thereby those work were taxable if entered after 01.03.2015. The relevant portion of the said notification is reproduced herewith:

NOTIFICATION NO.9/2016- Service Tax  
New Delhi, the 1<sup>st</sup> March, 2016.

*G.S.R.....(E).-In exercise of the powers conferred by sub-section (1) of section 96 of the Finance Act, 1994 (32 of 1994), the Central Government being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.25/2012- Service Tax, dated the 20<sup>th</sup> June,2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub section (i) side number G.S. R. 467 (E), dated the 20<sup>th</sup> June,2012, namely:-*

*1. In the said notification,*

-----  
-----

*(iv) after entry 12, with effect from the 1st March, 2016, the following entry shall be inserted, namely*

*"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) 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 65B of the said Act;*

*under a contract which had been entered into prior to the 1<sup>st</sup> 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"*

7. On the basis of the above, it was evident that the fresh agreement and services provided after 01.03.2015 were taxable services. On the basis of the gathered intelligence as approved by the then Additional Director General, DGCEI, Zonal Unit, Ahmedabad, an inquiry against contractor M/s. Yashanand Engineers and Contractors, 214/5, Khyati Complex, Mithakhali, Ellisbridge,

Ahmedabad was initiated under Summons proceeding by calling certain information/ records.

## 8. SCRUTINY OF DOCUMENTS

**8.1** Various Summons dated 30.11.2016, 18.01.2019 and 11.07.2019 were issued to the assessee to submit copies of all work-orders, RA bills for the period from October, 2015 to June, 2017 along with copy of Balance-sheet/ P&L Account etc.

**8.2.** In response to Summons issued to the assessee, the assessee provided the relevant information/records/documents to the DGGI, Vapi vide their letters dated 30.11.2016, 13.02.2019, 16.05.2019, 29.11.2019 and mail dated 23.03.2021.

**8.3.** A statement of Shri Maulik Doshi, Accountant-cum-Authorised Signatory of M/s. Yashanand Engineers and Contractors, 214/5, Khyati Complex, Mithakhali, Ellisbridge, Ahmedabad was recorded on 18.07.2019.

**8.4.** During the course of recording of statement dated 18.07.2019, Shri Maulik Doshi, Accountant-cum-Authorised Signatory of M/s. Yashanand Engineers and Contractors, 214/5, Khyati Complex, Mithakhali, Ellisbridge, Ahmedabad furnished financial year-wise worksheet of work orders, name of the party, nature of work with taxability status of the services i.e. taxable or exempted, was mentioned. Further, on perusal of the worksheet and other documents, it appeared that M/ s. Yashanand Engineers and Contractors, 214/ 5, Khyati Complex, Mithakhali, Ellisbridge, Ahmedabad were engaged in the business of providing Works Contract Services to Government, Local Authority and Government Bodies. They had provided Works Contract Services to the following government entities as mentioned below: -

- i. Ahmedabad Municipal Corporation;
- ii. Gujarat Mineral Development Corporation Limited;
- iii. M.P. Housing and Infrastructure Development Board, Bhopal;
- iv. Commissionerate of Health Project Implementation Unit;
- v. M.P. Road Development Corporation Ltd. ;
- vi. Sambhagiya Pariyogna Yantri Lok Nirman Department PIU, Datia;
- vii. Ahmedabad District Co-op Milk Producer Union Ltd.; and
- viii. Vadodara Urban Development Authority

**8.5** All the work orders produced by the assessee were scrutinized with the relevant provisions of Notification No.25/2012-ST dated 20.06.2012, as amended vide Notification No.06/2015-ST and Notification No.09/2016 S. Tax dated 01.03.2016, and it was found that some work orders were exempted from service Tax in terms of Notification No. 25/2012-ST dated 20.06.2012 (as amended) and others were taxable in terms of Notification No.06/2015 from 2015-16. The details of all Work orders executed by M/s. Yashanand Engineers and Contractors, 214/5, Khyati Complex, Mithakhali, Ellisbridge, Ahmedabad for the period from October 2015 to June 2017 are as under:-

Sr.No.	Work Order No.	Date of WO	Name of the Govt. Department/Authority/Body to whom services provided	Nature of work viz. original work or repair & maintenance or others	Taxable or exempted	Remarks
1	2337	11.02.2014	AMC housing Project	Original	exempted	work order prior to 01.03.2015
2	2331	11.02.2014	AMC housing Project	Original	exempted	work order prior to 01.03.2015
3	2337	11.02.2014	AMC housing Project	Original	exempted	work order prior to 01.03.2015
4	ESALE/JOB NO. 39/2013-17	31.01.2014	AUDA Housing project	Original	exempted	work order prior to 01.03.2015
5	GMDC/370/CV/GMDRS-1.A B/309/10671/11-12	31.01.2012	Gujarat Mineral Development Corporation	Original	Taxable	
6	508/I-34-G-14/2014	10.06.2014	M P Housing & Infrastructure Development Board, Bhopal	Original	exempted	work order prior to 01.03.2015
7	AB/TC/2016	11.12.2013	Office of Engineer, Navrangpura	Original	exempted	work order prior to 01.03.2015
8	2340	11.02.2014	AMC housing project	Original	exempted	work order prior to 01.03.2015
9	PIU/ACS/MC/SA BARKANTHA/4975/2014	19.12.2014	Commissionerate of health	Original	exempted	work order prior to 01.03.2015
10	PIU/ACS/MC/DH ARPUR,PATAN/983/2014	01.03.2014	Commissionerate of health	Original	Taxable	
11	6/5F-2/Office/2015/PIU Datia	01.09.2015	Sambhagiya Pariyogna Yantri Lok Nirman Department	Original	Taxable	
12	PIU/ACS/LTRAC CEPT/MC-Vadnagar/3526/2015	15.09.2015	Commissionerate of Health	Original	Taxable	
13	GIFT/ENG/BW/WC/2015/03-369	08.01.2016	Gujarat International Finance Tec-Citi	Original	exempted	Export of Services to SEZ
14	AB / TC / B2 / 11 / 2015-16	18.02.2016	Office of Engineer, Surat	Original	Taxable	
15	B-02/54/2015-16	15.02.2016	Office of Engineer, Vadodara	Original	Taxable	
16	16053/MPR DC/ PROCU /	18.01.2016	Madhya Pradesh Road Development	Original	Taxable	

	WO / MEDICAL COLLEGE/ 2 72/ 2015		Corporation Ltd.			
17	GIFT/ ENG/ BW/WC/ 20 16/ 01 /1195	08.11.2016	Gujarat International Finance Tec-City	Original	Taxable	
18	2066/ SAC/ GR-1/16-17	10.06.2016	The executive Gas engineers	Original	Taxable	
19	PIU/ACS/MC/ Patan /32 20/ 2012	30.08.2012	Commissionerate of Health	Original	exempted	work order prior to 01.03. 2015
20	AB/ TC/ 2016	11.12.2013	Office of Engineer, Navrangpura	Original	exempted	work order prior to 01.03. 2015
21	SSA CIVIL/2016/ 26227	01.07.2016	Gujarat Council of Elementary Education	Original	Taxable	
22	B2/ 312/ 2012-13	24.05.2013	Commissionerate of Health	Original	exempted	work order prior to 01.03. 2015
23	UTTAM/ NVP / 05/ 01 / 3977	10.02.2017	Ahmedabad district Co Op Milk Producer Union Ltd	Original	Taxable	
	UDA / CIVIL/ 023/ 2016	05.08.20 16	Vadodara Urban Development Authority	Original	exempted	Exempted under 12(e) of Notification No.25/2012- ST as amended

## 9. INVESTIGATION:

9.1. From the Scrutiny of ST-3 Returns (October 2015 to June 2017), FORM 26AS (Financial Year 2015-16 to 2017-18), Reconciliation statement and Work Orders / Contract Agreements, it appeared that M/s. Yashanand Engineers and Contractors, Ahmedabad had received year wise contract income as mentioned below: -

(Amt. in Rs.)

Sr.No.	Period	Income as RA Bills	Value declared in ST3	Income as per 26AS
1	Oct 2015 to Dec 2015	752349258	1042564360	725276999
2	Jan 2016 to Mar 2016	1352727239	1330291169	1180088689
3	April 2016 to June 2016	406150289	400492756	604865735
4	July 2016 to Sept 2016	873061808	858608823	897631492
5	Oct 2016 to Dec 2016	823625044	782561470	858769077
6	Jan 2017 to Mar 2017	1349269316	1098308976	1192413687
7	April 2017 to June 2017	1022959536	1016033713	1089933595

9.2 In view of the discussion made in foregoing paras, it appeared that the assessee had provided Works Contract Service to various Government Authorities during the period from October 2015 to June 2017. During the course of investigation, it was observed that

the assessee had paid Service Tax on those works' orders executed by them which were taxable under Service Tax. It was further observed that the assessee had also claimed exemptions under various exemption Notifications.

**9.3** In view of the above paras, it seemed that there was a difference in values of RA Bills, ST-3 returns and value of income in 26AS. On being asked about difference in values of RA Bills, Value in ST-3 Returns and value of income in 26AS, the assessee had not submitted any reply.

**9.4.** Therefore, the higher amounts from Form 26AS, ST-3 Returns and R.A. Bills were considered as contract income as mentioned in table in para 9.1 as best judgement as the assessee themselves had failed to submit the necessary clarification in this regard. Thus, the calculation and quantification was done on the higher values from values of RA Bills, Value in ST-3 Returns and value of income in 26AS. Therefore, the assessee was found liable to pay service tax on the higher values from the values of RA Bills, Value in ST-3 Returns and value of income in 26AS.

(i) For the period October 2015- December 2015, the Value in ST-3 return was higher. Thus the value of ST-3 return i.e 104,25,64,360/- had been taken for calculation of Service Tax.

(ii) For the period January 2016 - March 2016, the value in RA bills was higher. Thus the value of RA bills i.e. 135,27,27,239/- had been taken for calculation of Service Tax.

(iii) For the period April 2016- June 2016, the Value in Form 26AS was higher. Thus the value of Form 26AS i.e. 60,48,65,735/- had been taken for calculation of Service Tax.

(iv). For the period July 2016- Sept 2016, the Value in Form 26AS was higher. Thus the value of Form 26AS i.e. 89,76,31,492/- had been taken for calculation of Service Tax.

(v). For the period October 2016- December 2016, the Value in Form 26AS was higher. Thus the value of Form 26AS i.e. 85,87,69,077/- had been taken for calculation of Service Tax.

(vi) For the period January 2017 - March 2016, the Value in RA bills was higher. Thus the value of RA Bills i.e. 134,92,69,316/ - had been taken for calculation of Service Tax.

(vii) For the period April 2017- June 2017, the Value in Form 26AS was higher. Thus the value of Form 26AS i.e. 108,99,33,595/- had been taken for calculation of Service Tax.

## 10. QUANTIFICATION:

10.1 In view of the discussion made in foregoing paras, to arrive at the service tax liability of the assessee, the contract



income had been ascertained as per 26AS, ST-3 returns and RA Bills for the period from October 2015 to June 2017 being higher side of gross value shown thereunder as discussed in para 9.1 above, Therefore, the Service Tax liability of the assessee for the period 2015-16 to 2017-18 (Upto June 2017) had been calculated and shown in the Annexure -A attached to the subject SCN.

10.2 For calculation of Service Tax where value in 26AS was higher than Value of RA bills or ST-3 returns, abatement had been given 60% considering all the works being original works in nature. Also, the ST had been charged as 15% (including cess) on the value for which RA was not there.

10.3 It appeared that M/s. Yashanand Engineers and Contractors, 214/ 5, Khyati Complex, Mithakhali, Ellisbridge, Ahmedabad had received net taxable amount of Rs.108,79,42,313/- (after abatements and exemptions) against the gross contract income of Rs.719,57,60,814/- towards taxable Services provided to Govt. authorities during the Financial Year 2015-16 (from October 2015) to 2017-18 (upto June- 2017) and the total liability of Service Tax calculated of Rs.16,12,56,785/- (including cesses). It was noticed that the assessee had already paid Service Tax of Rs. 13,64,88,477/- and filed ST-3 returns for the period from October- 2015 to June- 2017 on regular basis. The assessee had not paid Service Tax of Rs.2,47,68,308/- for providing taxable services to different government department which was liable to be recovered from them under Section 73 of the Finance Act, 1994 alongwith applicable interest under Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

## 11. LEGAL PROVISIONS:-

11.1 Whereas, after the advent of negative list from July, 2012, the above services rendered by M/s. Yashanand Engineers and Contractors, Ahmedabad, were squarely covered under the definition of "Taxable Service", which is defined under Section 65B(51) of the Finance Act, 1994, as amended, as under:

*"Taxable service" means any service on which service tax is leviable under Section 66B;*

11.2 Whereas, the Definition of the 'Service' under Section 65B (44), inserted by the Finance Act, 2012 is as under:

*'Service' means any activity carried out by a person for another for consideration, and includes declared service, but shall not include-... ..*

The work scope of all the above work order is not covered in the negative list and it is a taxable service.

11.3 As per Section 65(105)(zzzza) "Works Contract" means to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

*Explanation — For the purposes of this sub-clause, "works contract" means a contract wherein, —*

*(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and*

*(ii) such contract is for the purposes of carrying out, —*

*(a) erection, commissioning or installation of plant, machines, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or*

*(b) construction of a new building or a civil structure or a part thereof or of a pipeline or conduit, primarily for the purposes of commerce or industry, or*

*(c) construction of a new residential complex or a part thereof; or*

*(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or*

*(e) turkey projects including engineering, procurement and construction or commissioning (EPC) projects;*

11.4 Whereas, after the advent of negative list from July, 2012, the service rendered by M/s. Yashanand Engineers and Contractors, Ahmedabad appeared to be covered under the definition of "Declared services" as provided under Section 66E(b) & Section 66E(h) of the Finance Act, 1994, as amended. The section 66E of the Act ibid read as under:

66E. declared Services. -The following shall constitute declared services, namely:

— (h) Service *portion in the execution of a words contract*

**11.5. Provisions in respect of valuation of Works Contract Service: -**

Provisions relating to determination of value of service portion involved in the execution of a works contract are contained in Rule 2A of Service Tax (Determination of Value) Rules, 2006. The provisions of said rule are as follow: -

*"2A. Determination of value of service portion in the execution of a works contract. - Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:*

*(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.*

Explanation.- For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract; (vi) cost of establishment of the contractor relating to supply of labour and services;

(vii) other similar expenses relating to supply of labour and services; and

(viii) profit earned by the service provider relating to supply of labour and services;

(c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract, shall determine the service tax payable in the following manner, namely:-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy per cent of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an

immovable property, service tax shall be payable on sixty per cent. of the total amount charged for the works contract;

(w.e.f. 01.10.2014 above sub-clause (B) & (C) has been substituted vide Notification NO.11/2014-ST Dt.11.07.2014) as under:

*(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for,-*

*(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or*

*(ii) maintenance or repair or completion and furnishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property, service tax shall be payable on seventy per cent. of the total amount charged for the works contract.*

Explanation 1. *For the purposes of this rule,-*

*(a) "original works" means-*

*(i) all new constructions;*

*(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;*

*(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;*

*(b) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-*

*(i) the amount charged for such goods or services, if any; and*

*(ii) the value added tax or sales tax, if any, levied thereon.*

*Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.*

*Explanation 2. - for the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any input, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004."*

12. It appeared that the assessee had failed to discharge tax liability properly on the taxable services so provided. It also appeared that they were fully aware of the responsibility of payment of the said Service Tax amount but had intentionally avoided payment of the same in contravention of the various provisions of the Finance Act, 1994 relating to levy and collection of Service Tax and rules made thereunder with an intent to evade the payment of Service Tax. The short-payment of Service Tax came to the notice only after initiation of the investigation and intention to evade payment of Service Tax was also apparent from the total non cooperative attitude of the assessee

which the case was under investigation. Deliberate intention of evasion appeared to be established by this simple act of non cooperation itself. The total service tax of Rs. 16,12,56,785/- (including cesses) had been ascertained for providing of taxable services for the period from October 2015 to June 2017, out of which assessee had already paid Service Tax of Rs. 13,64,88,477/- on regular basis. Further, the assessee had short paid Service Tax amounting to Rs.2,47,68,308/- (including all Cesses) for the period 2015-16 (from October-15) to 2017-18 (Upto June 2017) as discussed in earlier paras which was recoverable from them for the said taxable service under the proviso of Section 73(1) of the Finance Act, 1994 by invoking extended period of limitation.

13. It appeared that M / s. Yashanand Engineers and Contractors, Ahmedabad had contravened the provisions of :-

- i. Section 66 of the Finance Act, 1994, in as much as they have failed to collect and pay the Service Tax to the credit of the Central Government.
- ii. Section 68 of the Finance Act, 1994, read with Rule 6 of the Service Tax Rules, 1994, in-as-much as they have failed to make the payment of Service Tax to the credit of the Central Government.

14. These acts of contravention appeared to have been committed by the assessee by taking recourse to suppression of facts with intention to evade payment of Service Tax and the short-payment of Service Tax by the assessee came to knowledge of the department only after initiation of investigation. It thus, appeared that the Service Tax amounting to Rs.2,47,68,308/ -(including all cesses), not paid by them for the period from F.Y. 2015-16 (from October 15) to 2017-18 (Upto June 2017) on the amount received by them against performing work contract services to Government departments/ authority was required to be recovered from them under the proviso of Section 73(1) of the Finance Act, 1994 by invoking extended period of limitation, along with interest under Section 75 of the Finance Act, 1994. Further, for all these acts of contravention of the provisions of Finance Act, 1994 relating to levy and collection of Service Tax and the rules made there under with intent to evade payment of Service Tax, the assessee had rendered themselves liable to penal action under Section 77 & 78 of the Finance Act, 1994.

15. Accordingly, a Show Cause Notice dated 19<sup>th</sup> April,2021 was issued Yashanand Engineers and Contractors, 214/5, Khyati Complex, Mithakhali,

Ellisbridge, Ahmedabad by the Additional Director General, DGGI, Vapi asking them as to why: -

- (i) Service Tax (including all Cesses) amounting to Rs. 2,47,68,308/- (Rupees Two Crore Forty Seven lakh Sixty Eight thousand three hundred eight only) should not be demanded and recovered from them under proviso to section 73(1) of the Finance Act 1994 read with Section 174 of the Central Goods & Services Tax Act, 2017;
- (ii) Interest on the amount mentioned at S.No.(i) above, at the applicable rates, should not be recovered under Section 75 of the Finance Act 1994 read with Section 174 of the Central Goods & Services Tax Act, 2017;
- (iii) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 read with Section 174 of the Central Goods & Services Tax Act, 2017 for failure to pay Service Tax; and
- (iv) Penalty should not be imposed upon them under Section 77(1)(c) of the Finance Act, 1994 read with Section 174 of the Central Goods & Services Tax Act 2017, for not furnishing information / not producing the documents and not appearing before the Department when issued a Summons for appearance to give evidence.

#### **16. DEFENCE REPLY:**

The assessee did not submit and defence reply in the subject matter.

#### **PERSONAL HEARING:**

17. The personal hearing granted to the assessee on 01.08.2022, was attended by Shri Gunjah Shah, CA on behalf of the assessee. During the course of hearing, they filed a written submission dated 01.08.2022. He submitted that the audit of the assessee was already done by the department and no such discrepancy was pointed out. He also submitted the two audit report issued by the department. He also pointed out the erroneous calculation of Service Tax basically on the basis of quarterly instead of the entire Financial Year by the department which had resulted in the issuance of the SCN.

#### **DISCUSSION AND FINDINGS:**

18. 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 01.08.2022 submitted by the assessee during personal hearing and oral submission made during the course of hearing by authorized representatives of the assessee.

18.1 I observe from the SCN that the investigation was carried out against the assessee by DGGI, Vapi Regional Unit, Vapi. During the

investigation it was observed from the financial and other records called for by them that the assessee was engaged in providing works contract services to government, government authorities, Local Authorities during the period October-2015 to June, 2017. It was also observed that exemption from payment of service tax was available to various services described at Sr. No. 12 of Notification No. 25/2012-ST dated 20.06.2012, when the same had been provided to Government, Government authority and Local Authority. However, the said Notification No. 25/2012-ST was amended vide Notification No. 06/2015-ST dated 01.03.2015 and 09/2016-ST dated 01.03.2016. The Items/services described at (a), (c) and (f) under Entry No. 12 of Notification No. 25/2012-ST dated 20.06.2012, were omitted vide Notification 06/2015-ST dated 01.03.2015, thereby making these services taxable. Notification No. 25/2012-ST dated 20.06.2012 was amended vide Notification No. 09/2016-ST dated 01.03.2016, to insert the new entry No, 12A to Notification No. 25/2012-ST. The new entry allowed the exemption to said services which was withdrawn vide notification no. 06/2015-ST, subject to the condition that the contract under which the services had been provided, had been entered into prior to 01.03.2015 and appropriate stamp duty had been paid. In this backdrop, the investigation of financial and other records was carried out by the DGGI, Vapi Regional Unit, and short payment of service tax of Rs. 2,47,68,308/- by the assessee, was noticed. Accordingly, SCN dated 19.04.2021 seeking demand of Service tax of Rs. 2,47,68,308/-, covering the period from FY 2015-16 (from October,2015) to 2017-18 (upto June 17) was issued to the assessee on 19.04.2021.

19 During the personal hearing held on 01.08.2022, the assessee submitted their written submission dated 01.08.2022, wherein they interalia have denied all the allegations, averments and contentions of the SCN, they also contended that they have not contravened any of the provision of the ACT or the Rules. They have submitted that the SCN is not legally tenable as same is based on assumptions & presumptions not permitted by law and inferences drawn by the department are not warranted by facts. They have submitted that the demand raised in the SCN is erroneous in as much as it had arbitrarily selected the values on which Service Tax is to be demanded. They have submitted that for each quarter it had selected the highest value from the RA Bill value, TDS value and 26AS amount. They have submitted that it should be in totality for the entire Financial Year. They have also submitted that the 26AS figures are arrived

based on the deduction of TDS by various Government companies for which the assessee had undertaken the work. The Government department/ AMC have been deducting TDS as and when they made payment, thus, for the last quarter many a times TDS had appeared in the next financial year. They have submitted that some times to book the expense the TDS is deducted in the earlier quarter as compared to the actual payment, thus TDS cannot be exactly measured on quarter to quarter basis.

**19.1.** They have submitted that the assessee was audited by the department on 22.05.2017, 26.05.2017 and 30.05.2017 for the F.Y. 2015-16, they also audited by the Service Tax department on 27.11.2020, 08.01.2021, 20.01.2021, 16.02.2021, 18.02.2021, 19.03.2021, 23.03.2021 and 25.03.2021 for the period of April, 2016 to June, 2017. They have submitted that both the audit reports were having objections with reference to reconciliations and the amounts mentioned in the Audit reports have been paid as well as acknowledged. They have submitted that since audit was conducted in May, 2017, the issuance of SCN in April, 2021 is time barred. The assessee have relied upon the judgment of Hon'ble Supreme Court in case of Nizam Sugar Factory reported in 2006(197)ELT 465 (SC).

**19.2.** They have submitted that all the facts and figures were available in the profit and loss account and balance sheet and there was no suppression of the figures, all the figures have been taken by the department from 26AS, Profit & Loss Account and Balance sheet, it cannot be said that there was deliberate intention to evade payment of service tax. They have submitted that Section 73(1) of the finance act can be made applicable for invoking the larger period only when there is presence of fraud, willful mis-statement, suppression of facts, etc coupled with the intention to deliberately evade payment of service tax. In support of their arguments, they have relied upon the case of M/s. Continental Foundation Jr. Venture Vs. CCE, Chandigarh reported in 2007(216) ELT 177(SC) and M/s. Jaiprakash Industries Ltd., reported in 2002 (146) ELT 481(SC). They have submitted that mere failure to pay Service Tax on account of interpretation of law would not make it a fit case where the revenue can invoke extended period of limitation.

**19.3.** They have submitted that there was no element of fraud, will full mis-statement or suppression of facts with intent to evade payment of service tax, as all the income received by them were accounted for in the books of accounts and subjected to income tax, in the absence of the element of suppression, omission or commission, or deliberate attempt to evade



payment of Service Tax cannot be alleged against them. In support of their argument they have relied upon the case laws of M/s. Pahwa Chemicals Private Ltd., Vs. Commissioner, 2005(189)ELT257(SC), M/s. Hindustan Steel Ltd.

20. I find that main contention raised by the assessee is that the departmental audit of the books of account for the period 2015-16 (Audit Report No.123/16-17 dated 16.06.2017) and for the period April-2016 to June-17 (Audit report No. CE/ST-1215/2020-21 dated 03.05.2021) had already been done which includes the entire period involved in the present matter, therefore extended period of limitation cannot be invoked in the matter. I find that the contention of the assessee that since audit had been conducted by the department, the extended period cannot be invoked is not acceptable, since the audit is conducted by the officers on the basis of the documents/information furnished by the assessee and it cannot be concluded for certainty that each and every information was provided by the assessee to the audit. In this regard I find that in a number of judicial pronouncements, it has been held that mere audit of the assessee does not take away the right of the department to invoke the extended period of limitation for raising any demand. Some of case laws are as under:

(i) Hon'ble High Court of Bombay in the case of M/s.TIGRANIA METAL & STEEL INDUSTRIES P. LTD., reported in 2015(326)ELT650(Bom) has held that- Demand - Limitation - Extended period - Visits by audit parties and filing of classification list - Effect of - Assessee claiming exemption on iron and steel products by declaring in classification list that re-rollable inputs used in manufacture of final product to be duty paid - Claim of assessee found false on subsequent investigations - Assessee contending that in view of visits of audit parties, extended period not invocable - HELD : Mere filing of classification list or visits and communication of intended visits by audit parties no ground for not invoking extended period - No evidence that audit parties given opportunity to inspect or actually inspected evidence of duty paid nature of inputs as claimed in classification list - Adjudicating authority erred in first remand proceedings in holding that since invoices were shown to audit parties, extended period not invocable - Such findings only a simple opinion without referring to any evidence of actual verification of such invoices by audit parties - In second remand, adjudicating authority arriving at a finding of fact of misdeclaration after taking into consideration fact of visits by audit parties and Tribunal upholding such factual finding - Appeal filed by appellant being for re-appreciation or reappraisal of this factual finding, not raising any substantive question of law - Extended period invocable - Section 11A of Central Excise Act, 1944. (Emphasis supplied)

(ii) The Hon'ble CESTAT in the case of M/s. Sabarmati Network Systems Pvt Ltd., reported in 2012(27)STR 35 (Tri-Ahmd) has held that- Demand - Limitation - Suppression - ST-3 returns did not reflect the actual income received by appellant and only after the visit by officers, it was found that appellant had not paid the full amount of Service tax and therefore suppression has been correctly invoked - Ground of limitation cannot be accepted - Plea that audit party had not made any observation, not acceptable - What is required to be seen is whether the appellant had reflected the correct amounts received for providing services or not and whether audit party had made any observation - Section 11A of Central Excise Act, 1944.

(iii) The Hon'ble CESTAT in the case of M/s. SUNIL HI-TECH ENGINEERS LTD., reported in 2014 (36) S.T.R. 408 (Tri. - Mumbai) has held that- Demand - Limitation - Knowledge of Department by audit of records of assessee - It is immaterial where non-payment of Service Tax was deliberate ploy of assessee to minimize their tax liability - Hence, extended period was invocable under Section 73 of Finance Act, 1994.

(iv) The Hon'ble CEGAT in the case of M/s. TIGRANIA METAL & STEEL INDUSTRIES reported in 2001 (132) E.L.T. 103 (Tri. - Del.) has held that- Demand - Limitation - Visit by audit party - Suppression of material facts - Mere visit of Department's Audit party to the factory of Respondents not enough to infer Revenue's knowledge about the wrongful availment of benefit under Notification No. 208/83-C.E., dated 1-8-1983 by Respondents - Respondents having availed the benefit under Notification *ibid*, had the burden to prove Revenue's knowledge which they failed to discharge - Collector, in compliance of Tribunal's remand orders, having also failed to record specific findings regarding Revenue's knowledge, the case again remanded for fresh decision - Section 11A(1) of Central Excise Act, 1944.

(v) The Hon'ble CESTAT in the case of M/s. CHEMFAB ALKALIS LTD., reported in 2010 (251) E.L.T. 264 (Tri. - Chennai) has held that - Demand - Limitation - Cenvat/Modvat - Separate accounts not maintained of common inputs for exempted and dutiable products, and particulars of exempted product not submitted to department every year - Extended period invocable - Rule 6(3)(b) of Cenvat Credit Rules, 2004 - Section 11A of Central Excise Act, 1944. -Demand - Limitation - Suppression - Audit parties visit all excisable units from time to time - Their visit cannot mean that extended period will not apply in respect of any unit, as that would render provision regarding extended period totally redundant - Section 11A of Central Excise Act, 1944

(vi) The Hon'ble CESTAT in the case of M/s. YEE KAY TECHNOCRAT (P) LTD. reported in 2011 (267) E.L.T. 92 (Tri. - Del.) has held that- Demand - Limitation - Cenvat credit - Irregularity coming to knowledge during departmental audit - *HELD* : Limitation had to be reckoned with reference to obligation of assessee - Date of detection by Department was not relevant - Section 11A of Central Excise Act, 1944. - *Consultant has not been able to show as to how the date of audit when the department came to know of the irregularity becomes relevant date in the light of the above provision defining the relevant date under Section 11A.*

I find that in view of the above judicial pronouncements it is quite clear that the period of limitation cannot be curtailed on the plea that audit had been conducted or the department had any knowledge. Accordingly, I hold that the contention of the assessee on this count is not acceptable and the demand is not hit by limitation.

21. I find that assessee has contested that extended period of limitation cannot be extended in the instant case as there was no suppression of facts by them, they have relied upon the judgment of Apex Court in the case of M/s. Nizam Sugar Factory reported in 2006(197)ELT 465 (SC), M/s. Continental Foundation Jr. Venture Vs. CCE, Chandigarh reported in 2007(216)ELT 177(SC) and M/s. Jaiprakash Industries Ltd., reported in 2002 (146)ELT 481(SC). They have also contested that there was no element of fraud, willful mis-statement or suppression of facts, as all the income received by them were accounted for in the books of accounts, they have relied upon the decision of M/s. Pahwa Chemicals Private Ltd., Vs.

Commissioner-2005 (189) ELT 257(SC), M/s. Hindustan Steel Ltd., VS. State of Orissa-1978 (2) ELTJ 159(SC) and Padmini Products Vs. Collector of C.Ex., 189(043)ELT 0195(SC). I find that the facts of the above cases relied upon by the assessee are on a different footing and the ratio of the same is not applicable to the facts of the case at hand.

22. I find that the assessee had not agreed with the revenue para 1 i.e. Short payment of Service Tax on Reconciliation (ST-CSR040), of Final Audit Report NO.CE/ST-1215/2021-22 dated 03.05.2021. It is seen from the audit report that *"the assessee was not agree with the audit objection, but paid the duty portion under protest vide DRC-03 dated 01.04.2021 (Debit Entry No.DI2404210000696), interest and penalty is liable to be ascertained at the time of actual payment of the same."* Hence, the argument put forth by the assessee that they had paid the amounts mentioned in audit report is not acceptable, as the revenue para 1 of Audit report NO. CE/ST-1215/2021-22 dated 03.05.2021 remained unsettled.

Further, I find that assessee have been issued summons dated 30.11.2016, 18.01.2019 & 11.07.2019 by the DGGI, Vapi, and the audit was conducted on 22.05.2017, 26.05.2017 and 30.05.2017 for the F.Y. 2015-16, and on 27.11.2020, 08.01.2021, 20.01.2021, 16.02.2021, 18.02.2021, 19.03.2021, 23.03.2021 and 25.03.2021 for the period of April, 2016 to June, 2017. From the above facts, it can be seen that even before audit was conducted by the department for F.Y.2015-16, investigation against the assessee had been initiated by the DGGI, Vapi. I also find that the statement of Shri Maulid Doshi, Accountant-cum-Authorised signatory of M/s. Yashanand Engineers and Contractors was taken on 18.07.2019, wherein, no mention about the audit of the assessee being conducted by the department for the period 2015-16 on 22.05.2017, 26.05.2017 and 30.05.2017 has been made. Further, it is also seen from the audit report that the assessee has not disclosed to audit the fact about the investigation being carried out by the DGGI against them. Hence, it can be discerned and fairly assumed that the DGGI investigation was focused on the exemption claimed by the assessee and audit was conducted on different issues.

23. I find that the para 9.3 shows that assessee had not submitted any reply to the DGGI during the investigation. I hereby reproduce para 9.3 of the subject SCN which is as under:

*"9.3. In view of the above paras, it seems that there is a difference in values of RA Bills, ST-3 returns and value of income in 26AS. On being asked about difference in values of RA Bills, Value in ST3 Returns and value of income in Form 26AS, the noticee did not submit any reply."*

From the above, I find that the assessee had the knowledge that they were liable to pay service tax during the investigation of the case by the DGGI, however, they had not responded to the investigation of the case held by the DGGI. Accordingly, the DGGI was left with no option but to take the higher amounts from Form 26AS, ST3 Returns and RA Bills as contract income for ascertaining the duty liability of the assessee. Therefore, the assessee's argument that department had arbitrarily selected the highest value from the RA Bill Value, TDS Value and 26AS for each quarter is not acceptable.

24. I also find that the assessee have submitted the GSTR9C of 2017-18 for Gujarat and Madhya Pradesh Registration, which are not relevant to the current/subject adjudication proceedings.

24.1. I find that the assessee have provided work sheet showing reconciliation with 26AS, the same work sheet provides the details of income as per RA Bill, Income as per 26AS and difference of RA and 26AS. The assessee have not put forth any argument/evidence, challenging the statement showing the details of Service Tax calculation in respect of services provided for the period from October,2015 to June,2017 of Annexure-A of the subject SCN, supporting/buttrressing their argument that they are not required to pay Service Tax as demanded in the present SCN.

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

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

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

*(b) .....*

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

(d) canal, dam or other irrigation works

(e) .....

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

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

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

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

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

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

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

24.3 From the above legal position, it is apparent that the Items/services described at (a), (c) and (f) under Entry No. 12 of Notification No. 25/2012-ST dated 20.06.2012, were omitted vide Notification 06/2015-ST dated 01.03.2015, thereby making these services taxable. Notification No. 25/2012-ST dated 20.06.2012 was amended vide Notification No. 09/2016-ST dated 01.03.2016, to insert the new entry No, 12A to Notification No. 25/2012-ST. The new entry allowed the exemption to said services which was withdrawn vide notification no. 06/2015-ST, subject to the condition that the contract under which the services had been provided, had been entered into prior to 01.03.2015 and appropriate stamp duty had been paid prior to 01.03.2015. Therefore, the exemption to construction services provided to the Government, a local authority or a governmental authority is available under E. No. 12A ibid, only if the contract for provision of service had been entered into prior to 01.03.2015 and appropriate stamp duty had been paid prior to 01.03.2015.

24.4 In view of the above legal position and documents gathered by the DGGI, the service tax liability short paid by the assessee, has been

worked out in para 8.5 of the subject SCN dated 19.04.2021, which is reproduced as under for ease of reference.

Sr.No.	Work Order No.	Date of WO	Name of the Govt. Department/Authority/Body to whom services provided	Nature of work viz. original work or repair & maintenance or others	Taxable or exempted	Remarks
1	2337	11.02.2014	AMC housing Project	Original	exempted	work order prior to 01.03.2015
2	2331	11.02.2014	AMC housing Project	Original	exempted	work order prior to 01.03.2015
3	2337	11.02.2014	AMC housing Project	Original	exempted	work order prior to 01.03.2015
4	ESALE/JOB NO. 39/2013-17	31.01.2014	AUDA Housing project	Original	exempted	work order prior to 01.03.2015
5	GMDC/370/CV/GMDRS-1.A B/309/10671/11-12	31.01.2012	Gujarat Mineral Development Corporation	Original	Taxable	
6	508/I-34-G-14/2014	10.06.2014	M P Housing & Infrastructure Development Board, Bhopal	Original	exempted	work order prior to 01.03.2015
7	AB/TC/2016	11.12.2013	Office of Engineer, Navrangpura	Original	exempted	work order prior to 01.03.2015
8	2340	11.02.2014	AMC housing project	Original	exempted	work order prior to 01.03.2015
9	PIU/ACS/MC/SA BARKANTHA/4975/2014	19.12.2014	Commissionerate of health	Original	exempted	work order prior to 01.03.2015
10	PIU/ACS/MC/DH ARPUR,PATAN/983/2014	01.03.2014	Commissionerate of health	Original	Taxable	
11	6/5F-2/Office/2015/PIU Datia	01.09.2015	Sambhagiya Pariyogna Yantri Lok Nirman Department	Original	Taxable	
12	PIU/ACS/LTRAC CEPT/MC-Vadnagar/3526/2015	15.09.2015	Commissionerate of Health	Original	Taxable	
13	GIFT/ENG/BW/WC/2015/03-369	08.01.2016	Gujarat International Finance Tec-Citi	Original	exempted	Export of Services to SEZ
14	AB / TC / B2/ 11 / 2015-16	18.02.2016	Office of Engineer, Surat	Original	Taxable	
15	B-02/54/2015-16	15.02.2016	Office of Engineer, Vadodara	Original	Taxable	
16	16053/MPR DC/ PROCU / WO / MEDICAL COLLEGE/ 272/ 2015	18.01.2016	Madhya Pradesh Road Development Corporation Ltd.	Original	Taxable	
17	GIFT/ ENG/ BW/WC/ 2016/ 01 /1195	08.11.2016	Gujarat International Finance Tec-City	Original	Taxable	
18	2066/ SAC/ GR-1/16-17	10.06.2016	The executive Gas engineers	Original	Taxable	
19	PIU/ACS/MC/ Patan /3220/ 2012	30.08.2012	Commissionerate of Health	Original	exempted	work order prior to 01.03.2015
20	AB/ TC/ 2016	11.12.2013	Office of Engineer, Navrangpura	Original	exempted	work order prior to 01.03.2015
21	SSA CIVIL/2016/ 26227	01.07.2016	Gujarat Council of Elementary Education	Original	Taxable	

22	B2/312/ 2012-13	24.05.2013	Commissionerate of Health	Original	exempted	work order prior to 01.03.2015
23	UTTAM/ NVP / 05/ 01 / 3977	10.02.2017	Ahmedabad district Co Op Milk Producer Union Ltd	Original	Taxable	
24	UDA / CIVIL/ 023/ 20t6	05.08.20 16	Vadodara Urban Development Authority	Original	exempted	Exempted under 12(e) of Notification No.25/2012- ST as amended

Accordingly, on the basis of documents submitted by the assessee to DGGI, Vapi Service Tax of Rs.2,47,68,308/- was demanded as per Annexure-A of the SCN dated 19.04.2021.

I find that the assessee have not submitted any documents/arguments, challenging the demand of Service Tax of Rs.2,47,68,308/-. They have submitted the statement showing income as per RA bills, Income as per 26AS and Difference of RA and 26AS. However, the assessee is silent about the calculation shown in Annexure-A of the subject SCN.

24.5 I find that taxable service is defined under Section 65B(51) of the Finance Act, 1994, as amended, as under:

*"Taxable service" means any service on which service tax is leviable under Section 66B;*

I find that, Definition of the 'Service' under Section 65B (44), inserted by the Finance Act, 2012 is as under:

*'Service' means any activity carried out by a person for another for consideration, and includes declared service, but shall not include-...*

I find that, as per Section 65(105)(zzzza) "Works Contract" means to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

*Explanation — For the purposes of this sub-clause, "works contract" means a contract wherein, —*

*(iii) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and*

*(iv) such contract is for the purposes of carrying out, —*

*(a) erection, commissioning or installation of plant, machines, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound*

insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof or of a pipeline or conduit, primarily for the purposes of commerce or industry, or

(f) construction of a new residential complex or a part thereof; or

(g) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(h) turkey projects including engineering, procurement and construction or commissioning (EPC) projects;

I find that, after the advent of negative list from July, 2012, the service rendered by the assessee covered under the definition of "Declared services" as provided under Section 66E(b) & Section 66E(h) of the Finance Act, 1994, as amended. The section 66E of the Act ibid read as under:

66E. declared Services. -The following shall constitute declared services, namely:

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.....

(h) Service portion in the execution of a works contract

I find that provisions relating to determination of value of service portion involved in the execution of a works contract are contained in Rule 2A of Service Tax (Determination of Value) Rules, 2006. The provisions of said rule are as follow: -

"2A. Determination of value of service portion in the execution of a works contract. - Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Explanation.- For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;



(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract; (vi) cost of establishment of the contractor relating to supply of labour and services;

(vii) other similar expenses relating to supply of labour and services; and

(viii) profit earned by the service provider relating to supply of labour and services;

(c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy per cent of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, service tax shall be payable on sixty per cent of the total amount charged for the works contract;

(w.e.f. 01.10.2014 above sub-clause (B) & (C) has been substituted vide Notification NO.11/2014-ST Dt.11.07.2014) as under:

*(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for,-*

*(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or*

*(ii) maintenance or repair or completion and furnishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property, service tax shall be payable on seventy per cent of the total amount charged for the works contract.*

Explanation 1. For the purposes of this rule,-

*(a) "original works" means-*

*(i) all new constructions;*

*(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;*

*(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;*

*(b) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-*

- (i) the amount charged for such goods or services, if any; and  
(ii) the value added tax or sales tax, if any, levied thereon.

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

*Explanation 2.* - for the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any input, used in or in relation to the said words contract, under the provisions of CENVAT Credit Rules, 2004."

I find from the details given in Annexure-A of the subject SCN, that total service tax of Rs. 16,12,56,785/- (including cesses) was ascertained for providing of taxable services for the period from October 2015 to June 2017, out of which assessee have already paid Service Tax of Rs. 13,64,88,477/-. Accordingly, the assessee has short paid Service Tax amounting to Rs.2,47,68,308/- (including all Cesses) for the period 2015-16 (from October-15) to 2017-18 (Upto June 2017) and the same is liable to be recovered from the assessee for the said taxable service under the proviso of Section 73(1) of the Finance Act, 1994 by invoking extended period of limitation.

25. In view of the above discussion and finding, I am constrained to hold that the assessee is liable to pay service tax amounting to Rs. 2,47,68,308/- as demanded vide SCN dated 19.04.2021 for the period October,2015 to June,2017, and thus the same is liable to be recovered under the provision of Section 73(1) of the Finance Act, 1994.

26. I also find that the provisions of Section 75 of the Finance Act, 1994 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate for the period by which the crediting of the tax or any part thereof is delayed. I, thus hold that the assessee is also liable to pay the interest on Service Tax of Rs. 2,47,68,308/-.

27. From the above facts and discussion, I find that assessee has contravened that provision of (i) Section 66 of the Finance Act, 1994 in as much as they had failed to collect and pay the Service Tax to the credit of Central Government (ii) Section 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they had failed to pay appropriate service tax on the taxable services provided by them (iii)

Section 77 of the Finance Act, 1994, they had failed to furnish information/not producing the documents and not appearing before the department when issued a summons for appearance to give evidence.

28. From the facts and discussion aforementioned, I find that in the instant case the assessee had failed to assess the actual taxable income in the ST-3 Returns filed by them and had not paid appropriate Service Tax despite the fact that they were engaged in providing taxable services and had wrongly availed the benefit of exemption from Service tax. Thus, the assessee had suppressed the material facts from the Department by not showing their actual taxable income in the ST-3 Returns by way of incorrectly claiming exemptions, by not paying the Service Tax due to them and had also suppressed the taxable value in the ST-3 Returns. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax payers' behaviour. The responsibility on the tax payer to voluntarily make information disclosures is much greater in the system of self-assessment. The omission or commission on the part of the assessee has clearly demonstrated their intention to evade payment of service tax, as they were very much aware of the unambiguous provisions of Finance Act, 1994 and Rules made there under. They have failed to disclose to the department at any point of time, the fact regarding the claiming of exemption without being eligible under Notification No. 25/2012-ST as discussed in forgoing paras during October, 2015 to June, 2017. These facts would not have come to light but for the investigation conducted by DGGI officers. Moreover, the government has from the very beginning placed full trust on the assessee, accordingly measures like self assessment etc. based on mutual trust and confidence have been put in place. Further, the assessee are not required to maintain any statutory or separate records under the Excise / service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for purpose of excise & Service tax laws. Moreover, returns are also filed online without any supporting documents. All these operates on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provisions is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the

payment of the duty/ tax. It is also evident that such fact of contravention and short/non paying the service tax by short declaring /under reporting taxable value of the service provided, as discussed earlier, on the part of the assessee came to the notice of the department only when the DGGI initiated the investigation against them. In the case of *Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241*, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In *2009 (23) STT 275, in case of Lalit Enterprises vs. CST Chennai*, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under proviso to Section 73(1) of the Finance Act, 1994. By invoking the extended period of time of 5 years, service tax totally amounting to Rs 2,47,68,308/- (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 ingredients 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.

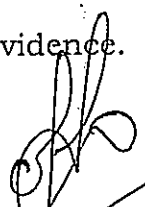
29. In view of the above discussion and findings, I pass the following order:

**ORDER**

- (i) I confirm the demand of Service Tax amounting to Rs. 2,47,68,308/- (including all cesses), (Rupees Two Crore Forty Seven Lakhs Sixty Eight Thousand Three Hundred Eight Only) and order to recover the same from the assessee under the proviso to section 73(1) of the Finance Act 1994 read with Section 174 of the Central Goods & Service Tax Act,2017.
- (ii) I order to charge Interest and recover the same from the assessee under Section 75 of the Finance Act, 1994 read with the Central Goods & Service Tax Act,2017 on the service tax amount of Rs. 2,47,68,308/-.
- (iii) I impose penalty of Rs. 2,47,68,308/- (including all cesses), (Rupees Two Crore Forty Seven Lakhs Sixty Eight Thousand

Three Hundred Eight Only) on the assessee, under Section 78 of the Finance Act, 1994 read with Section 174 of the Central Goods & Service Tax Act, 2017, for their failure to pay Service Tax. However, if the service tax amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the Service Tax amount, provided if such penalty is also paid within such period of 30 days.

- (iv) I impose penalty of Rs. 10,000/- ( Rupees Ten Thousand Only) on the assessee, under Section 77(1)(c) of the Finance Act, 1994 read with Section 174 of the Central Goods & Service Tax Act, 2017, for not furnishing information/not producing the documents and not appearing before the department when issued a summons for appearance to give evidence.

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

Date: 29.09.2022.

By Regd. Post AD./Hand Delivery  
F. No. STC/15-257/OA/2021

To  
M/s. Yashanand Engineers and Contractors  
214/5, Khyati Complex,  
Mithakhali,  
Ellisbridge,  
Ahmedabad.

Copy to:

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