


<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 & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
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निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-219/OA/2021

DIN- 20221164WT000000C69D

आदेश की तारीख / Date of Order : 09.11.2022
जारी करने की तारीख / Date of Issue : 09.11.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-24/2022-23

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 Girdharnagar Bridge, Girdharnagar, 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- 24/2022-23

M/s. Pramukh Projects, 25, Somnath Nagar Society, Nr. Sanghavi High School, Navarangpura Char Rasta, Ahmedabad -380013, having PAN No. AAPFP9337E were issued SCN F. No. STC/15-219/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. PRAMUKH PROJECTS, ARE AS FOLLOWS:

M/s. Pramukh Projects, 25, Somnath Nagar Society, Nr. Sanghavi High School, Navarangpura Char Rasta, Ahmedabad -380013 (hereinafter referred to as the 'Assessee' for the sake of brevity) were engaged in providing taxable services. It also appeared that the assessee having PAN No. AAPFP9337E, was not registered with Service tax department.

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

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

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

Sr. No.	F.Y.	Total Value for TDS (including 194C, 194Ia,194Ib,194J 194)	Service Tax rate	Service Tax Payable
1	2015-16	14,00,94,927	14.5%	2,03,13,764
2	2016-17	7,16,79,148	15%	1,07,51,872
	Total	21,17,74,075		3,10,65,636

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

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

7. All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appeared to be publishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time. The said assessee appeared liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.

8. No data was shared by the CBDT, for the period FY 2017-18 (upto June-2017), therefore, at the time of issuance of SCN it was not possible to quantify short payment of Service Tax, if any, for the period FY 2017-18 (upto June-2017).

Unquantified demand at the time of issuance of SCN.

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

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

9. The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2017-18 (upto June-2017) had not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to the department. The assessee had also failed to provide the required information even after the issuance of letter from the Department in view of which the assessable value for the year 2017-18 (upto June-2017) was not ascertainable at the time of issuance of this Show Cause Notice. If any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action was to be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period 2017-18 (upto June-2017) covered under subject Show Cause Notice, was to be recovered from the assessee.

10. It appeared that the assessee had not obtained Service Tax Registration from the department for the services provided by them during FY 2015-16 to FY 2017-18 (up to June,2017). It appeared that the assessee had not paid actual service tax by way of willful suppression of facts and in contravention of provision of the Finance Act, 1994 and rules made there under relating to levy and collection of service tax, with intent to evade payment of service tax. Hence, the service tax amounting to Rs. 3,10,65,636/- appeared to be recoverable from the assessee, under the provisions of Section 73(1) of the Finance Act,1994 by invoking extended period of time, alongwith interest thereof at appropriate rate under the provisions of section 75 of the Finance Act,1994. The provisions of Finance Act,1994 read with Service Tax Rules,1994 framed there under, were saved by the Section 174(2) of the CGST Act,2017.

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

12. Therefore, a Show Cause Notice No. STC/15-219/OA/2021 dated 23.04.2021 was issued by the Commissioner, Central GST & Central Excise, Ahmedabad North to the assessee, asking them as to why;

- (i) Service Tax of Rs. 3,10,65,636/- which was not paid for the financial year 2015-16 & 2016-17, should not be demanded and recovered from them under the proviso to Sub- Section (1) of Section 73 of Finance Act, 1994;
- (ii) Service Tax liability not paid during the Financial Year 2017-18 (upto June, 2017), ascertained in future, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994;
- (iii) Interest at the appropriate rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;
- (iv) Penalty under the provisions of Section 77(1)(a), 77(1)(c) & 77(2) of the Finance Act, 1994 as amended, should not be imposed on them ;
- (v) Penalty under Section 78 of the Finance Act, 1994, as amended, should not be imposed upon them for suppressing the full value of taxable services and material facts from the department resulting into non-payment of Service Tax as explained herein above.

13. **DEFENCE REPLY:**

The assessee vide their letter dated 28.04.2021 tendered a written submission, wherein they have interalia stated that:

- They were engaged in providing exempted services. The services provided by them were covered under Negative List of services. They were therefore not liable to pay service tax on services provided by them.
- They had carried out construction work for (i) Ahmedabad Municipal Corporation (ii) Gujarat Housing Board (iii) Gujarat Council of Elementary Education -Sarva Siksha Abhiyan. They also contested that the works that they had carried out were covered under "Negative List of services -Section 66D -Item Sr.No. 12 Read with Sr. No. 29(h) -Sub Contractor"
- There was no intention to evade the payment of service tax. They had provided services to Government Departments only.
- It is not true that they had failed to provide information /documents called for by the department. Thus, they are not liable for penal action.

The assessee submitted the following document in support of exemption claimed from service tax on services rendered by them.

- Form 26AS for FY 2015-16, 2016-17 and 2017-18
- Income Ledgers for FY 2015-16, 2016-17 and 2017-18
- Two Work Orders issued to M/s. Yogi Construction by AMC and GHB.
- Work Order issued by Gujarat Council of Elementary Education
- RA Bills raised by them for carrying out the work on subcontract basis
- Two Subcontract Agreements entered into with M/s. Yogi Construction Co.

14. PERSONAL HEARING:

Personal hearings were granted to the assessee on 04.05.2022, 23.05.2022, 20.06.2022, 26.07.2022 and 07.09.2022. The assessee did not appear for any of the personal hearing fixed on the above dates. Thereafter, the assessee was granted a final personal hearing on 14.10.2022, which was attended by Shri Siddharth Patel, Partner of the assessee. During the course of personal hearing, he reiterated the arguments/contention raised in their written submission dated 28.04.2021. He submitted that the service provided by the assessee are exempted vide Notification No. 25/2012-ST, as the services were provided to Govt./Government controlled entities meant for public usage.

DISCUSSION AND FINDINGS:

15. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 28.04.2021, the documents submitted and oral submission made by the assessee during the course of personal hearing on 14.07.2022.

16. On going through the SCN dated 23.04.2021, I find that basically the essence of the case here is that data of "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" (as per TDS Statement-Form 26AS) was shared by the CBDT with CBIC for FY 2015-16 and 2016-17. The difference in taxable value was worked out after comparing the income declared in Form 26AS (i.e. "Total Amount Paid/Credited under 194C, 194H, 194I, 194J") vis-à-vis taxable value disclosed in ST-3 Returns. As per SCN dated 23.04.2021, the difference of Rs. 21,17,74,075/- in value was observed for FY 2015-16 and 2016-17, therefore, it was alleged vide SCN dated 23.04.2021, that the assessee had short/not paid the service tax of Rs. 3,10,65,636/- on such differential value, for providing the taxable service. Accordingly, I find that the

issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 3,10,65,636/- short/not paid on the differential taxable value of Rs. 21,17,74,075/- for the Financial Year 2015-16 and 2016-17 as demanded in SCN dated 23.04.2021 under proviso to section 73(1) of Finance Act, 1994 or not.

17. I find that Section 194C of the Income Tax Act deals with the tax deduction at source (TDS) that is to be compulsorily deducted from any payments that have been made to any person who is a resident contractor or a subcontractor. Therefore, any amount paid/credited on which TDS has been deducted under Section 194C from such amount, the amount paid/credited is a contract income from contractual activities carried out. Therefore, such activity is covered under the definition of "Service" under Section 65B(44), accordingly, it is subject to the service tax under section 66B of the Finance Act, unless the services provided are covered under negative list of service or exemption notification or exclusion clause provided under definition of "Service" as per 65B(44). I find that there is no dispute as far as the receipt of the consideration for provision of service by the assessee is concerned. The assessee has admittedly stated in their defence reply dated 28.04.2021 that they had provided construction services to government. Accordingly, I find that there is no dispute as far as the question of provision of services by the assessee is concerned.

18. I find that the assessee vide their defence reply dated 28.04.2021 has contested that they had provided service by way of construction work for (i) Ahmedabad Municipal Corporation (ii) Gujarat Housing Board (iii) Gujarat Council of Elementary Education -Sarva Siksha Abhiyan. They have also contested that the works that they had carried out were covered under "Negative List of services -Section 66D -Item Sr.No. 12 Read with Sr. No. 29(h) - Sub Contractor" accordingly they were not liable to pay service tax on provision of such services during FY 2015-16 and 2016-17.

18.1 I find that the defence reply is somewhat vague, as there is no serial number like "12" or "29(h)" under Section 66D of the Finance Act. However, I find that the assessee during the course of personal hearing, has claimed the exemption from service tax under Notification No. 25/2012-ST. Therefore, it appears that the assessee was referring to the exemption contained/available under Notification No. 25/2012-ST vide Entry No. 12 read with 29(h). As already discussed, I am of the opinion that there is no dispute regarding provision of services by the assessee. Therefore, the issue that needs

to be decided is whether the services provided by the assessee were eligible for exemption under Notification No. 25/2012-ST vide Entry 12 read with 29(h) or otherwise as claimed by the assessee.

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

- Form 26AS for FY 2015-16, 2016-17 and 2017-18
- Income Ledgers for FY 2015-16, 2016-17 and 2017-18
- Two Work Orders issued to M/s. Yogi Construction by AMC and GHB.
- Work Order issued by Gujarat Council of Elementary Education
- RA Bills raised by them for carrying out the work on subcontract basis
- Two Subcontract Agreements entered into with M/s. Yogi Construction Co.

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

Value of services considered in the subject SCN dated 23.04.2021				
Sr. No.	F.Y.	Total Value for TDS (including 194C, 194Ia, 194Ib, 194J 194)	Service Tax rate	Service Tax Demand as per the SCN
1	2015-16	14,00,94,927	14.5%	2,03,13,764
2	2016-17	7,16,79,148	15%	1,07,51,872
	Total	21,17,74,075		3,10,65,636

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	Yogi Construction Co	140094927	194C
	TOTAL	140094927	

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	Gujarat Council of Elementary Education	5217764	194C
2	Yogi Construction Co	66461384	194C
	TOTAL	71679148	

FY 2017-18 - 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 (upto June 2017) (in Rs.)	Section of IT Act, under which TDS deducted
1	Yogi Construction Co	10881594	194C
	TOTAL	10881594	

In view of the above, I would now proceed with data of Form 26AS (amount paid or credited to the assessee by the recipient of service and on which TDS under Section 194C of IT Act has been deducted by the recipient of service), for deciding the matter as the same is the basis of the demand in the SCN dated 23.04.2021.

21. It is also observed from data of Form 26AS that the assessee had received the payments from only two recipient of services i.e. M/s. Yogi Construction Co. and Gujarat Council of Elementary Education, Gandhinagar during FY 2015-16, 2016-17 and 2017-18 (upto June 17) for providing the services.

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

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

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

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

(b)

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

(d) canal, dam or other irrigation works

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

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

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

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

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

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

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

Provided that nothing contained in this entry shall apply on or after the 1st April, 2020;]

(Inserted vide Notification No. 9/2016- ST dated, 1.3.2016 w.e.f.1.3.2016.)"

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

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

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

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

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

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

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

29. Services by the following persons in respective capacities —

(a)

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

22.1. From the above legal position, it is seen that the E.No. 12(a) was omitted w.e.f. 01.04.2015 vide Notification No. 6/2015-ST dated 1.3.2015. However, by virtue of insertion of new Entry No. 12A(a) to the Notification 25/202-ST vide Notification 09/2016-ST dt. 01.03.2016 and insertion of Section 102 vide Finance Act, 2016 dated 14.05.2016, the exemption was again restored for "services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works for use other than the commercial, Industry or business or profession" with condition that the contract had been entered prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

23. The assessee has provided the following Work Orders and Sub Contract Agreements entered into by them with Main Contractors, in support of their arguments for the service rendered by them being exempt service. The said documents and the relevant information emerging from the said documents are given below:

Sr. No.	Documents details (Work Order / Sub Contract agreement)
1	Work Order No. ૩૯/ડી/બી/ટી/કે-૩/ dated 19.05.2015 issued to M/s. Yogi Construction Co. by the Office of the Executive Engineer, Gujarat Housing Board, Ahmedabad-13 for Construction /Development of Multi Storied Residential Building at Dehgam (40 Shops + 48 LIG-1 + 72 LIG-2 +12 MIG 1 units) - Third Phase of Package 20.
2	Sub Contract Agreement dated 20.05.2015 entered into by M/s. Yogi Construction and M/s. Pramukh Projects (the assessee), whereby subcontracting the work of Construction of Flat Type High Rise Building cum Commercial units including on site Development with all infrastructure services for various income group at Dehgam under "Mukhya Mantri Gruh Yojana" Package No. 20 on Back to Back terms of the contract to M/s. Pramukh Projects.
3	Work Order No. 2599 dated 12.02.2014 issued to M/s. Yogi Construction Co. by Ahmedabad Municipal Corporation for Construction of 581 LIG Residential Flats including Internal infrastructure development work.
4	Sub Contract Agreement dated 07.02.2014 entered into by M/s. Yogi Construction and M/s. Pramukh Projects (the assessee), whereby subcontracting the work of Construction of 581 LIG Multistoried Residential Flats including internal infrastructure and development work within the plot at various locations in Ahmedabad (LIG Package-4) to M/s. Pramukh Projects
5	Work Order No. SSA/Civil/ 2016-17 /22927 dated 15.06.2016 issued to M/s. Pramukh Projects by Gujarat Council of Elementary Education -Sarva Siksha Abhiyan (SSA), Gandhinagar for the construction of 24 Additional Class Rooms in Ahmedabad District.

23.1 From the above work orders, it is observed that M/s. Yogi Construction Co. were awarded work/contract of (i) Construction /Development of Multi Storied Residential Building at Dehgam (40 Shops + 48 LIG-1 + 72 LIG-2 +12 MIG 1 units) - Third Phase of Package 20 by Gujarat Housing Board vide Work Order No. Work Order No. ૩૯/ડી/બી/ટી/કે-૩/

dated 19.05.2015 and (ii) Construction of 581 LIG Residential Flats including Internal infrastructure development work by Ahmedabad Municipal Corporation vide Work Order No. 2599 dated 12.02.2014. The said contracts were further subcontracted to the assessee by M/s. Yogi Construction Co. vide Sub Contract Agreements dated 20.05.2015 and 07.02.2014 respectively. On perusing the said contracts, it is seen that the said contracts were subcontracted to the assessee by M/s. Yogi Construction on Back to Back terms and condition of Main Contracts.

23.2 Further, it is also observed that the assessee was awarded work/contract of Construction of 24 Additional Class Rooms in Ahmedabad by Gujarat Council of Elementary Education (Serva Siksha Abhiyan) vide Work Order No. SSA/Civil/ 2016-17 /22927 dated 15.06.2016.

24. As regards availability of exemption from service tax under Entry No. 12(a) read with 12A(a) of Notification No. 25/2012-ST, it is quite clear from the legal position as discussed herein above that the service 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. But, by virtue of insertion of new entry Sr. 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 with the condition that service provided were exempted only if the work contract had been entered into prior to 01.03.2015.

25. As mentioned hereinabove, the assessee had provided construction services to Ahmedabad Municipal Corporation, Gujarat Housing Board and Gujarat Council for Elementary Education (Serva Siksha Abhiyan) either directly or indirectly on subcontract basis. I find that Ahmedabad Municipal Corporation being the local body is a Local Authority. Gujarat Housing Board has been set up under Gujarat Housing Board Act, 1961 for providing houses to peoples belonging to low income groups, thereby catering to their need of housing. GHB is fully under control of the Gujarat Government and undertakes the functions as entrusted to them by the government, thus, it qualifies to be Government Authority. Gujarat Council for Elementary Education (GCEE) is an administrative agency of Department of Education Gujarat Government. The council is responsible for administration of

elementary education in the state as well as implementing state level agency for Serva Siksha Abhiyan. The Council has been registered under the Societies Registration Act 1860 and undertakes the functions as entrusted to them by the government. Therefore, GCEE also qualifies to be the governmental authority. As regard the condition regarding date of contract as laid down under the said entry no. 12A(a), it is evidently apparent from the documents that two work orders i.e. work orders issued by Gujarat Housing Board and Gujarat Council of Elementary Education (Serva Siksha Abhiyan) have been issued after 01.03.2015. Therefore, the condition as stipulated is not satisfied in respect of construction services provided to Gujarat Housing Board and Gujarat Council of Elementary Education. Accordingly, the exemption from service tax is not available to the assessee on services provided to these two entities.

25.1 As regard claim for exemption from service tax by the assessee on provision of services to Ahmedabad Municipal Corporation by them, I would like to reiterate the condition /criteria as laid down under Entry No. 12A(a) of Notification No. 25/2012-ST. The exemption from service tax is available only if the following criteria are satisfied:

- (i) The services had been provided to the Govt. /Govt. Authority/ Local Authority by way of construction of a civil structure/ original work, not meant for use for commerce, industry or any other business or profession, and
- (ii) for which the contract had been entered into prior to 01.03.2015.

I find from the documentary evidences submitted that the assessee has provided services by way of "construction of civil structure (residential units-LIG)" to AMC on subcontract basis. The AMC being local body qualifies to be local authority and the AMC being a local authority, it was their charter to provide houses to weaker section of the society. As residential type "LIG" itself suggests the residential units built were intended for the people belonging to Low Income Group and the same cannot be interpreted as being used for commercial, industrial, or business purposes. Further, the work order for construction of residential units was issued by AMC prior to 01.03.2015. Accordingly, I find that all the conditions /criteria of Entry No. 12A(a) of Notification No. 25/2012-ST are satisfied. Accordingly, I find that the construction services provided to AMC on subcontract basis, is squarely covered under Entry No. 12A(a) of Notification No. 25/2012-ST dated 20.06.2012 read with Entry No. 29(h), as the said services were also exempt from service for Main Contractor (i.e. M/s. Yogi Construction Co.) and thus the

assessee is eligible for exemption from service tax in respect of services provided to AMC.

26. In order to bifurcate/quantify the service wise payment received from M/s. Yogi Construction Co. for the provision of services to AMC and GHB on subcontract basis during FY 2015-16 & 2016-17, comparison of the RA Bill raised by the assessee and Income ledgers vis-à-vis the transaction entries (payment made/credited to the assessee) as appearing in Form 26AS, is carried out as under:

FY 2015-16		As per Form 26AS statement			Corresponding Documents produced by the assessee
Sr. No.	Name of the TDS deductor	Transaction date	Amount paid /credited (Rs.)		
1	Yogi Construction Co	31-03-2016	15460567	<ul style="list-style-type: none"> • RA Bill No. 09 dated 31.03.2016 for Rs. 14239706/- raised by the assessee for carrying out work of Project of LIG -IV, AMC • Income ledger 	
2	Yogi Construction Co	22-03-2016	11299192	<ul style="list-style-type: none"> • RA Bill No. 01 dated 22.03.2016 for Rs. 10393985/- raised by the assessee for carrying out work of Project of GHB Dehgam • Income ledger 	
3	Yogi Construction Co	21-03-2016	23643584	<ul style="list-style-type: none"> • RA Bill No. 08 dated 21.03.2016 for Rs. 24768032/- raised by the assessee for carrying out work of Project of LIG -IV, AMC • Income ledger 	
4	Yogi Construction Co	15-02-2016	5246876	<ul style="list-style-type: none"> • RA Bill No. 07 dated 15.02.2016 for Rs.4832550/- raised by the assessee for carrying out work of Project of LIG -IV, AMC • Income ledger 	
5	Yogi Construction Co	06-11-2015	20932004	<ul style="list-style-type: none"> • RA Bill No. 06 dated 06.11.2015 for Rs.19279085/- raised by the assessee for carrying out work of Project of LIG -IV, AMC • Income ledger 	
6	Yogi Construction Co	25-10-2015	12962505	<ul style="list-style-type: none"> • RA Bill No. 05 dated 25.10.2015 for Rs. 1,19,38,907/- raised by the assessee for carrying out work of Project of LIG -IV, AMC • Income ledger 	
7	Yogi Construction Co	13-10-2015	21751168	<ul style="list-style-type: none"> • RA Bill No. 04 dated 13.10.2015 for Rs. 1,70,42,074 /- raised by the assessee for carrying out work of Project of LIG -IV, AMC • Income ledger 	
8	Yogi Construction Co	15-08-2015	12297604	<ul style="list-style-type: none"> • RA Bill No. 03 dated 15.08.2015 for Rs. 1,13,26,510/- raised by the assessee for carrying out work of Project of LIG -IV, AMC • Income ledger 	
9	Yogi Construction Co	11-07-2015	6611854	<ul style="list-style-type: none"> • RA Bill No. 02 dated 11.07.2015 for Rs. 6089742/- raised by the assessee for carrying out work of Project of LIG -IV, AMC • Income ledger 	
10	Yogi Construction Co	11-05-2015	9889573	<ul style="list-style-type: none"> • RA Bill No. 01 dated 11.05.2015 for Rs. 91,08,633/- raised by the assessee for carrying out work of Project of LIG -IV, AMC • Income ledger 	
Total			140094927		

FY 2016-17		As per Form 26AS statement			Corresponding Documents produced by the assessee
Sr. No.	Name of the TDS deductor	Transaction date	Amount paid /credited (Rs.)		
1	i	Gujarat Council of Elementary Education	31-03-2017	1831507	• Income Ledger
	ii	Gujarat Council of Elementary Education	02-03-2017	3386257	• Income Ledger
Sub Total			5217764		

2	i	Yogi Construction Co	05-03-2017	5439939	• RA Bill No. 06 dated 05.03.2017 for Rs. 5298500/- raised by the assessee for carrying out work of Project of GHB Dehgam • Income ledger
	ii	Yogi Construction Co	31-12-2016	10492314	• RA Bill No. 05 dated 31.12.2016 for Rs. 9651845/- raised by the assessee for carrying out work of Project of GHB Dehgam • Income ledger
	iii	Yogi Construction Co	01-11-2016	12906211	• RA Bill No. 04 dated 12.10.2016 for Rs. 11458237/- raised by the assessee for carrying out work of Project of GHB Dehgam • Income ledger
	iv	Yogi Construction Co	18-08-2016	12983799	• RA Bill No. 03 dated 18.08.2016 for Rs. 10983421/- raised by the assessee for carrying out work of Project of GHB Dehgam • Income ledger
	v	Yogi Construction Co	03-07-2016	14281324	• RA Bill No. 02 dated 03.07.2016 for Rs. 12643911/- raised by the assessee for carrying out work of Project of GHB Dehgam • Income ledger
	vi	Yogi Construction Co	15-05-2016	10357797	• RA Bill No. 01 dated 15.05.2016 for Rs. 8782182/- raised by the assessee for carrying out work of Project of GHB Dehgam • Income ledger
		Sub Total		66461384	
		Grand Total		71679148	

26.1 From the above tabulated details, it is discerned that the assessee had received payments from M/s. Yogi Construction Co. for providing construction services to AMC & GHB on subcontract basis and from Gujarat Council of Elementary Education for providing construction services, as under:

FY 2015-16			
Sr. No.	Payment Received from	Service Description	Amount Received
1	M/s. Yogi Construction Co.	Construction /Development of Multi Storied Residential Building at Dehgam (40 Shops + 48 LIG-1 + 72 LIG-2 +12 MIG 1 units) - Third Phase of Package 20 for Gujarat Housing Board, Ahmedabad-13.	11299192
2		Construction of 581 LIG Residential Flats including Internal infrastructure development work for Ahmedabad Municipal Corporation	128795735
		Total	140094927

FY 2016-17			
Sr. No.	Payment Received from	Service Description	Amount Received
1	M/s. Yogi Construction Co.	Construction /Development of Multi Storied Residential Building at Dehgam (40 Shops + 48 LIG-1 + 72 LIG-2 +12 MIG 1 units) - Third Phase of Package 20 for Gujarat Housing Board, Ahmedabad-13.	66461384
2	Gujarat Council of Elementary Education	Construction of 24 Additional Class Rooms in Ahmedabad District for Gujarat Council of Elementary Education - Sarva Siksha Abhiyan (SSA)	5217764
			71679148

26.2 As discussed herein above that the Construction services of 581 LIG Residential Flats for AMC are eligible for exemption from service tax during FY 2015-16 only, as the same are covered under Notification No. 25/2012-ST vide Entry No. 12A(a) read with 29(h). The rest of the services provided by the assessee are not covered under Notification No. 25/2012-ST, thus, the assessee is liable to pay service tax on the services provided by them other

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

26.3 I find that the value of service portion in execution of works contract has to be determined as per Service Tax (Determination of Value) Rules, 2006 (Valuation Rules). Accordingly, in case of works contracts entered into for execution of "Original Works", service tax shall be payable on Forty Percent of the total amount charged for the works contract. In other case of works contract (i.e. other than Original Work, including repair, maintenance, finishing services), the service tax shall be payable on Seventy Percent of the total amount charged for the works contract. As discussed hereinabove, the services provided by the assessee is in nature of Works Contract service, therefore, valuation of service portion in respect of services provided is to be determined according to the Valuation Rules. As per the documents, the services provided by the assessee appear to be "New Construction" in nature, therefore, the service appears to be covered under the meaning of "Original Work" as provided under Valuation Rules. Therefore, I find that the assessee is required to pay service tax on 40% of the amount charged by them from M/s. Yogi Construction Co. and Gujarat Council for Elementary Education for providing construction services by way of "Construction /Development of Multi Storied Residential Building at Dehgam (40 Shops + 48 LIG-1 + 72 LIG-2 +12 MIG 1 units) - Third Phase of Package 20 **for Gujarat Housing Board**" and Construction of 24 Additional Class Rooms in Ahmedabad District for Gujarat Council of Elementary Education -Sarva Siksha Abhiyan (SSA) respectively.

26.4 Having considered the above legal and factual position/discussion, the service tax liability has been worked out herein under on the basis of amount paid to the assessee as per Form 26AS, for providing services by the assessee to Gujarat Housing Board and Gujarat Council of Elementary Education.

Sr. No.	As per Form 26AS		Abatement under valuation Rules (Rate)	Net Taxable Value (After abatement)	Service Tax Rate %	Service Tax Payable
	Dt. of transaction	Amount paid to the assessee (Value of service provided)				
FY 2015-16						
By M/s.Yogi Construction Co. for Services to GHB						
1	22/03/2016	11299192	60%	4519677	14.5	655353
		11299192		Sub total		655353
FY 2016-17						
By M/s. Gujarat Council of Elementary Education						
1	31/03/2017	1831507	60%	732603	15	109890
2	02/03/2017	3386257	60%	1354503	15	203175
By M/s.Yogi Construction Co. for Services to GHB						
3	05/03/2017	5439939	60%	2175976	15	326396
4	31/12/2016	10492314	60%	4196926	15	629539
5	01/11/2016	12906211	60%	5162484	15	774373
6	18/08/2016	12983799	60%	5193520	15	779028
7	03/07/2016	14281324	60%	5712530	15	856879
8	15/05/2016	10357797	60%	4143119	14.5	600752
		71679148		Sub total		4280033
				Grand Total		4935386

26.5 Having considered these factual and documentary evidences available on record, I find that the assessee has failed to establish that the services rendered by them were exempt service as claimed by them except for the services provided to AMC on subcontract basis. Accordingly, the assessee is liable to pay service tax of Rs. 49,35,386/- (Rs. 6,55,353/- for FY 2015-16 + Rs. 42,80,033/- for Rs. 2016-17) under section 66B read with Rule 2 of Service Tax Rules 1994 for rendering taxable services by them. Therefore, I hold that the assessee has failed to pay service tax amounting to Rs. 49,35,386/-, which was required to be paid under Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules 1994 for taxable services provided during FY 2015-16 and 2016-17 by them. Since, the assessee is liable to pay service tax of Rs. 49,35,386/- out of total demand of Service Tax of Rs. 3,10,65,636/-, the rest of demand of Service Tax of Rs. 2,61,30,250/- is liable to be dropped on merit being incorrect and legally not sustainable. Therefore, I hold that the assessee is required to pay service tax of Rs. 49,35,386/- and thus, the same is required to be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

27. Based on above facts and discussion, I find that the assessee has contravened the provisions of (i) Section 68 and 66B of the Finance Act, 1994 read with Rules 2 and 6 of the Service Tax Rules 1994, in as much as they have not paid service tax to the tune of Rs. 49,35,386/- though they were liable to pay the same on provision of taxable services (ii) Section 69 of Finance Act, 1994 read with Rule 4 of Service Tax Rules in as much as they have failed to obtain service tax registration as required for the person liable to pay service tax and (iii) Section 70 of Finance Act, 1994 read with Rule 6 & 7 of the

Service Tax Rules, 1994 in as much as they have failed to assess their correct service tax liability and have failed to file ST-3 Returns for the FY 2015-16 and 2016-17.

28. 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. 49,35,386/-.

29. As regards the levy of service tax for FY 2017-18 (upto June 2017), I find that the subject SCN has clearly spelt out that the demand for FY 2017-18 (upto June 2017) was not ascertainable at the time of issuance of SCN, but if consequently, any other amount was to be disclosed by income tax department/or any other source/agency, action was to be initiated for recovery of service tax liability alongwith the present SCN. Therefore, as sought in the subject SCN, the demand for FY 2017-18 (upto June 2017) is also required to be adjudicated upon in the present SCN. The principles and manner of computing the amounts due from the assessee were clearly laid down in the SCN, as envisaged under Board's Master Circular 1053/02/2017-CX dated 10.03.2017. Now, the assessee has itself produced the copy of Form 26AS from FY 2017-18 and Income Ledger for FY 2017-18 (upto June 2017). Accordingly, the taxable value /income from services as appearing in Form 26AS/ income ledger for FY 2017-18 (upto June 2017), is to be considered for computing the tax liability under the subject SCN.

29.1 I find from Form 26AS that the assessee had received the payment of Rs. 1,08,81,594/- during FY 2017-18 (upto June 2017) from M/s. Yogi Construction Co. for construction services provided to them on subcontract basis. As discussed at length in forgoing paras, the assessee was liable to pay service tax on services rendered other than to AMC on subcontract basis. Accordingly, the assessee is also liable to pay service tax on payment received from M/s. Yogi Construction Co. during FY 2017-18 (upto June 2017) as well. Considering the abatement available on works contract service, the service tax liability of the assessee for FY 2017-18, has been worked out as under.

Sr. No.	As per Form 26AS		Abatement under valuation Rules (Rate)	Net Taxable Value (After abatement)	Service Tax Rate %	Service Tax Payable	Remarks
	Dt. of transaction	Amount paid to the assessee (Value of service provided)					
FY 2017-18 (upto June 17)							
By M/s.Yogi Construction Co.							
1	28/06/2017	4437200	60%	1774880	15	266232	Not Exempt
2	15/04/2017	6444394	60%	2577758	15	386664	Not Exempt
		10881594				652896	

29.2 In view of the above, the assessee is also liable to pay service tax of Rs. 6,52,896/- for FY 2017-18 (upto June 2017) under Section 66B read with Section 68 of Finance Act, 1994 and the same is required to be recovered under the proviso to Section 73(1) of Finance Act, 1994 alongwith applicable interest under Section 75 of the Finance Act, 1994, as demanded in the Subject SCN.

29.3. I find that the subsequent inclusion of such difference in value of income for computing tax liability, which was not ascertainable at the time of issuance of SCN which has been communicated to the assessee, is valid in law. In this regard, I rely on the decision of the Hon'ble Madhya Pradesh High Court in the case of Gwalior Rayon Mfg. (Wvg.) Co. vs Union Of India (UOI) reported at [1982 (10) ELT 844 (MP)], wherein the High court had observed that "*necessary particulars to enable the petitioner to show cause have not been stated in the notice. This cannot be a ground for quashing the notice at this stage. It is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause, assuming the same to be deficient*". The relevant para of the said decision is reproduced as under:

24. It was then contended that necessary particulars to enable the petitioner to show cause have not been stated in the notice. This cannot be a ground for quashing the notice at this stage. It is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause, assuming the same to be deficient. It may however, be mentioned that the petitioner has understood the notice to indicate that the allegation of short levy is based on the value of sulphuric acid manufactured by another assessee at Kota, the nearest place, and the proposed value has also been mentioned in the notice stating that it is sub-clause (i) and not sub-clause (ii) of Rule 6(b) that applies to the petitioner's case. According to the respondents, these are the only facts on which the notice to show cause against revision of the assessable value has been given. Whether a case of short levy on the basis stated in the show cause notice is made out is yet to be determined in the enquiry.

30. From the facts and discussion aforementioned, I find that in the instant case the assessee had not obtained the service tax registration though they were liable to pay service tax on taxable services rendered by them. Thus, the assessee had failed to pay legitimate service tax due to the government despite the fact that they were engaged in providing 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 obtaining service tax registration and not filing /showing their actual taxable income in the ST-3 Returns and also by not paying the Service Tax due on them. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax payers' behaviour.

The responsibility on the tax payer to voluntarily make information disclosures is much greater in the system of self-assessment. The omission or commission on the part of the assessee has clearly demonstrated their intention to evade payment of service tax, as they were very much aware of the unambiguous provisions of Finance Act, 1994 and Rules made there under. They have failed to disclose to the department at any point of time, the fact regarding the claiming of exemption without being eligible under Notification No. 25/2012-ST as discussed in forgoing paras during FY 2015-16, 2016-17 & 2017-18 (upto June 2017). These facts would not have come to light if the department had not initiated inquiry on the basis of data shared by the Income Tax Department. Moreover, the government has from the very beginning placed full trust on the assessee, accordingly measures like self assessment etc. based on mutual trust and confidence have been put in place. Further, the assessee are not required to maintain any statutory or separate records under the Excise / service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for purpose of excise & Service tax laws. Moreover, returns are also filed online without any supporting documents. All these operates on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provision is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is also evident that such fact of contravention and non paying the service tax by not declaring taxable value of the service provided, as discussed earlier, on the part of the assessee came to the notice of the department only when the inquiry was initiated by the department. In the case of *Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241*, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In *2009 (23) STT 275, in case of Lalit Enterprises vs. CST Chennai*, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under proviso to Section 73(1) of the Finance Act, 1994. By invoking the extended period of time of 5 years, service tax totally amounting to Rs 55,88,282/- (including cess) (Rs. 49,35,386/- for FY 2015-16 & 2016-17 plus Rs. 6,52,896/- for FY 2017-18 (upto June 2017)) is required to be recovered along with applicable interest under Section 75 of the Finance Act, 1994 from the assessee. For the same reasons, all ingredient for imposing penalty on the

assessee under Section 78 exists, therefore, the assessee is also liable for penal action under the provisions of Section 78 of the Finance Act, 1994.

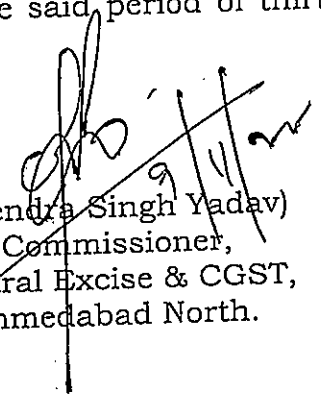
31. As regards, the proposal for imposition of penalty under Section 77(1)(a), 77(1)(C) and 77(2) of the Finance Act, 1994, as discussed herein above, I find that the assessee had failed to obtain the service tax registration as required under Section 69(1) of the Finance Act, 1994 as they were liable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

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

- (i) I hereby confirm the demand of service tax of Rs. 49,35,386/- (Rs. Forty Nine Lakh Thirty Five Thousand Three Hundred Eighty Six only) out of the total demand of service tax of Rs. 3,10,65,636/- for FY 2015-16 & 2016-17, not paid by the assessee and order to recover the same from the assessee under proviso to Sub-section (1) of Section 73 of Finance Act, 1994. I further drop the rest of the demand of Service Tax of Rs. 2,61,30,250/- accordingly.
- (ii) I confirm the demand of Service tax of Rs. 6,52,896/- not paid, which was to be ascertained for FY 2017-18 (upto June 2017), and order to recover the same from the assessee under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (iii) I order to charge Interest at the appropriate rate on the demand of Service tax of Rs. 49,35,386/- and 6,52,896/- and to recover the same from the assessee under Section 75 of the Finance Act, 1994;
- (iv) I impose penalty of Rs. 49,35,386/- and Rs. 6,52,896/- on the assessee under the provision of Section 78 of the Finance Act, 1994.

- (v) I impose penalty of Rs. 10,000/- on the assessee under the provision of Section 77(2) of the Finance Act, 1994, for failure to assess their service tax liability and also for failure to file ST-3 Returns.
- (vi) I impose penalty of Rs. 10,000/- on the assessee under the provision of Section 77(1)(a) of the Finance Act, 1994, for failure to obtain service tax registration under Section 69 of the Finance Act, 1994.
- (vii) I refrain from imposing penalty under Section 77(1)(c) of Finance Act, 1994 for the reasons discussed hereinabove.

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


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

By Regd. Post AD./Hand Delivery
F.No. STC/15-219/OA/2021

Date: 09.11.2022.

To

M/s. Pramukh Projects,
25, Somnath Nagar Society,
Nr. Sanghavi High School,
Navarangpura Char Rasta,
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.