


Signature

आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(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
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**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा .सं/. F.NO. STC/15-40/OA/2021

DIN : 20221064WT0000520917

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- 18 /2022-23**

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

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

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

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

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

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

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

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 18 /2022-23**

M/s. Prabhudas Becharbhai Patel, A-F-6, Dhanjibhai Complex, Nr. Naranpura Railway Crossing, Naranpura, Ahmedabad -380013, were issued SCN No. STC/15-40/OA/2021 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

**BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S. PRABHUDAS BECHARBHAJI PATEL, ARE AS FOLLOWS:**

M/s. Prabhudas Becharbhai Patel, A-F-6, Dhanjibhai Complex, Nr. Naranpura Railway Crossing, Naranpura, Ahmedabad -380013 (hereinafter referred to as the 'Assessee' for the sake of brevity) engaged in providing taxable services, were holding Service Tax Registration No. ACCPP3756ASD001.

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.Prabhudas Becharbhai 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 service related taxable value declared in their Income Tax Return/ Form 26AS were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return for the 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 ITR/Form 26AS for the FY 2015-16 and 2016-17. The difference in value as observed for F.Y. 2015-16 and 2016-17, was as under:

Sr. No.	Financial Year	Taxable Value as per ST-3 Returns (in Rs.)	Gross Receipt from Services (value from ITR/26AS) (in Rs.)	Difference Between Value of services from ITR/26AS and Gross value of service provided (in Rs.)	Resultant Service tax short paid (in Rs.)
1	2015-16	0	8,43,04,202	8,43,04,202	1,22,24,109
2	2016-17	0	6,70,38,033	6,70,38,033	1,00,55,705
			15,13,42,235	15,13,42,235	2,22,79,814



Therefore, it appeared that the said assessee had short paid /not paid service tax to the extent of Rs. 2,22,79,814/- (including Cess) on the differential value of Rs. 15,13,42,235/-.

4. Accordingly, the service tax liability of M/s.Prabhudas Becharbhai 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 of the assessee 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. 2,22,79,814/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 2015-16 and 2016-17 vis-à-vis "Sales /Gross Receipts from Services (ITR)" OR "Total Amount paid /Credited Under 194C, 194H, 194I, 194J" (as per Form 26AS). The said short payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 2,22,79,814/- (including Cess) worked out on value of Rs. 15,13,42,235/- and therefore, the said Service Tax was required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

10. Therefore, it appeared that the said assessee had (i) failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994; (ii) failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994; (iii) failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they had not paid service tax as worked out in the Table for Financial Year 2015-16 and 2016-17; (iv) contravened the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 which appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (v) made themselves liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994; (vii) also 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.

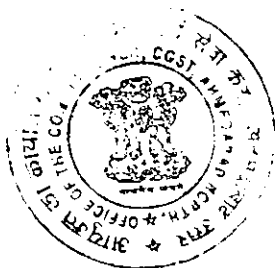
11. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of



the differential value, that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 and 2016-17. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 2,22,79,814/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the assessee which were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

12. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (at such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appeared that the said assessee had short paid/not-paid Service Tax of Rs. 2,22,79,814/- 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 its Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.

13. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax and they appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of Service Tax as discussed in the foregoing paras and therefore, the Service Tax amounting to Rs. 2,22,79,814/- (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.



14. 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 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.'*

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 77 of the Finance Act, 1994 as amended from time to time.

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

17. The assessee was given opportunity to appear for pre-SCN consultation on 23.04.2021, however 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 of Rs. 2,22,79,814/- (Rupees Two Crore Twenty Two Lakh Seventy Nine Thousand Eight Hundred Fourteen Only) for FY 2015-16 and FY 2016-17), 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.

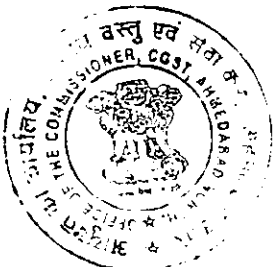
**DEFENCE REPLY:**

19. The assessee vide their letter dated 22.07.2021 and 04.01.2022 (received on 18.01.2022) submitted their written submission, wherein they interalia have stated that:

- They have been issued SCN demanding Service tax amounting to Rs. 2,22,79,814/-, wherein the value of service as per ST-3 Returns has been shown zero for FY 2015-16 and 2016-17.
- They have filed ST-3 Returns regularly and have paid applicable service tax on provision of service by them. They have provided taxable services as well as exempt services under mega exemption notification.
- The department has carried out service tax audit covering the period from 01.04.2015 to 30.06.2017. However, the audit has issued audit report covering the period from 01.04.2016 to 30.06.2017 only. The audit observation raised by the audit were agreed upon by them and service tax was paid by them accordingly. They have enclosed copy of Audit Report No. 110/2021-22 dated 22.04.2021. The audit has not issued audit report for the period from FY 2015-16, though their records were verified by the audit.
- The assessment for the period FY 2015-16 is beyond five years, therefore, the SCN is time barred as provided under Section 73 of the Finance Act, 1994. They have relied on Order No. 60565/2021 dated 19.03.2021 passed by the Hon'ble CESTAT Chandigarh.

The assessee vide their letter dated 15.06.2022 (Received on 23.06.2022), provided the following documents for FY 2015-16 & 2016-17, in support of their defence:

- Copy of ST-3 Returns
- Summary of Tax calculated and paid
- Reconciliation of taxable turnover with Audit Report Turnover



- Accounts ledger of various parties to whom services rendered
- Form 26AS
- Audit Report
- Copy of Work Orders and Bill for FY 2015-16 and 2016-17.

**PERSONAL HEARING:**

20. Personal Hearing was granted to the assessee on 22.04.2022, 18.05.2022, 15.06.2022 and 27.06.2022 and 21.07.2022, however, no one appeared for the personal hearing granted on 22.04.2022 and 18.05.2022. The assessee telephonically requested to give another dates for hearing granted on 27.06.2022 and 21.07.2022. Thereafter, personal hearing was again granted on 01.09.2022 which was attended by Shri Harshid Patel, CA as authorized by the assessee. During the course of hearing, he made reference to their written submissions dated 22.07.2021, 04.01.2022 and 15.06.2022. He submitted that assessee's records have been audited by the department for FY 2016-17 and they were exempt from service tax for providing services to government like Ahmedabad Municipal Corporation and Gujarat State Police Housing Corporation Ltd etc.

The assessee submitted the copy of Two Certificates dated 03.08.2022 issued by the AMC, certifying the amount paid for the work/contract awarded, work order number and date, Name of work and TDS deducted in support of their defence.

**DISCUSSION AND FINDINGS:**

21. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence replies and documents submitted on 22.07.2021, 04.01.2022 and 15.06.2022 and the oral submission made during the course of hearing by authorized representative of the assessee.

22. I observe that SCN dated 23.04.2021 has been issued to the assessee by the competent authority demanding Rs. 2,22,79,814/- as service tax liability. On going through the said SCN, I find that basically the essence of the case 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 ITR/26AS vis-à-vis taxable value disclosed in ST-3 Returns. As per the said SCN dated 23.04.2021, the difference of Rs. 15,13,42,235/- in value was



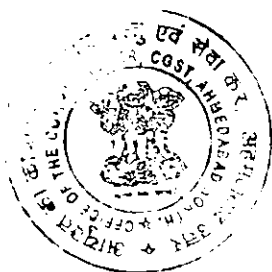


observed for FY 2015-16 and 2016-17, therefore, it was alleged vide SCN dated 23.04.2021, that the assessee had short paid/not paid the service tax of Rs. 2,22,79,814/- on such differential value, for providing the taxable service. Therefore, the subject SCN was issued to the assessee. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 2,22,79,814/- on the differential taxable value of Rs. 15,13,42,235/- for the Financial Year 2015-16 and 2016-17 as demanded under SCN dated 23.04.2021, under proviso to section 73(1) of Finance Act, 1994 or not.

**23.** I find that the assessee in their defence replies dated 22.07.2021, and 04.01.2022 and during the personal hearing, has contested that they had provided services to Government bodies like Ahmedabad Municipal Corporation, Gujarat State Police Housing Corporation etc. The services provided by them were exempt as well as taxable services. The exempt services were covered under the Mega Exemption notification and they have paid appropriated service tax, where they wherever liable to pay service on providing services.

**24.** I find that the SCN dated 23.04.2021 mentions 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. On going through the data of Form 26AS for FY 2015-16 & 2016-17, I find that the amounts paid/ credited to the assessee, as disclosed under Section 194C of Income Tax Act by the recipients of service from the assessee, are found to be exactly tallying with value of service considered in the subject SCN, for demanding service tax from the assessee. Further, the turnover (income from Construction work) of the assessee as per P&L during FY 2015-16 & 16-17, is found to be not tallying with the value of service considered in the subject SCN. The figures of turnover/ amount paid /credited for FY 2015-16 and 2016-17, as per P&L accounts, Form 26AS and value of taxable service considered in the SCN, are reproduced herein below for ready reference:

<b>Figures / value of services considered in the subject SCN</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.)
1	2015-16	0	8,43,04,202
2	2016-17	0	6,70,38,033
	<b>Total</b>	0	15,13,42,235



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	AHMEDABAD MUNICIPAL CORPORATION	4,67,91,425	194C
2	GUJARAT STATE POLICE HOUSING CORPORATION LTD	1,98,43,277	194C
3	GUJARAT UNIVERSITY	1,76,69,500	194C
	Total for FY 2015-16	8,43,04,202	

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	AHMEDABAD MUNICIPAL CORPORATION	2,01,35,756	194C
2	GUJARAT STATE POLICE HOUSING CORPORATION LTD	1,14,90,763	194C
3	GUJARAT UNIVERSITY	16,66,500	194C
4	NAYAN SHAH	3,37,45,014	194C
	Total for FY 2016-17	6,70,38,033	

Turnover as per Profit and Loss Account (in Rs.)			
	FY 2015-16	FY 2016-17	Total
By Construction Work	8,37,89,872	6,75,79,767	15,13,69,639
Total	8,37,89,872	6,75,79,767	15,13,69,639

24.1 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 (From Construction Work) (Rs.)	Value of services considered in the SCN (in Rs.) for computation of service tax liability of the assessee.
2015-16	8,43,04,202	8,37,89,872	8,43,04,202
2016-17	6,70,38,033	6,75,79,767	6,70,38,033
Total	15,13,42,235	15,13,69,639	15,13,42,235

24.2 On perusing the summarized details, it is quite clear that the value of service rendered by the assessee during FY 2015-16 and 2016-17 as per the subject SCN, is found to be tallying with the figures reflecting in Form 26AS. However, the same is found to be not tallying with P&L accounts for FY 2015-16 & 2016-17. Hence, it is evident that the data shared by the Income Tax department were not from the ITR, but the same were from the Form 26AS only. Accordingly, I would proceed with data of Form 26AS (amount paid or credited



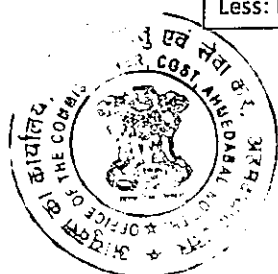
to the assessee by the recipient of service and on which TDS under Section 194C of IT Act has been deducted by the recipient of service) for deciding the matter.

**24.3** I find that Section 194C of the Income Tax Act deals with the tax deduction at source (TDS) that is to be compulsorily deducted from any payments that have been made to any person who is a resident contractor or a subcontractor. Therefore, any amount paid/credited on which TDS has been deducted under Section 194C from such amount, the amount paid/credited is a contract income, and is subject to the service tax under section 66B of the Finance Act, unless the services provided are covered under negative list of service or exemption notification. I find that there is no dispute as far as the receipt of the consideration from provision of service by the assessee is concerned. The assessee has admittedly stated in their defence replies that they had provided exempt as well as taxable services to government. Accordingly, I find that there is no dispute as far as the question of provision of services by the assessee is concerned.

**24.4** I find that the assessee has also contested that SCN shows the value of services as per ST-3 Returns to be "ZERO", though they have filed ST-3 Returns for FY 2015-16 and 2016-17 and they have provided the copies of ST-3 Returns filed by them during FY 2015-16 and 2016-17 in support of their arguments. On perusing the said ST-3 Returns for FY 2015-16 and 2016-17, the following information is forthcoming:

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	545945	20833475	261291	23061928	807236	43895403
Less: Exempt Service	0	16023638	0	12926686	0	28950324
Less: Abatement	382162	3847870	182904	4581416	565066	8429286
Net Taxable Value	163783	961967	78387	5553826	242170	6515793
Service Tax Paid	22441	134675	10997	777536	33438	912211

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	531335	10582286	637398	32674264	1168733	43256550
Less: Exempt Service	0	2116457	0	30553556	0	32670013



Less: Abatement	371935	6349372	446179	772483	818114	7121855
Net Taxable Value	159400	2116457	191219	1348225	350619	3464682
Service Tax Paid	23701	312692	28685	202233	52386	514925

Evidently, it appears that plea regarding filing of ST-3 Returns by them hold good. It is also apparent from ST-3 Returns that they had classified the services provided by them as "Works Contract Services". The gross value of services as appearing in the said returns, is found to be not tallying with Form 26AS or other records. It is also seen from the said ST-3 returns that the assessee had availed the benefit of exemption from Service tax under Sr. No. 12(a)/12(e)/12A(a) of Notification No. 25/2012-ST dated 20.06.2012 and Sr. No. 9 of Notification No. 30/2012-ST dated 20.06.2012 (for RCM) and has also availed the benefit of abatement from taxable value of service under Notification No. 24/2012-ST.

**24.5** The assessee has contested that they had provided exempt as well as taxable services to Ahmedabad Municipal Corporation, Gujarat State Police Housing Corporation etc.,. The assessee has submitted the following documents in support of their say.

- Copy of ST-3 Returns
- Summary of Tax calculated and paid
- Reconciliation of taxable turnover with Audit Report Turnover
- Accounts ledger of various parties to whom services rendered
- Form 26AS
- Audit Report
- Copy of Work Orders and Bill for FY 2015-16 and 2016-17.
- Two certificates dated 03.08.2022 issued by AMC, certifying the amount paid corresponding to work order and date of work order, Name of the work for which payment was made and TDS deducted.

**25.** 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, relying on the documents produced by the assessee, I 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 (Sr. No. 12(a)/12(e)/12A(a)) or otherwise to the services rendered by the noticee, I would like to examine the



documents submitted by the noticee alongwith their written submission dated 31.05.2021. On going through the Form 26AS vis-à-vis work orders and department bill (RA bills), Bills issued by the assessee for services rendered by them and Two Certificates dated 03.08.2022 issued by AMC, the following facts are emerging as under:

FY 2015-16		As per Form 26AS statement				Documents produced and Nature of work done by the noticee as per RA Bills /other documents
Sr. No.		Name of the TDS deductor	Transaction date	Amount paid /credited (Rs.)	TDS deducted under Section 194C (Rs.)	
1	(i)	AHMEDABAD MUNICIPAL CORPORATION	31-03-2016	8445846	84459	<ul style="list-style-type: none"> <li>Ledger account</li> <li>Copy of 4th RA Bill dated Nil, in respect of work of "Constructing Refuse Transfer Station in TPS No. 2 (Kankaria) FP No. 188, 189, 191 AMC Metal Depot"</li> <li>Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>WO No. 495/21.02.2015 issued by the Additional City Engineer, Solid West Management and Conservancy Services, AMC, for sophistication of Disposal work of Solid Waste Materials</li> </ul>
	(ii)	AHMEDABAD MUNICIPAL CORPORATION	02-03-2016	8551901	85520	<ul style="list-style-type: none"> <li>Ledger account</li> <li>Copy of 3rd RA Bill dated Nil, in respect of work of "Constructing Refuse Transfer Station in TPS No. 2 (Kankaria) FP No. 188, 189, 191 AMC Metal Depot"</li> <li>Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>WO No. 495/21.02.2015 issued by the Additional City Engineer, Solid West Management and Conservancy Services, AMC, for Sophistications of Disposal work of Solid Waste Materials</li> </ul>
	(iii)	AHMEDABAD MUNICIPAL CORPORATION	16-11-2015	12841179	128412	<ul style="list-style-type: none"> <li>Ledger account</li> <li>Copy of 2nd RA Bill dated Nil, in respect of work of "Constructing Refuse Transfer Station in TPS No. 2 (Kankaria) FP No. 188, 189, 191 AMC Metal Depot"</li> <li>Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>WO No. 495/21.02.2015 issued by the Additional City Engineer, Solid West Management and Conservancy Services, AMC, for sophistication of Disposal work of Solid Waste Materials</li> </ul>



(IV)	AHMEDABAD MUNICIPAL CORPORATION	09-11-2015	91315	914	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of 1st and Final RA Bill dated Nil, in respect of work of " Providing &amp; Fixing of wire fencing on the Compound wall of Stadium Water Distribution Station in Stadium Ward of West Zone of AMC"</li> <li>• Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>• Work Order No. 2473/05.07.2013 issued by the Additional City Engineer, Water Project Department, AMC, Ahmedabad for Construction of Under Ground Tank and Pump House.</li> </ul>
(V)	AHMEDABAD MUNICIPAL CORPORATION	26-10-2015	2596221	25963	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of Final RA Bill dated Nil, in respect of work of " Construction of Underground Sump &amp; Pumphouse near Panchsheel Society FP No. 60 in Stadium Ward of West Zone of AMC"</li> <li>• Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>• WO No. 1986/13.07.2012 issued by the Additional City Engineer, Water Project Department, AMC, Ahmedabad for Construction of Under Ground Tank and Pump House..</li> </ul>
(VI)	AHMEDABAD MUNICIPAL CORPORATION	17-10-2015	233139	2332	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of 1st and Final RA Bill dated Nil, in respect of work of " Laying of paver Block in the compound of TP-28, FP -74, Near Dev City Bunglows in New West Zone of AMC, Ahmedabad"</li> <li>• Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>• WO No. 4070/03.10.2013 issued by the Additional City Engineer, Water Project Department, AMC, Ahmedabad for Construction of Under Ground Water Tank and Pump House.</li> </ul>
(VII)	AHMEDABAD MUNICIPAL CORPORATION	17-10-2015	228473	2285	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of 1st and Final RA Bill dated Nil, in respect of work of " Laying of Paver Block in the Compound of Stadium Water Distribution Station in Stadium Ward of West Zone of AMC"</li> <li>• Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>• Work Order No. 2473/05.07.2013 issued by the Additional City Engineer, Water Project Department, AMC, Ahmedabad for Construction of Under Ground Tank and Pump House.</li> </ul>



	(VIII)	AHMEDABAD MUNICIPAL CORPORATION	14-09-2015	1910021	19101	<p>Ledger account</p> <ul style="list-style-type: none"> <li>• Copy of 6th RA Bill dated Nil, in respect of work of " Construction of Underground Sump of 17 Lac Gallon Capacity with Pumphouse in Stadium Ward of West Zone"</li> <li>• Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>• Work Order No. 2473/05.07.2013 issued by the Additional City Engineer, Water Project Department, AMC, Ahmedabad for Construction of Under Ground Tank and Pump House.</li> </ul>
	(IX)	AHMEDABAD MUNICIPAL CORPORATION	13-08-2015	1709647	17097	<p>Ledger account</p> <ul style="list-style-type: none"> <li>• Copy of 7th RA Bill dated Nil, in respect of work of " Construction of 21.87 Lacs Gallon UGT &amp; Pump House at TP-28, FP - 74 Near Dev City Bungalow in New WZ"</li> <li>• Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>• WO No. 4070/03.10.2013 issued by the Additional City Engineer, Water Project Department, AMC, Ahmedabad for Construction of Under Ground Water Tank and Pump House.</li> </ul>
	(X)	AHMEDABAD MUNICIPAL CORPORATION	29-07-2015	1891023	18911	<p>Ledger account</p> <ul style="list-style-type: none"> <li>• Copy of 2nd RA Bill dated Nil, in respect of work of " Casting of Existing UGT Slab at Harijan Ashram WDS Phase -2 in Old Wadaj West Zone"</li> <li>• Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>• WO No. 5264/17.01.2015 issued by the Additional City Engineer, Water Project Department, AMC, Ahmedabad for Repairing of the Existing Under Ground Tank Slab at Harijan Ashram Water Distribution Station.</li> </ul>
	(XI)	AHMEDABAD MUNICIPAL CORPORATION	27-07-2015	5391745	53918	<p>Ledger account</p> <ul style="list-style-type: none"> <li>• Copy of 1st RA Bill dated Nil, in respect of work of "Constructing Refuse Transfer Station in TPS No. 2 (Kankaria) FP No. 188, 189, 191 AMC Metal Depot"</li> <li>• Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>• WO No. 495/21.02.2015 issued by the Additional City Engineer, Solid West Management and Conservancy Services, AMC, for sophistication of Disposal work of Solid Waste Materials</li> </ul>



	(XII)	AHMEDABAD MUNICIPAL CORPORATION	29-06-2015	1556131	15562	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of Final Bill dated Nil, in respect of work of " Construction and allied works for Under Ground Tank &amp; Pump House at Vejalpur TP-5, FP-274 WDS in New West Zone of AMC, Ahmedabad"</li> <li>• Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>• WO No. 2180/21.03.2011 issued by the Additional City Engineer, Water Project Department, AMC, Ahmedabad for Construction of Under Ground Tank and Pump House.</li> </ul>
	(XIII)	AHMEDABAD MUNICIPAL CORPORATION	28-05-2015	1336284	13363	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of 1st RA Bill dated Nil, in respect of work of " Casting of Existing UGT Slab at Harijan Ashram WDS Phase -2 in Old Wadaj West Zone"</li> <li>• Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>• WO No. 5264/17.01.2015 issued by the Additional City Engineer, Water Project Department, AMC, Ahmedabad for Repairing of the Existing Under Ground Tank Slab at Harijan Ashram Water Distribution Station.</li> </ul>
	(XIV)	AHMEDABAD MUNICIPAL CORPORATION	12-05-2015	8500	85	<ul style="list-style-type: none"> <li>• No information provided.</li> </ul>
		Sub Total		46791425		
2	(I)	GUJARAT STATE POLICE HOUSING CORPORATION LTD	31-03-2016	4089359	40894	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of Journal Voucher No. NIL dt. 02/11/2015 issued by GSPHCL, which mentions "Being amount of 3rd RA bill for the works of Construction of Central Kitchen and Dining Hall at GPA, Karai, Gandhinagar"</li> <li>• Work Order No. ગુપીહા/ટેક/૨૦૧૨/એમડી/ 5861/5000 dated 03.06.2015 issued by the DGP and MD, GSPHCL for Construction of Central Dining Hall and Kitchen (including Electrification)</li> </ul>
	(II)	GUJARAT STATE POLICE HOUSING CORPORATION LTD	10-03-2016	3434927	34349	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of Journal Voucher No. NIL dt.29/03/2016 issued by GSPHCL, which mentions "Being amount of 6th RA bill for the works of Construction of Central Kitchen and Dining Hall at GPA, Karai, Gandhinagar"</li> <li>• Work order as above</li> </ul>





	(III)	GUJARAT STATE POLICE HOUSING CORPORATION LTD	16-01-2016	4427468	44275	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of Journal Voucher No. 583 dt. 16/01/2016 issued by GSPHCL, which mentions "Being amount of 4th RA bill for the works of Construction of Central Kitchen and Dining Hall at GPA, Karai, Gandhinagar"</li> <li>• Work order as above</li> </ul>
	(IV)	GUJARAT STATE POLICE HOUSING CORPORATION LTD	02-11-2015	3081686	30817	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of Journal Voucher No. NIL dt. 02/11/2015 issued by GSPHCL, which mentions "Being amount of 3rd RA bill for the works of Construction of Central Kitchen and Dining Hall at GPA, Karai, Gandhinagar"</li> <li>• Work order as above</li> </ul>
	(V)	GUJARAT STATE POLICE HOUSING CORPORATION LTD	30-09-2015	2927353	29274	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of Journal Voucher No. NIL dt. 30/09/2015 issued by GSPHCL, which mentions "Being amount of 2nd RA bill for the works of Construction of Central Kitchen and Dining Hall at GPA, Karai, Gandhinagar"</li> <li>• Work order as above</li> </ul>
	(VI)	GUJARAT STATE POLICE HOUSING CORPORATION LTD	19-08-2015	1882484	18825	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of Journal Voucher No. 106 dt. 19/08/2015 issued by GSPHCL, which mentions "Being amount of 1st RA bill for the works of Construction of Central Kitchen and Dining Hall at GPA, Karai, Gandhinagar"</li> <li>• Work order as above</li> </ul>
		Sub Total		19843277		
3	(I)	GUJARAT UNIVERSITY	31-03-2016	10615900	106159	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of RA Bill No. 3 dated Nil, issued by the assessee on Gujarat University for "Rectification and Expansion of Botany Department at Gujarat University Campus"</li> <li>• Work Order No. Estate/ Rectification /Expansion /Botany/ GU / 55239/2015 dated 21.05.2015 issued by the Registrar, Gujarat University for Rectification and Expansion of Gujarat University</li> </ul>
	(II)	GUJARAT UNIVERSITY	26-11-2015	3736100	37361	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of RA Bill No. 2 dated Nil, issued by the assessee on Gujarat University for "Rectification and Expansion of Botany Department at Gujarat University Campus"</li> <li>• Work Order as above.</li> </ul>
	(III)	GUJARAT UNIVERSITY	16-10-2015	3317500	33175	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of RA Bill No. 1 dated Nil, issued by the assessee on Gujarat University for "Rectification and Expansion of Botany Department at Gujarat University Campus"</li> <li>• Work Order as above</li> </ul>
		Sub Total		17669500		
		Grand total		84304202		



FY 2016-17		As per Form 26AS statement				Documents produced and Nature of work done by the noticee as per RA Bills /other documents
Sr. No.		Name of the TDS deductor	Transaction date	Amount paid /credited (Rs.)	TDS deducted under Section 194C (Rs.)	
1	(I)	AHMEDABAD MUNICIPAL CORPORATION	28-02-2017	5004692	50047	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of 7th RA Bill dated Nil, in respect of work of " Construction of 21.87 Lacs Gallon UGT &amp; Pump House at TP-28, FP - 74 Near Dev City Bungalow in New WZ"</li> <li>• Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>• WO No. 4070/03.10.2013 issued by the Additional City Engineer, Water Project Department, AMC, Ahmedabad for Construction of Under Ground Water Tank and Pump House.</li> </ul>
	(II)	AHMEDABAD MUNICIPAL CORPORATION	23-11-2016	28771	288	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted. According to which the amount pertains to Work Order No. 495/21.02.2015 for construction of Refuse Transfer Station in TPS No. 2 (Kankaria)</li> </ul>
	(III)	AHMEDABAD MUNICIPAL CORPORATION	13-10-2016	4777350	47774	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of 6th RA Bill dated Nil, in respect of work of "Constructing Refuse Transfer Station in TPS No. 2 (Kankaria) FP No. 188, 189, 191 AMC Metal Depot"</li> <li>• Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>• WO No. 495/21.02.2015 issued by the Additional City Engineer, Solid West Management and Conservancy Services, AMC, for sophistications of Disposal work of Solid Waste Materials</li> </ul>
	(IV)	AHMEDABAD MUNICIPAL CORPORATION	14-09-2016	2682806	26829	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of 7th RA Bill dated Nil, in respect of work of " Construction of Underground Sump of 17 Lac Gallon Capacity with Pumphouse in Stadium Ward of West Zone"</li> <li>• Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>• Work Order No. 2473/05.07.2013 issued by the Additional City Engineer, Water Project Department, AMC, Ahmedabad for Construction of Under Ground Tank and Pump House.</li> </ul>

	(V)	AHMEDABAD MUNICIPAL CORPORATION	12-07-2016	6934965	69350	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of 5th RA Bill dated Nil, in respect of work of "Constructing Refuse Transfer Station in TPS No. 2 (Kankaria) FP No. 188, 189, 191 AMC Metal Depot"</li> <li>• Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>• WO No. 495/21.02.2015 issued by the Additional City Engineer, Solid West Management and Conservancy Services, AMC, for sophistications of Disposal work of Solid Waste Materials</li> </ul>
	(VI)	AHMEDABAD MUNICIPAL CORPORATION	17-06-2016	707172	7072	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of 3rd and Final RA Bill dated Nil, in respect of work of " Casting of Existing UGT Slab at Harijan Ashram WDS Phase -2 in Old Wadaj West Zone"</li> <li>• Certificate dated 03.08.2022 issued by Chief Accountant, Finance Department, AMC, Ahmedabad certifying the amount paid, work order number and date, Name of work and TDS deducted.</li> <li>• WO No. 5264/17.01.2015 issued by the Additional City Engineer, Water Project Department, AMC, Ahmedabad for Repairing of the Existing Under Ground Tank Slab at Harijan Ashram Water Distribution Station.</li> </ul>
		Sub Total		20135756		
2	(I)	GUJARAT STATE POLICE HOUSING CORPORATION LTD	21-10-2016	908477	9085	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of Bank payment /journal Voucher No. NIL dt. 21/10/2016 issued by GSPHCL, which mentions "Being amount of 10th and Final RA bill for the works of Construction of Central Kitchen and Dining Hall at GPA, Karai, Gandhinagar"</li> <li>• Work Order No. ગુપોહ/૨૬/૨૦૧૬ /એમડી/ 5861/5000 dated 03.06.2015 issued by the DGP and MD, GSPHCL for Construction of Central Dining Hall and Kitchen (including Electrification)</li> </ul>
	(II)	GUJARAT STATE POLICE HOUSING CORPORATION LTD	06-08-2016	1690532	16905	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of Bank payment /journal Voucher No. NIL dt. 06/08/2016 issued by GSPHCL, which mentions "Being amount of 9th RA bill for the works of Construction of Central Kitchen and Dining Hall at GPA, Karai, Gandhinagar"</li> <li>• Work Order as above.</li> </ul>
	(III)	GUJARAT STATE POLICE HOUSING CORPORATION LTD	11-07-2016	4115504	41155	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of Journal Voucher No. Nil dt. 11/07/2016 issued by GSPHCL, which mentions "Being amount of 8th RA bill for the works of Construction of Central Kitchen and Dining Hall at GPA, Karai, Gandhinagar"</li> <li>• Work Order as above.</li> </ul>



	(IV)	GUJARAT STATE POLICE HOUSING CORPORATION LTD	31-05-2016	4776250	47763	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of Bank Payment Voucher No. NIL dt.31/05/2016 issued by GSPHCL, which mentions "Being amount of 7th RA bill for the works of Construction of Central Kitchen and Dining Hall at GPA, Karai, Gandhinagar"</li> <li>• Work Order as above.</li> </ul>
		Sub Total		11490763		
3	(I)	GUJARAT UNIVERSITY	31-01-2017	1666500	16665	<ul style="list-style-type: none"> <li>• Ledger account</li> <li>• Copy of RA Bill No. 4 dated Nil, issued by the assessee on Gujarat University for "Rectification and Expansion of Botany Department at Gujarat University Campus"</li> <li>• Work Order No. Estate/ Rectification /Expansion /Botany/ GU / 55239/2015 dated 21.05.2015 issued by the Registrar, Gujarat University for Rectification and Expansion of Gujarat University</li> </ul>
		Sub Total		1666500		
4	(I)	Nayan C Shah	16-03-2017	6178201	61782	<ul style="list-style-type: none"> <li>• Ledger account of Nayan C Shah maintained by the assessee</li> <li>• 4th RA Bill dated Nil, issued by the assessee on M/s. Nayan C Shah for Construction of New Water Distribution Station at Chandkheda GHB in west zone of AMC, Ahmedabad.</li> <li>• Work Order No. 609 dated 05/05/2015 issued to M/s. Nayan C Shah by the Additional City Engineer, Water Project Department, AMC, Ahmedabad for Construction of 25 Lakh Gallon Capacity Under ground tank with Pump House at TP-20/B Survey No. 445, 447 Guj. Housing Board Plot in Chandkheda ward in West Zone of AMC.</li> <li>• Sub Contract Agreement dated 09.04.2016 entered by the assessee with M/s. Nayan C Shah for above work.</li> </ul>
	(II)	Nayan C Shah	19-01-2017	8172687	81727	<ul style="list-style-type: none"> <li>• Ledger account of Nayan C Shah maintained by the assessee</li> <li>• 3rd RA Bill dated Nil, issued by the assessee on M/s. Nayan C Shah for Construction of New Water Distribution Station at Chandkheda GHB in west zone of AMC, Ahmedabad.</li> <li>• Sub Contract Agreement and Work Order are as above</li> </ul>
	(III)	Nayan C Shah	24-10-2016	10146450	101465	<ul style="list-style-type: none"> <li>• Ledger account of Nayan C Shah maintained by the assessee</li> <li>• 2nd RA Bill dated Nil, issued by the assessee on M/s. Nayan C Shah for Construction of New Water Distribution Station at Chandkheda GHB in west zone of AMC, Ahmedabad.</li> <li>• Sub Contract Agreement and Work Order are as above</li> </ul>



	(IV)	Nayan C Shah	01-09-2016	9247676	92477	<ul style="list-style-type: none"> <li>• Ledger account of Nayan C Shah maintained by the assessee</li> <li>• 1st RA Bill dated Nil, issued by the assessee on M/s. Nayan C Shah for Construction of New Water Distribution Station at Chandkheda GHB in west zone of AMC, Ahmedabad.</li> <li>• Sub Contract Agreement and Work Order are as above</li> </ul>
		Sub Total		33745014		
		Grand Total		67038033		

From detailed scrutiny of the documents as discussed above and ST-3 Returns, it is apparent that the service provided are evidently classifiable under Works Contract Service, therefore, the classification of service under Works Contracts by the assessee as per ST-3 returns, is found to be appropriate and justifiable.

**25.1.** 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:**

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

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business of profession; (omitted by Notification No. 6/2015-ST dated 1.3.2015 w.e.f.1.4.2015.)

(b) .....

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; (omitted by Notification No. 6/2015-ST dated 1.3.2015 w.e.f.1.4.2015.)

(d) canal, dam or other irrigation works

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

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;" (omitted by Notification No. 6/2015-ST dated 1.3.2015 w.e.f.1.4.2015.)

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



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

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

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

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

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

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

“SECTION 102. . — (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of—

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;
- (b) a structure meant predominantly for use as —
  - (i) an educational establishment;
  - (ii) a clinical establishment; or
  - (iii) an art or cultural establishment;
- (c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act,

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

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

25.2. From the above legal position, it is quite clear that the “services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works for use other than the commercial, Industry or business or profession”, was exempt till 31.03.2015 under Entry No. 12 of Notification No. 25/2012 -ST. But, by virtue of insertion of new Entry No. 12A to the Notification 25/202-ST vide Notification 09/2016-ST dt. 01.03.2016 and insertion of Section 102 vide Finance Act, 2016 dated 14.05.2016, the exemption was made available to the

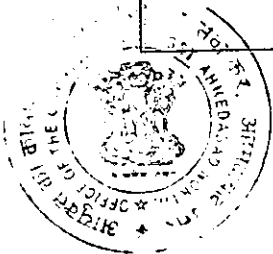


said services provided for which work contract was entered into prior to 01.03.2015.

**25.3** Further, it is also clear from the above legal position that the "Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal" is exempt service under Sr. No. 12(e) of Notification No. 25/2012-ST dated 20.06.2012.

**25.4** From the documents submitted by the assessee, it is discerned that they have provided services to Ahmedabad Municipal Corporation (AMC), by way of Constructing/ Repairing of Under Ground Water Tank, Sump and Pump House for water supply. The assessee has also provided services to Ahmedabad Municipal Corporation (AMC) by way of constructing of Refuse Transfer Station, which was not meant for use for commerce, industry or any other business or profession and for which work order was issued prior to 01.03.2015. Therefore, the services provided by the assessee to Ahmedabad Municipal Corporations, which is local authority are squarely covered either under Sr. No. 12(e) or 12A(a) of Notification No. 25/2012-ST dated read with Section 102 of the Finance Act, 1944, as follows. Therefore, the services provided in connection with the following work orders i.e. directly to AMC, are exempt service being covered under the Mega Exemption Notification 25/2012-ST. Thus, no service tax is leviable on services rendered directly to AMC during FY 2015-16 and 2016-17. However, it is pertinent to mention here that the assessee has not provided any details of payment of Rs. 8500/- received from AMC on 12.05.2015 as per Form 26AS and all other amounts received from AMC are found to be covered under exemption from service tax; hence, there is no reason to believe that the said amount has been paid for the services other than the following services provided to AMC. Therefore, in absence of any contradictory evidences, I find that the same is also eligible for exemption under Notification No. 25/2012-ST.

Work Order No. and date (issued by AMC)	Name of Work	Sr. No. of Notification No. 25/2012-ST
5264/17.01.2015	Repairing of existing U.G. Tank Slab at Harijan Ashrams WDS (Phase-3) in Old Vadaj in West Zone	Sr. No. 12( e)
4070/03.10.2013	Construction of Under Ground Water Sump at TP-29, FP-74 (nr. Dev City Bungalow) in Gota Ward of New West Zone Client :AMC	Sr. No. 12( e)



2473/05.07.2013	Construction of additional Underground Tank with Pumphouse in Stadium Water distribution station Compound in West Zone of AMC	Sr. No. 12( e)
1986/13.07.2012	Construction of Underground Sump & Pump House Near Panchsheel Society FP No. 60 in Stadium Ward in West Zone of AMC	Sr. No. 12( e)
2180/21.03.2011	Construction and allied works for Under ground Tank & Pump House at Vejalpur TP -5, FP -274 WDS in New West Zone.	Sr. No. 12( e)
495/21.02.2015	Constructing of Refuse Transfer Station in TPS No. 2 (Kankaria) FP No. 188,189,191, AMC Metal Depot, Opp. Hirabhai Market, Khadia Ward, Central Zone, Ahmedabad	Sr. No. 12A(a)/Section 102

**25.5** As regards services provided during 2016-17 to M/s. Nayan C Shah, it is seen that from the documents submitted by the assessee that the said service was provided to M/s. Nayan C Shah by way of Constructing of 25 Lakh Gallon Capacity Underground Tank with Pump House at TP-20/B Survey No. 445, 447 Guj. Housing Board Plot in Chandkheda ward in West Zone of AMC. It is seen from the sub contract agreement dated 09.04.2016 entered into by the assessee with M/s. Nayan C Shah that the said agreement was for Constructing of 25 Lakh Gallon Capacity Underground Tank with Pump House at TP-20/B Survey No. 445, 447 Guj. Housing Board Plot in Chandkheda ward in West Zone of AMC and the said work was awarded to M/s. Nayan C Shah vide work order No. 609 dated 05.05.2015 issued by the Additional City Engineer, AMC, which was further subcontracted to the assessee. The services provided in the instant case to AMC was in nature of Works Contract Service as discussed above, and the same is also found to be covered under Sr. No. 12(e) of Notification No. 25/2012-ST dated 20.06.2012. 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 providing of works contract services by the contractor, are exempt. Therefore, the service provided by the assessee as a subcontractor is also exempt, as the service was exempt for main contractor as the same being covered under Sr.No. 12(e) of Notification 25/2012-ST. Hence, in the instant case the services provided to M/s. Nayan C Shah, as subcontractor by the assessee, is also exempt service in terms of Sr. No. 12( e) read with Sr. No. 29(h) of Notification No. 25/2012-ST dated 20.06.2012. Accordingly, I find that the assessee is not liable to pay service tax on services rendered to M/s. Nayan C Shah during FY 2016-17.



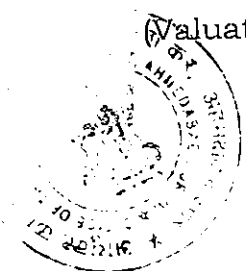


**25.6** As regards services provided by the assessee to M/s. Gujarat State Police Housing Corporation (GSPHCL) and Gujarat University, it is apparent from the Ledger Accounts, Journal Voucher/Payment Vouchers prepared by M/s. GSPHCL, and Bill raised by the assessee to Gujarat University that the assessee had collected service tax from the recipient of service provided by them. All the work orders have been issued to the assessee by these two entities, after 01.03.2015. In view of the legal position as well as documents available on records, the question of exemption on services provided to M/s. GSPHCL and Gujarat University does not arise. The assessee is liable to pay service tax on services provided to M/s. GSPHCL and Gujarat University during FY 2015-16 and 2016-17. Therefore, in the instant case, it is to be ascertained that the assessee had paid the appropriate service tax on services rendered to M/s. GSPHCL and Gujarat University or otherwise.

**28.** It is also evident that the assessee had filed ST-3 Returns for FY 2015-16 and 2016-17, and the value of services declared in the said ST-3 Returns were not considered for computing impugned service tax liability. Since the assessee has not provided any details/work sheet of taxable value declared or worked out in ST-3 Returns /abatement claimed /Exemption claimed in ST-3 Returns vis-à-vis value of service provided as per their financial records, computation of service tax liability of the assessee has been carried out on the basis of records available/ produced by the assessee and considering the exemption/abatement available to them under Notification 30/2012-ST and Service Tax (Determination of Value) Rules, 2006 for providing works contract services.

**28.1** I find that M/s. GSPHCL are fully owned government company who undertakes the construction of residential, non-residential and all others type of buildings required for Gujarat Police, Jails, Home Guards and for other in the state of Gujarat. M/s. GSPHCL have been established by the State Government and is directly under control of the state government and they undertake the functions as entrusted to them by the government. Therefore, M/s. GSPHCL qualify to be governmental authority as well. Further, Gujarat University is not a Government or a Local Authority or a Governmental authority.

**28.2** I find that the value of service portion in execution of works contract has to be determined as per Service Tax (Determination of Value) Rules, 2006 (Valuation Rules). Accordingly, in case of works contracts entered into for



execution of "Original Works", service tax shall be payable on Forty Percent of the total amount charged for the works contract. In other case of works contract (i.e. other than Original Work, including repair, maintenance, finishing services), the service tax shall be payable on Seventy Percent of the total amount charged for the works contract. As discussed hereinabove, the services provided by the assessee is in nature of Works Contract service, therefore, valuation of service portion in respect of services provided to M/s. GSPHCL and Gujarat University is to be determined according to Valuation Rules. As per the Work Order issued by M/s. GSPHCL, the assessee was to carry out the work of Construction of Central Kitchen and Dining Hall at GPA, Karai, Gandhinagar; the work awarded being "New Construction" falls within the ambit of "Original Work". Accordingly, the value of service portion in case of works contract service provided to M/s. GSPHCL, will be 40% of the amount charged by the assessee for the said work. Now, in case of Service provided to Gujarat University, I find from the work order issued by Gujarat University, the assessee was to carry out the work of "Rectification and Expansion of Botany Department at Gujarat University Campus", the work awarded being repair/maintenance of immovable property in nature, does not fall within the ambit of "Original Work" as defined under Valuation Rules. Therefore, the value of service portion in case of works contract service provided to Gujarat University, will be 70% of the amount charged by the assessee for the said work.

**28.3** Further, it is evident that the assessee is a proprietorship firm and had provided the works contract service to the body corporate i.e. M/s, Gujarat State Police Housing Corporation (GSPHCL). The Notification No. 30/2012-ST dt. 20.06.2012 issued under Section 68(2) of the Finance Act, 1994, prescribes the class of person liable to pay service tax under reverse charge mechanism being the recipient of service from the specified persons. Accordingly, as per Sr. No. 9 of the Notification No. 30/2012-ST dated 20.06.2012, works contract service provided by the assessee to the body corporate, the assessee being proprietorship firm, was liable to pay 50% of the tax under partial Reverse charge mechanism. The rest 50% of the service tax was required to be paid by the body corporate. In the instant case, I find that M/s. GSPHCL being the body corporate was liable to pay 50% of the service tax on the receipt of the service from the assessee.



28.4 Having considered the above legal and factual position, the service tax liability has been worked out herein under, by comparing the service tax paid as per ST-3 Returns vis-à-vis Service Tax payable on amount paid to the assessee as per Form 26AS, for providing service:

Sr.No.	As per Form 26AS		Abatement under valuation Rules (Rate)	Percentage liability to pay Service Tax u/r Noti. No.30/2012-	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. GSPHCL									
1	30-09-2015	2927353	60%	50%	585471	14	81965		
2	19-08-2015	1882484	60%	50%	376497	14	52710		
Sub total for FY 2015-16 (April -Sept)					961967		134675	134675	0
3	31-03-2016	4089359	60%	50%	817872	14.5	118591		
4	10-03-2016	3434927	60%	50%	686985	14.5	99613		
5	16-01-2016	4427468	60%	50%	885494	14.5	128397		
6	02-11-2015	3081686	60%	50%	616337	14	86287		
By Gujarat University									
7	31-03-2016	10615900	30%	100%	7431130	14.5	1077514		
8	26-11-2015	3736100	30%	100%	2615270	14.5	379214		
9	16-10-2015	3317500	30%	100%	2322250	14	325115		
Sub total for FY 2015-16 (Oct -Mar)					15375338		2214731	777536	1437195
Total For FY 2015-16					16337305		2349406	912211	1437195
FY 2016-17									
By M/s. GSPHCL									
10	06-08-2016	1690532	60%	50%	338106	15	50716		
11	11-07-2016	4115504	60%	50%	823101	15	123465		
12	31-05-2016	4776250	60%	50%	955250	14.5	138511		
Sub total for FY 2016-17 (April -Sept)					2116457		312692	312692	0
13	21-10-2016	908477	60%	50%	181695	15	27254		
By Gujarat University									
14	31-01-2017	1666500	30%	100%	1166550	15	174983		
Sub total for FY 2016-17 (Oct -Mar)					1348245		202237	202233	4
Total For FY 2016-17							514925		4

From the above computation, difference of Rs. 14,37,195/- in service tax payment for FY 2015-16 is seen. The assessee was therefore required to pay service tax of Rs. 23,49,406/- instead of Rs. 9,12,211/- paid towards service tax during FY 2015-16. Hence, there is a short payment of service tax of Rs. 14,37,195/- on provision of service by the assessee during FY 2015-16. The difference in service tax payable and service tax paid for FY 2016-17 is miniscule i.e. only Rs. 4/-. The same could be on account of rounding off the amount during the calculation and should not be considered as short payment of service tax during FY 2016-17. Hence, I find that there is no short payment of service tax during FY 2016-17. The service tax payable as calculated above, against the amount paid as per Form 26AS is found to be almost matching with the



amount of service tax booked in the Financial Ledgers of the assessee as well as with the bills raised/ payment vouchers; images of ledger (sample) is given below. Hence, I find that the assessee has short paid the service tax of Rs. 14,37,195/- during FY 2015-16 and there is no short payment of service tax during FY 2016-17.

M/S JHANKHANA BUILDERS - (From 1-Apr-2015) -

A/F-6 Dhanjibhai Complex  
Nr Naranpura Railway Crossing  
Usmanpura  
Ahmedabad

Gujarat State Police Hsg Corporation  
Ledger Account

1-Apr-2015 to 31-Mar-2016

Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
19-8-2015	Dr Dena Bank - 017713023831 Ch. No. Received by NEFT	Receipt	37		16,79,176.00
	Cr (as per details)	Journal	96	16,79,176.00	
	Service Tax @ 5.60	52,710.00 Cr			
	TDS Expenses	18,825.00 Dr			
	Testing Charges	18,825.00 Dr			
	Security Deposit GSPHC	1,88,248.00 Dr			
	Vat Account	11,295.00 Dr			
	Labour Cess	18,825.00 Dr			
	Construction Work	18,82,484.00 Cr			
	As per Bill No				
30-9-2015	Cr (as per details)	Journal	124	26,11,198.00	
	Service Tax @ 5.60	81,966.00 Cr			
	Testing Charges	29,274.00 Dr			
	Security Deposit GSPHC	2,92,735.00 Dr			
	TDS Expenses	29,274.00 Dr			
	Vat Account	17,564.00 Dr			
	Labour Cess	29,274.00 Dr			
	Construction Work	29,27,353.00 Cr			
	As per Bill No				
	Dr Dena Bank - 017713023831 Ch. No. Received by RTGS	Receipt	49		26,11,198.00
2-11-2015	Dr Dena Bank - 017713023831 Ch. No. Recd by RTGS	Receipt	69		27,48,863.00
	Cr (as per details)	Journal	164	27,48,863.00	
	Service Tax @ 5.60	86,287.00 Cr			
	Testing Charges	30,817.00 Dr			
	Security Deposit GSPHC	3,08,169.00 Dr			
	TDS Expenses	30,817.00 Dr			
	Vat Account	18,490.00 Dr			
	Labour Cess	30,817.00 Dr			
	Construction Work	30,81,686.00 Cr			
	As per Bill No				
16-1-2016	Dr Dena Bank - 017713023831 Ch. No. Transfer	Receipt	85		39,53,727.00

Carried Over

70,39,237.00 1,09,92,964.00

continued



M/S JHANKHANA BUILDERS - (From 1-Apr-2015) -  
Gujarat State Police Hsg Corporation Ledger Account 1-Apr-2015 to 31-Mar-2016 Page 2

Date	Particulars	Vch Type	Vch No	Debit	Credit
	Brought Forward			70,39,237.00	1,04,92,964.00
16-1-2016	Cr (as per details)	Journal	224	39,53,727.00	
	Service Tax @ 5.60	1,23,069.00 Cr			
	Testing Charges	44,275.00 Dr			
	Security Deposit GSPHC	4,42,747.00 Dr			
	TDS Expenses	44,275.00 Dr			
	Vat Account	26,565.00 Dr			
	Labour Cost	44,275.00 Dr			
	SBA Cess @ 0.5%	4,427.00 Cr			
	Construction Work	44,27,469.00 Cr			
	As per Bill No				
10-3-2016	Dr Dena Bank - 017713023831	Receipt	102		19,92,177.00
	Ch No RTGS				
	Cr (as per details)	Journal	270	19,92,177.00	
	Service Tax @ 5.60	96,178.00 Cr			
	Testing Charges	34,349.00 Dr			
	Security Deposit GSPHC	3,43,453.00 Dr			
	TDS Expenses	34,349.00 Dr			
	Vat Account	20,510.00 Dr			
	Labour Cost	34,349.00 Dr			
	Star Rate Expenses	10,76,213.00 Dr			
	SBA Cess @ 0.5%	3,435.00 Cr			
	Construction Work	34,34,927.00 Cr			
	As per Bill No				
28-3-2016	Cr (as per details)	Journal	263	39,93,822.00	
	Service Tax @ 5.60	1,14,502.00 Cr			
	Testing Charges	40,894.00 Dr			
	Security Deposit GSPHC	66,910.00 Dr			
	TDS Expenses	40,894.00 Dr			
	Vat Account	24,536.00 Dr			
	Labour Cost	40,894.00 Dr			
	SBA Cess @ 0.5%	4,089.00 Cr			
	Construction Work	40,89,359.00 Cr			
	As per Bill No				
29-3-2016	Dr Dena Bank - 017713023831	Receipt	109		39,93,822.00
	Ch No. Transfer				
				1,69,78,563.00	1,69,78,563.00



M/S JHANKHANA BUILDERS - (From 1-Apr-2015) -  
A/F-6 Dhanjibhai Complex  
Nr. Naranpura Railway Crossing  
Usmanpura  
Ahmedabad  
Gujarat University  
Ledger Account

1-Apr-2015 to 31-Mar-2016

Date	Particulars	Vch Type	Vch No	Debit	Credit
15-10-2015	Cr (as per details)	Journal	149	34,43,522.00	
	Service Tax @ 5.60	3,25,111.00 Cr			
	TDS Expenses	33,175.00 Dr			
	Retainership Money Gujarat University	1,65,873.00 Dr			
	Construction Work	33,17,459.00 Cr			
19-10-2015	Dr Dena Bank - 017713023831	Receipt	65		34,43,522.00
2-11-2015	Cr (as per details)	Journal	165	38,78,069.00	
	Service Tax @ 5.60	3,66,137.00 Cr			
	TDS Expenses	37,361.00 Dr			
	Retainership Money Gujarat University	1,86,804.00 Dr			
	Construction Work	37,36,097.00 Cr			
30-11-2015	Dr Dena Bank - 017713023831	Receipt	78		38,78,069.00
31-3-2016	Cr (as per details)	Journal	328	1,10,56,447.00	
	Service Tax @ 5.60	10,40,357.00 Cr			
	TDS Expenses	1,06,159.00 Dr			
	Retainership Money Gujarat University	5,30,794.00 Dr			
	SBA Cess @ 0.5%	37,156.00 Cr			
	Construction Work	1,06,15,887.00 Cr			
				1,83,78,038.00	73,21,591.00
Dr	Closing Balance				1,10,56,447.00
				1,83,78,038.00	1,83,78,038.00

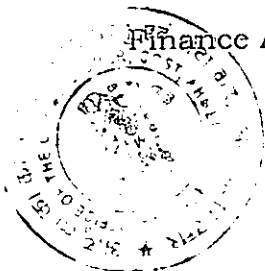


**28.5** I find that the assessee has claimed that their records for FY 2015-16 to 2017-18 (upto June 2017) were audited by the departmental audit team but the audit report was issued for FY 2016-17 to 2017-18 (upto June 2017), accordingly, they contested that they are not liable to pay service tax as alleged in the SCN. On going through the copy of Audit Report No. 110/2021-22 dated 22.04.2021 as submitted by the assessee, it is seen that the said audit was conducted on 30.03.2021 and had covered the period of FY 2016-17 to 2017-18 (upto June 2017). The said report does not mention about covering of the period of FY 2015-16 or having verified the records for the said period. Therefore, evidently no audit for FY 2015-16 was carried out by the audit team. In absence of any evidence, the arguments for having their record audited for FY 2015-16, as advanced by the assessee is not acceptable.

**28.6** The assessee has also contested that the SCN has been issued beyond five years hence it is time barred. In this regard, I find from the service tax liability worked out hereinabove that the short payment specifically pertains to the period Oct-15-March 16, for which the ST-3 Return was filed on 26.04.2016 by the assessee, whereas the SCN was issued on 23.04.2021. Hence, the SCN is found to be issued well within the Five Years from the relevant date as provided under Section 73 of the Finance Act, 1994. Hence, the contention of the assessee does not hold good.

**29.** Therefore, in view of the legal position and documentary evidence available on records, I hold that the assessee is liable to pay service tax of Rs. 14,37,195/- short paid on taxable service provided by them during FY 2015-16, out of total demand of Service tax of Rs. 2,22,79,814/- for FY 2015-16 and 2016-17. Therefore, I hold that the rest of the demand of service tax amounting to Rs. 2,08,42,619/- needs to be dropped the same being not sustainable and legally not tenable. Thus, the assessee is liable to pay total service tax of Rs. 14,37,195/- only and the same is therefore, required to be recovered from the assessee under the proviso to Section 73(1) of the Finance Act, 1994.

**30.** 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. 14,37,195/- for the period from FY 2015-16. 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 short paid service tax to the tune of Rs. 14,37,195/- 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 period from April 2015 to March 2016.

31. 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. 14,37,195/-.

32. From the facts and discussion aforementioned, I find that the assessee has failed to assess and discharge their appropriate service tax liability for the period from FY 2015-16. They have failed to disclose their actual taxable income by not declaring the correct taxable value of service provided by them, in their service tax returns filed with the department. They have also failed to pay legitimate appropriate service tax due to the govt. account, though they were having income which was liable to service tax. These acts of non /short payment of service tax, non filing of correct service tax returns, suppressing the material facts from the department were done with an intent to evade the payment of service tax. 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 service tax law. Moreover, returns are also filed online without any supporting documents. All these operate 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 evident that such fact of contravention and non payment of service tax, as discussed earlier, on the part of the assessee



only came to the notice of the department when the inquiry was initiated by the department, consequent upon the data shared by the CBDT. 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 v 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 the proviso to Section 73(1) of Finance Act, 1994. Hence, by invoking the extended period of five years, I hold that the assessee is liable to pay Service Tax of Rs. 14,37,195/- along with applicable interest under Section 75 of the Finance Act, 1994. And for the same reasons, the assessee has rendered themselves liable for penal action under the provisions of Section 78 of the Finance Act, 1994.

**33.** As regards, the proposal for imposition of penalty under Section 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.

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

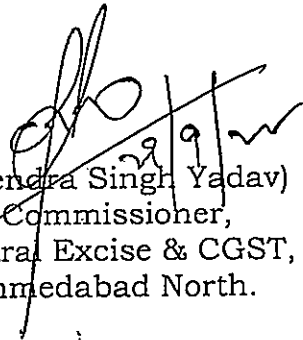
- (i) I hereby confirm the demand of service tax of Rs. 14,37,195/- (Rs. Fourteen Lakh Thirty Seven Thousand One Hundred Nineteen Five only) out of the total demand of service tax of Rs. 2,22,79,814/- for FY 2015-16 & 2016-17, short paid by the assessee for FY 2015-16 and order to recover the same from 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. 2,08,42,619/- accordingly.
- (ii) I order to charge the Interest at the appropriate rate on the demand of Service tax of Rs. 14,37,195/- and to recover the same from the assessee under Section 75 of the Finance Act, 1994;
- (iii) I impose penalty of Rs. 14,37,195/- 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 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/15-40/OA/2021

Date: .09.2022.

To

M/s. Prabhudas Becharbhai Patel,  
A-F-6, Dhanjibhai Complex,  
Nr. Naranpura Railway Crossing,  
Naranpura, Ahmedabad -380013

Copy to:

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

