


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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा सं./ STC/15-113/OA/2021

DIN- 20221164WT000000C732

आदेश की तारीख / Date of Order : 29.11.2022

जारी करने की तारीख / Date of Issue : 29.11.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-27/2022-23

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

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

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

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

हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ) उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल, उसकी भी उतनी ही, की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से कम प्रतियाँ संलग्न की जाएंगी म एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970, की अनुसूची, 1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

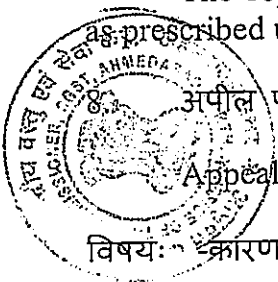
The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

अपील पर भी रु 4.00 का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice No. STC/15-113/OA/2021 dated 23.04.2021 issued to M/s. Viralbhai Shankerlal Patel, B-42, Sahjanand Apartment, Near Maharaja Agresen School, Memngar, Ahmedabad - 380052 (GUJARAT).



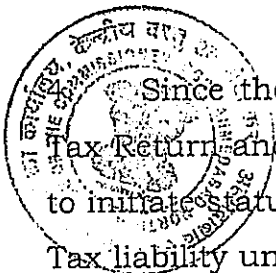
**ORDER-IN-ORIGINAL NO. AHM-EXCUS - 27/2022-23**

M/s. Viralbhai Shankerlal Patel, B-42, Sahjanand Apartment, Near Maharaja Agresen School, Memngar, Ahmedabad - 380052 (GUJARAT) were issued Show Cause Notice No. STC/15-113/OA/2021 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

**Brief facts of the case pertaining to Show Cause Notice No. STC/15-113/OA/2021 dated 23.04.2021 are as follows:**

1. M/s. Viralbhai Shankerlal Patel, B-42, Sahjanand Apartment, Near Maharaja Agresen School, Memngar, Ahmedabad - 380052 (GUJARAT) (hereinafter referred to as the 'Assessee' for the sake of brevity) were registered under Service Tax having Registration No. ABBPP5471ASD001 and were engaged in providing Services which were taxable.
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" of the Assessee was carried out by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17. The details of the analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC). On the basis of the data shared by the CBDT, it appeared that the assessee had earned income by providing services on which Service Tax was leviable; it also appeared that the assessee had not reflected such income in their Service Tax Returns, thereby they had also not made the payment of applicable Service Tax.
3. With effect from 01.07.2012, the negative list regime came into existence under which all services were taxable and only those services that were mentioned in the negative list were exempted. The nature of activities carried out by the Assessee appeared to be covered under the definition of service and the same appeared to be not covered under the Negative List as given in the Section 66D of the Finance Act, 1994, as amended from time to time.

Since the Assessee had not declared the above income in their Service Tax Return and had not paid Service Tax on the said income, it was necessary to initiate statutory demand from the Assessee for confirmation of their Service Tax liability under the relevant provisions of the Finance Act, 1994 and Service Tax Rules, 1994. Therefore, in order to ascertain the veracity of the issue, the assessee was given opportunity to appear for pre show-cause notice consultation on 23.04.2021, but the said Assessee did not appear for the same.



5. Since the assessee did not submit the required details of services provided during the Financial Year 2015-16 and 2016-17, nor did they avail the opportunity of pre show cause notice consultation, the service tax liability of the service tax assessee had to be ascertained on the basis of income mentioned in the ITR returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department was considered as the total taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.

6. By the act of non-compliance and non-submission of any information to the department, it appeared that the Assessee had contravened the following provisions of Chapter-V of the Finance Act, 1994, the Service Tax Rules, 1994:

- i. 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
- ii. 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 mandated
- iii. 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
- iv. Section 77 of the Finance Act, 1994, in as much as they had failed to file correct and true ST3 Returns,

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 liable for penalty under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time. The said assessee also 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. The assessee had failed to furnish the information in their Service Tax Returns and contravened various provision of Finance Act, 1994 and Rules made there under, and thereby rendered themselves liable for penalty under Section 77(1)(c) and 77(2) of the Finance Act, 1994.



9. Therefore, as per the analysis shared by the CBDT the Service tax payable on the basis of value of "sales of services under Sales/Gross Receipts From Services (Value from ITR)" or "Total Amount Paid/Credited Under Section 194C, 194I, 194H, 194J" for the financial year 2015-16 and 2016-17 was assessed as below:-

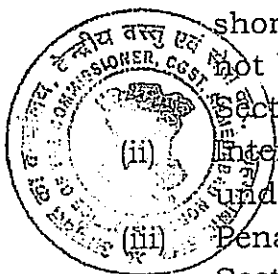
(Amount in Rs)					
Sr. No.	F.Y.	Taxable Value as per ST-3 returns (In Rs.)	Gross Receipts From Services (Value from ITR/26AS) (In Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax short paid (in Rs.)
1	2015-16	0/-	91408861/-	91408861/-	13254284/-
2	2016-17	0/-	45012283/-	45012283/-	6751842/-
TOTAL					20006127/-

10. It appeared that the assessee had not paid the service tax by way of suppression of facts and in contravention of provision of the Finance Act, 1994 and rules made there under relating to levy and collection of service tax, with intent to evade payment of service tax. Hence, the service tax amounting to Rs. 2,00,06,127/- 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, along with 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. The Assessee was also given the opportunity for pre-SCN consultation on 23.04.2021, but they did not avail the same.

12. Therefore, a Show Cause Notice STC/15-113/OA/2021 dated 23.04.2021 was issued by the Commissioner, Central GST & Central Excise, Ahmedabad North to the Assessee (M/s. Viralbhai Shankerlal Patel) asking them as to why;

- (i) The demand for Service tax to the extent of Rs. 2,00,06,127/- short paid/not paid by them in F.Y. 2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty should not be imposed upon them for late filing of ST-3 returns under the provisions of Rule 7C of the Service Tax Rules, 1994.



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

**DEFENCE REPLY:**

13. The assessee vide their letter dated 16.01.2022 (submitted to the department on 17.01.2022) submitted their reply to the Show Cause Notice dated 23.04.2021, wherein they have inter alia stated as under –

- i. That they are engaged in activity of Government works for Dam Gate
- ii. That their activity is exempted as per Notification No. 25/2012 [Point No. 12(d)]
- iii. That other than Government works, during the period they have done job work of Ajanta Energy P. Ltd. only

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

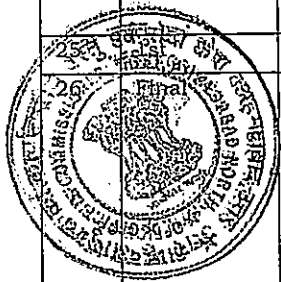
- a. Copies 26AS for the years 2015-16 and 2016-17
- b. Copies of P&L Accounts for the years 2015-16 and 2016-17
- c. Sample Work Order
- d. Ledger copy of contract income for the years 2015-16 and 2016-17

13.2 The Assessee has further submitted the RA Bills and the relevant Work Orders for the period 2015-16 and 2016-17. The details of the RA Bills are as below –

**2015-16**

Sl. No.	RA Bill No./Ref.	Work Order of RA Bill	Work Order Issuing Authority	Scope of work mentioned in Work Order	Amount (Rs) of RA Bill
1	1 <sup>st</sup>	IMD-3/lank Irri.proj/SK/102 dated 30.01.2016	Executive Engineer Irrigation Mechanical Division No. 3, Gandhinagar	Repairing & Strengthening of Radial Gates-30'x20'-05 Nos. Of Lank Irrigation Project as per the Drawings and Specifications.	249863
2.		IMD- ABTC/798 dated 30.04.2015	NWRP & Kalp Department, Schivalay, Gandhinagar	Strengthening work of Radial Gate with Rectification & Repairing Work of Skin Plate, Achor Girder, replacement of rubber seal, Replacement of Chequered Plate, servicing of replacement of Trunion Assly etc. of Radial Gate Size- 30'x20'-16 Nos. Of Kalubhar Irrigation	327953

				project	
3	2 <sup>nd</sup> & Final	-do-	-do-	-do-	747389
4	6 <sup>th</sup>	-do-	-do-	-do-	1375353
5	2 <sup>nd</sup> (75%)	-do-	-do-	-do-	235000
6	5 <sup>th</sup>	-do-	-do-	-do-	640655
7	4 <sup>th</sup>	-do-	-do-	-do-	1002803
8	1 <sup>st</sup> (75 % - Extra Work)	-do-	-do-	-do-	103535
9	1 <sup>st</sup> (75% - Excess Work)	-do-	-do-	-do-	921300
10	3 <sup>rd</sup>	-do-	-do-	-do-	2720060
11	2 <sup>nd</sup>	-do-	-do-	-do-	4949852
12	1 <sup>st</sup>	-do-	-do-	-do-	2822672
13	1 <sup>st</sup>	IMD- 7/ABTC/391 dated 02.03.2016	Superintendent Engineer Irri. Mech. Circle No. 2, Ahmedabad	Replacement work of existing Cabin cover of C D Unit, E R Unit & sill beam girder & other Misc. Work in Radial Gate Size- 30'x20' of Kalubhar Irrigation project.	1182175
14	1 <sup>st</sup> & Final (Extra)	IMD-3/SK/Sant Sarovar/Package- 1/12 dated 19.03.2015	Executive Engineer Irrigation Mechanical Division No. 3, Gandhinagar	Providing, fabricating and erecting Gate leaf, Embedded Parts, Hoist Platform, Hoist mechanism of Vertical Gate 60'x17' of Sant Sarovar (Indroda) Recharge Project	320888
15	4 <sup>th</sup>	-do-	-do-	-do-	3421786
16	7 <sup>th</sup> & Final	-do-	-do-	-do-	4802322
17	6 <sup>th</sup>	-do-	-do-	-do-	3183069
18	1 <sup>st</sup> & Final (Excess)	-do-	-do-	-do-	386776
19	5 <sup>th</sup>	-do-	-do-	-do-	1964913
20	3 <sup>rd</sup>	-do-	-do-	-do-	3682437
21	2 <sup>nd</sup>	-do-	-do-	-do-	10562650
22	1 <sup>st</sup>	-do-	-do-	-do-	10983939
23	F & F Bill	IMD-7/ABTC/ 1194 dated 21.05.2009	Executive Engineer Irrigation Mechanical Division No. 7, Ahmedabad	Repairing of C.R/H.R. gates on different Mahi canal sites under DEE, Limbasi Irri Sub-division, Limbasi & DEE, Matar Irri Sub- division, Matar.	67872
24	2 <sup>nd</sup> & Final	IMD-7/ABTC/ 839 dated 30.04.2015	Superintendent Engineer Irri. Mech. Circle No. 2, Ahmedabad	Replacement of ER Unit cabin, track base plate & track plate on existing track girder assy & providing & fitting of ladder with platform for approach at ladder of gate in alternative pier of gate & other misc. repairing work for vertical gate size-35'x6'-29 NOS. OF Bhadar-1 Irri. project	534523
		-do-	-do-	-do-	1223961
		B-1/04 of 2014- 15	Deputy EE, Irri. Mech. Sub-division, Junagadh	Providing necessary modification in CD Unit & Dig Unit including replacement of EM Brate and fitting the modified foundation base frame of radial gate size 12.497m x 8.23m - 6 nos. of SHINGODA Irrigation Scheme	353245
27	-do-	B-1/05 of 2014- 15	-do-	-do-	412178
28	First &	IMD-	Executive Engineer,	Servicing of gearbox assembly,	93485



	Final Extra Bill	3/SK/Motisar Irri. Proj./1207 dtd. 11.09.2014	Irrigation Mechanical Div. No. 3, Gandhinagar	guide roller, fulcuram assly & providing & fitting of new chequered plate platform with base beam & channel by discarding old one etc. of 9.10 mt. x 2.04 mt. size of Godbole Type Automatic Gate Sr.No. 1 to 15 of Motisar Irrigation Scheme Village at Patiali.	
<b>TOTAL...</b>					<b>59272654</b>

**2016-17**

Sl. No.	RA Bill No./Ref.	Work Order of RA Bill	Work Order Issuing Authority	Scope of work mentioned in Work Order	Amount (Rs) of RA Bill
1	3 <sup>rd</sup>	STG/CE/Tender/875	Civil Engineering Department, Central Office, Ahmedabad	Construction of New Depot Manager Quarters with its sub-work at Harij, Kadi, Kalol & Mehsana	1809936
2	7 <sup>th</sup> & Final	IMD-7/ABTC/798 dated 30.04.2015	NWRP & Kalp Department, Schivalay, Gandhinagar	Strengthening work of Radial Gate with Rectification & Repairing Work of Skin Plate, Achor Girder, replacement of rubber seal, Replacement of Chequered Plate, servicing of replacement of Trunion Assly etc. of Radial Gate Size- 30'x20'-16 Nos. Of Kalubhar Irrigation project	1912465
3	2 <sup>nd</sup> & Final	IMD-7/ABTC/391 dated 02.03.2016	Superintendent Engineer Irri. Mech. Circle No. 2, Ahmedabad	Replacement work of existing Cabin cover of C D Unit, E R Unit & sill beam girder & other Misc. Work in Radial Gate Size- 30'x20' of Kalubhar Irrigation project.	522022
4	1 <sup>st</sup> & Final	IMD-7/ABTC/Venu-II/736 dated 27.04.2016	Executive Engineer Irrigation Mechanical Division No. 7, Ahmedabad	Fabricating & Supplying of Arm Assembly for Radial Gates size 30' x 20' - 20 nos. of Venu-II project site welding with Trunion	2694470
5	3 <sup>rd</sup> & Final	IMD-3/SK/Gayatri/1260 dated 02.09.2011	Executive Engineer, Irrigation Mechanical Div. No. 3, Gandhinagar	Repairing of Radial Gate-size 41' x 27' - 3 nos. of BPO Gates - 4 nos. of Harnav Project	209626
6	1 <sup>st</sup>	IMD6/Store/Tender/B-1-16-17/812 dtd. 18.04.2016	EE, Irri.Mech. Div. No. 6, Rajkot	Providing of various components of Radial Gate size 12.497 m x 8.23 m (41' x 27') 7 nos of Hiran_II Irrigation Scheme under EE, Junagadh Irrigation Division, Junagadh	668951
7	2 <sup>nd</sup> Final Bill	IMD-3/lank Irri.proj/SK/102 dated 30.01.2016	Executive Engineer Irrigation Mechanical Division No. 3, Gandhinagar	Repairing & Strengthening of Radial Gates-30'x20'-05 Nos. Of Lank Irrigation Project as per the Drawings and Specifications.	571530
8	1 <sup>st</sup> & Final [Extra]	-do-	-do-	-do-	12430



9	1 <sup>st</sup> & Final	IMD-7/ABTC/1164 dated 13.06.2016	Executive Engineer Irrigation Mechanical Division No. 7, Gandhinagar	Repairing work of radial gate no. 14 with rubber seal & other misc. work in radial gate 30' x 20' size of Kalubhar Irri. project	191932
10	1 <sup>st</sup>	IMD-7/ABTC/737 dated 27.04.2016	Superintendent Engineer Irr. Mech. Circle No. 2, Ahmedabad	Replacement of high tensile alloy steel chain with sprocket, tension yoke assly & Rubber Seal etc. repairing work of Godbole type A/T gate size 10 x 4 meter - 16 Nos. and repairing work of HR Gate of Falku (Raj Jashvant Sagar) Irrigation Project	1308630
11	2 <sup>nd</sup> & Final	-do-	-do-	-do-	264631
12	1 <sup>st</sup> & Final (Excess)	-do-	-do-	-do-	127370
13	1 <sup>st</sup> & Final (Extra)	-do-	-do-	-do-	65744
14	1 <sup>st</sup> & Final	IMD-7/ABTC/1149 dated 10.06.2016	EE, Surendranagar Irrigation Division, Rajkot	Supplying & Fitting of heavy duty 7.5. MT capacity spur geared manually operated chain pulley block with 80 grade alloy steel chain having 10 meter lift for counter weight type A/T vertical gate size 30' x 9' - 14 nos. for Vadhavan Bhogavo-I (Nayaka) Irri. Project.	158113
15	1 <sup>st</sup> & Final	IMD-7/ABTC/2024 dated 24.11.2015	EE, Surendranagar Irrigation Division, Rajkot	Repairing work of service Gate-2 nos. & emergency Gate-2 nos. of LBHR Well & replacement of cheq. Plate of HR well & servicing of 8 MT capacity hoist assly - 4 nos. of service Gate-2 nos. & emergency Gate-2 nos. of LBHR Well of Bhadar-1 Irri. project	702257
16	1 <sup>st</sup>	IMD.3/SK/Suj.Suf.Spre. <del>Canal/103</del> dated 30.01.2016	EE, Irrigation Mechanical Div. No. 3, Gandhinagar	Providing & fitting of new rubber seals, discarding old one of C.R. and escape gates. Servicing of CDU, ERU, guide roller & other repairing work & servicing and repairing work of HR Gate, hoist mechanism etc. of Sujlam Suflam Spreading Cannal chainage 27.700 kms to 62.000 km under the Mazam sub division No. 2 Modasa and SSSC chainage 97.000 km to 139.610 km under the Suj-suf Spreading Canal Sub Division No. 1 Talod	692370
17	2 <sup>nd</sup> & Final	-do-	-do-	-do-	562032
18	1 <sup>st</sup>	-do-	-do-	-do-	77000
19	1 <sup>st</sup> & Final (Extra)	-do-	-do-	-do-	10695

20	1st	NPCMD/SK/AB/282 dtd. 16.09.2016	Dy. EE, NPC Mech. Sub Div. No. 1, SSNNL, Vadodara	Annual Maintenance contract work for repairs/maintenance /servicing of Radial & Vertical Gates cr/Syphon/HR/Escape Structure on Narmada Main Canal Reach 293 to 458 km, and replacement of different size wire ropes for Narmada main canal CR/HR/Escape and Branch Canal gates between NMC CH 144 to 458	985236
<b>TOTAL...</b>					<b>13547440</b>

**PERSONAL HEARING:**

14. Personal hearings were granted to the assessee on 21.12.2021, 20.01.2022, 28.04.2022, 23.05.2022, 17.06.2022, 26.07.2022 and 06.09.2022. However the Assessee did not appear for personal hearing on any of the above mentioned dates. Finally the personal hearing was fixed on 14.10.2022 and the same was attended by Shri Deepak Shah, Advocate on behalf of the Assessee. During the course of personal hearing, Shri Deepak Shah reiterated the contents of their written submission dated 17.01.2022. He also stated that the Assessee is engaged in the work relating to Dam gate and the same is exempted being covered under Notification NO.25/2012-ST.

**DISCUSSION AND FINDINGS:**

15. I have carefully gone through the facts of the case and records available in the case file, the Show Cause Notice dated 23.04.2021, the defense reply dated 16.01.2022 (submitted to the department on 17.01.2022), the documents submitted alongwith the defense reply dated 16.01.2022 and oral submissions made by the assessee during the course of personal hearing on 14.10.2022. Accordingly, I find that the following issues are required to be decided by me as an adjudicating authority –

- i. Whether the Service Tax has been correctly demanded vide the Show Cause Notice dated 30.03.2021.
- ii. Whether the contention of the Assessee that the services provided by them are exempted as per Notification No. 25/2012 dated 20.06.2012 is sustainable or not.



I find that the genesis of the demand has risen from the analysis of the 26AS and ITR of the Assessee by the CBDT and the same being shared with

the department for the period 2015-16 and 2016-17. The CBDT found that during the year 2015-16 and 2016-17, the Assessee had rendered services and had received income on such services without payment of service tax on such income. Therefore, for verification of the apparent non-payment of Service Tax by the Assessee, the department, prior to the issuance of Show Cause Notice, had given the opportunity for pre-SCN consultation to the Assessee on 26.03.2021, but they did not avail the same. Therefore, the department had no option but to issue a formal demand for recovery of unpaid Service Tax from the Assessee. Accordingly SCN dated 23.04.2021 was issued to the Assessee demanding service tax of Rs. 2,00,06,127/- (Rs. 1,32,54,285/- + Rs. 67,51,842/-) on the value of total taxable service, provided by the Assessee amounting to Rs. 13,64,21,144/- (Rs. 9,14,08,861/- + Rs. 4,50,12,283/-) for F.Y. 2015-16 and 2016-17.

17. Further, the income of the assessee as per Section 194I(a) and 194(C) reflected in Form 26AS and their income as per the P&L Account for the relevant period is as under:

Sl. No.	Name of the deductor as per Form 26AS	Total Income as per Form 26AS as per Section 194I(a) and 194(C)	
		2015-16	2016-17
	<b>Total Income as per Form 26AS</b>	<b>9,14,08,861/-</b>	<b>4,50,12,283/-</b>
	<b>Income as per Profit &amp; Loss Account</b>	<b>9,14,10,044/-</b>	<b>4,51,66,218/-</b>

17.1 I also find that the demand for the year 2015-16 and 2016-17 in the Show Cause Notice has been raised based on the income reflected in the 26AS of the Assessee for the relevant F.Y. 2015-16 and 2016-17, and therefore, for the sake of consistency in computation of tax, I would also rely on the Income reflected in the 26AS for the period 2015-16 and 2016-17. The summary of income reflected in the 26AS for the period 2015-16 and 2016-17 is as below

Sl. No.	Name of the deductor as per Form 26AS	Total Income as per Form 26AS as per Section 194(C)	
		2015-16	2016-17
1	Ajanta Energy Private Limited	20507474	20228726
2	Executive Engineer	4754681	1865035
3	Irrigation Mech Division No. 3	39652106	2135683
4	Kadi Municipality	6572973	281452
5	N.P. Canal Division No. 4/4	10547	
6	Executive Enngineer Irrigation & Mechanical Division-7	18854361	7980054

8	Sardar Sarovar Nigam Limited Exec. Engineer N.P. Canal Division No. 4/5	291296	
9	Executive Engineer Irrigation & Mechanical Division-6 Rajkot	765423	1180285
10	Exec. Engineer Narmada Project Main Canal Division No. 2	0	9934908
11	Exec. Engineer Narmada Project Canal Mechanical Division Gandhinagar	0	985236
12	Sujalal Suflam Spreading Chanal Division No. 1 Sabarkantha	0	181704
13	Executive Engineer Irrigation Mechanical Division-1 Vadodara	0	239200
	<b>Total Income as per Form 26AS</b>	<b>91408861</b>	<b>45012283</b>

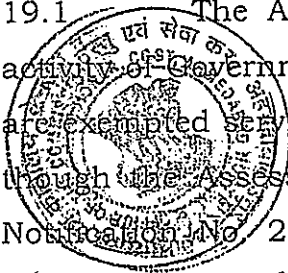
17.2 Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the taxable value of Rs. 13,64,21,144/- for the Financial Year 2015-16 and 2016-17.

18. I find the Assessee has not contested the computation of the value of taxable services in the SCN and there is no dispute as far as the receipt of the consideration for provision of service by the assessee is concerned. The only contention of the Assessee is that they are engaged in activity on behalf of Government for work for Dam Gate and the services provided by them are exempted services; that accordingly they were not liable to pay service tax on provision of such services. Therefore, I find that there is no dispute as far as the provision of services as well as receipt of income on provision of such services by the assessee for the period from 2015-16 and 2016-17 as given below:

Sl. No.	Year	Total Taxable Value (Rs.)
1	2015-16	9,14,08,861/-
2	2016-17	4,50,12,283/-
	<b>TOTAL</b>	<b>13,64,21,144/-</b>

19. Therefore, the subsequent issue that needs to be decided is whether the services provided by the assessee were eligible for exemption under Notification No. 25/2012-ST or otherwise as claimed by the assessee.

19.1 The Assessee has merely claimed that they are engaged in activity of Government works for Dam Gate and the services provided by them are exempted services under Notification 25/2012-ST dated 20.06.2012. Even though the Assessee has not specifically stated as to under which entry of Notification No. 25/2012-ST their activity is exempted, they have produced substantial records (Work Orders and RA Bills) as detailed in para 13.2 above, evidencing the nature of work done by them i.e. activity of Government works for Dam Gate. Accordingly, I find that the services rendered by the Assessee



falls under entry No. 12(d) of the Notification No. 25/2012-ST dated 20.06.2012. To appreciate the issue in the correct perspectives, relevant extracts/entries of Notification No. 25/2012-ST under which the services rendered by the Assessee falls, 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) .....*
- (b) .....*
- (c) .....*
- (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) .....*”

Accordingly I find that the services rendered by the Assessee, is exempted, if the same are provided to Government, a local authority or a governmental authority.

19.2 Further, I find that the Assessee, in support of the arguments put forth by them, have submitted records (Work Orders and RA Bills) as detailed in para 13.2 above, evidencing the nature of work done by them i.e. activity of Government works for Dam Gate. Analysis of the documents vis-a-vis the income reflected in 26AS submitted by the Assessee proves (except for the services rendered by them to M/s. Ajanta Energy Private Limited) that they have rendered services for works of Dam Gate to the Government Authority and thereby they are eligible for exemption as per entry No. 12(d) of the Notification No. 25/2012-ST dated 20.06.2012.

19.3 As far as the services rendered to M/s. Ajanta Energy Private Limited amounting to Rs. 4,07,36,200/- (Rs. 2,05,07,474/- during F.Y. 2015-16 & Rs. 2,02,28,726/- during F.Y. 2016-17) are concerned, I find that the Assessee has reflected the same in their ST-3 returns for the period October-March of 2015-16 and October-March of 2016-17 respectively. I also find that the Assessee has made the payment of applicable Service Tax on the said services rendered to M/s. Ajanta Energy Private Limited which is evident from the above mentioned 2 ST-3 returns. Copies of the relevant ST-3 returns are reproduced below –



**CENTRAL BOARD OF EXCISE AND CUSTOMS**  
Ministry of Finance - Department of Revenue



Form ST-3

(Return under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994)

Following issues have been found in your return :

<b>PART A GENERAL INFORMATION</b>					
A1	ORIGINAL RETURN	Yes	REVISED RETURN	No	
A2	STC Number	ABBPP5471ASD001	A3	Name of the Assessee	GAYATRI CONSTRUCTION
Address of Registered Unit		SAHAJANAND APPARTMENT B/42 NR.AGRASEN VIDHYALAY GURUKUL ROAD MEMNAGAR MEMNAGAR			
Commissionerate	SERVICE TAX - AHMEDABAD	Division	SERVICE TAX DIVISION-I - AHMEDABAD ST	Range	RANGE-II
A4	Financial Year	2015-2016	A5	Return for the Period	October-March

**RETURN FILING DETAILS**

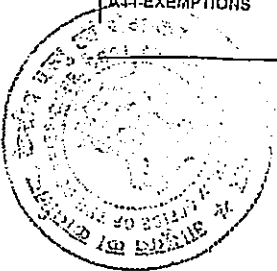
Due date for filing of this return	25/04/2016
Actual date of filing	22/04/2016
No of days beyond due date	0

<b>A6</b>		
A6.1	Has the Assessee opted to operate as "Large Taxpayer" Unit ["Y"/"N"] (As defined under Rule 2(e) (ea) of the Central Excise Rules, 2002 read with Rule 2 (1) (c)(cc) of the Service Tax Rules, 1994)	No
A6.2	If reply to column A6.1 is 'Y', name of Large Taxpayer Unit opted for	
A7	Premises Code Number	SD0102A001
A8	Constitution of the Assessee	Proprietorship

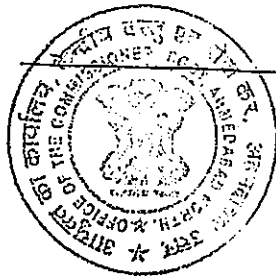
A9	Taxable Service(s) for which Tax is being paid	Sub Clause
Description of Taxable Services	Works contract service	(zzzza)

Taxable Service for which Tax is being paid		Works contract service	
<b>A10 Assessee is liable to pay Service Tax on this taxable service as</b>			
A10.1 A Service Provider under Section 68(1)	Yes	A10.2 A Service Receiver under Section 68(2)	No
A10.3 A Service Provider under partial reverse charge under proviso to Section 68(2)	Yes	A10.4 A Service Receiver under partial reverse charge under proviso to Section 68(2)	No
A10.5 If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service	50	A10.6 If covered by A10.4 above, then the percentage of Service Tax Payable as Recipient of Service	0

**A11-EXEMPTIONS**



A11.1		Has the assessee availed benefit of any exemption Notification ('Y/N')		N
A11.2		If reply to A11.1 is 'Y', Please furnish Notification No. and Sl. No. in the Notification under which such exemption is availed		Sl. No.
Sl. No.	Notification Number			
1			Y	
A12 ABATEMENTS				
A12.1		Has any abatement from the value of services been claimed ('Y/N')		
A12.2		If reply to A12.1 is 'Y', Please furnish Notification No. and Sl. No. in the Notification under which such abatement is availed		
Sl. No.	Notification Number		Sl. No.	
1	030/2012-S.T.		9	
A13 PROVISIONAL ASSESSMENT				
A13.1		Whether provisionally assessed ('Y/N')		
A13.2		If reply to A13.1 is 'Y', please furnish Provisional Assessment Order No. and Date		
		Provisional Assessment Order No.		Date
PART B VALUE OF TAXABLE SERVICE AND SERVICE TAX PAYABLE				
FOR SERVICE PROVIDER				
PART - B1				
Sl. No.	Quarter	Oct-Dec	Jan-Mar	Total
B1.1	Gross Amount (excluding amounts received in advance, amounts taxable on receipt basis, for which bills/invoices/challans or any other documents may not have been issued) for which bills/invoices/challans or any other documents are issued relating to service provided or to be provided (including export of service and exempted service)	0	19929517	19929517
B1.2	Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued	0	0	0
B1.3	Amount taxable on receipt basis under third proviso to Rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued	0	0	0
B1.4	Amount taxable for services provided for which bills/invoices/challans or any other documents have not been issued	0	0	0
B1.5	Money equivalent of other considerations charged, if any, in a form other than money	0	0	0
B1.6	Amount on which Service Tax is payable under partial reverse charge	0	0	0
B1.7	Gross Taxable Amount B1.7 = ( B1.1 + B1.2 + B1.3 + B1.4 + B1.5 + B1.6 )	0	19929517	19929517
B1.8	Amount charged against export of service provided or to be provided	0	0	0
B1.9	Amount charged for exempted service provided or to be provided (other than export of service given at B1.8 above)	0	0	0
B1.10	Amount charged as Pure Agent	0	0	0
B1.11	Amount claimed as abatement	0	0	0
B1.12	Any other amount claimed as deduction, please specify	0	11957711	11957711
B1.13	Total Amount Claimed as Deduction B1.13 = ( B1.8 + B1.9 + B1.10 + B1.11 + B1.12 )	0	3985903	3985903
B1.14	NET TAXABLE VALUE B1.14 = ( B1.7 - B1.13 )	0	15943614	15943614
B1.15	Service Tax Rate-wise break up of NET TAXABLE VALUE (B1.14): Advalorem Rate	0	3985903	3985903



Sl.no	Taxable Rate				Taxable Value		
	Tax Rate %	Swachh Bharat Cess %	Education Cess Rate %	Secondary And Higher Education Cess Rate %	Oct-Dec	Jan-Mar	Total
1	14	0.5	0	0	0	3985903	3985903
B1.16	Specific Rate (applicable as per Rule 6 of ST Rules)						
Sl. No	Taxable Rate				Taxable Units		
	Specific Rate	Swachh Bharat Cess %	Education Cess Rate %	Secondary And Higher Education Cess Rate %	Oct-Dec	Jan-Mar	Total
1	0	0	0	0	0	0	0
B1.17	Service Tax payable				0	558026	558026
B1.18	Less R and D Cess payable				0	0	0
B1.19	Net Service Tax payable B1.19 = ( B1.17 - B1.18 )				0	558026	558026
B1.20	Education Cess payable				0	0	0
B1.21	Secondary and Higher Education Cess payable				0	0	0
B1.22	Swachh Bharat Cess payable based on entries in B1.15				0	19930	19930
B1.23	Swachh Bharat Cess payable based on entries in B1.16				0	0	0
B1.24	Total Swachh Bharat Cess payable(B1.24 = B1.22 + B1.23)				0	19930	19930
<b>PART - C</b>							
<b>SERVICE TAX PAID IN ADVANCE</b>							
Amount of Service Tax paid in advance under sub-rule (1A) of Rule 6 of ST Rules							
Sl.No	Quarter			Oct-Dec	Jan-Mar	Total	
C1	Amount of Service Tax deposited in advance			0	0	0	
C1.1	Swachh Bharat Cess deposited in advance			0	0	0	
C2	Amount of Education Cess deposited in advance			0	0	0	
C3	Amount of Secondary and Higher Education Cess deposited in advance			0	0	0	
C4	Challan Nos. and Amount						
Sl. No	Challan Number (CIN)				Amount		
1					0		
<b>PART - D</b>							
<b>SERVICE TAX PAID IN CASH AND THROUGH CENVAT CREDIT</b>							
Service Tax, Education Cess, Secondary and Higher Education Cess, Swachh Bharat Cess and other amounts paid (To be filled by a person liable to pay Service Tax and not to be filled by an Input Service Distributor)							
Sl.No	Quarter			Oct-Dec	Jan-Mar	Total	
D1	In cash			0	558026	558026	
D2	By CENVAT Credit (not applicable where the Service Tax is liable to be paid by the recipient of service)			0	0	0	
D3	By adjustment of amount paid as Service Tax in advance under Rule 6(1A) of the ST Rules			0	0	0	
D4	By adjustment of excess amount paid earlier as Service Tax and adjusted, by taking credit of such excess Service Tax paid, in this period under Rule 6(3) of the ST Rules			0	0	0	
D5	By adjustment of excess amount paid earlier as Service Tax and adjusted in this period under Rule 6(4A) of the ST Rules			0	0	0	
D6	By adjustment of excess amount paid earlier as Service Tax in respect of service of Renting of Immovable Property, on account			0	0	0	



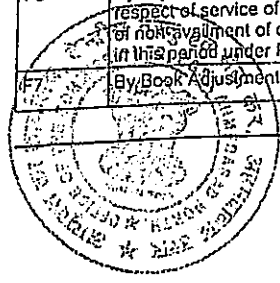


D7	of non-availment of deduction of Property Tax paid and adjusted in this period under Rule 6 (4C) of the ST Rules	0	0	0
D8	By Book Adjustment in the case of specified Govt Departments	0	558026	558026
D8	Total Tax paid D8 = ( D1 + D2 + D3 + D4 + D5 + D6 + D7 )	0		

PART-DA SWACHH BHARAT CESS (SBC) PAID IN CASH AND THROUGH ADJUSTMENTS				
SI.No	Quarter	Oct-Dec	Jan-Mar	Total
			19930	19930
DA1	Swachh Bharat Cess Paid in Cash	0	0	0
DA2	By adjustment of amount paid as SBC in advance under Rule 6(1A) of the ST Rules	0	0	0
DA3	By adjustment of excess amount paid earlier as SBC and adjusted, by taking credit of such excess SBC paid, in this period under Rule 6(3) of the ST Rules	0	0	0
DA4	By adjustment of excess amount paid earlier as SBC and adjusted in this period under Rule 6(4A) of the ST Rules	0	0	0
DA5	By Book adjustment in the case of specified Government departments	0	19930	19930
DA6	Total Swachh Bharat Cess Paid DA6 = DA1 + DA2 + DA3 + DA4 + DA5	0		

PART-E EDUCATION CESS PAID IN CASH AND THROUGH CENVAT CREDIT				
SI.No	Quarter	Oct-Dec	Jan-Mar	Total
			0	0
E1	In cash	0	0	0
E2	By CENVAT Credit (not applicable where the Service Tax is liable to be paid by the recipient of service)	0	0	0
E3	By adjustment of amount paid as Service Tax in advance under Rule 6 (1A) of the ST Rules	0	0	0
E4	By adjustment of excess amount paid earlier as Service Tax and adjusted, by taking credit of such excess Service Tax paid, in this period under Rule 6(3) of the ST Rules	0	0	0
E5	By adjustment of excess amount paid earlier as Service Tax and adjusted in this period under Rule 6(4A) of the ST Rules	0	0	0
E6	By adjustment of excess amount paid earlier as Service Tax in respect of service of Renting of Immovable Property, on account of non-availment of deduction of Property Tax paid and adjusted in this period under Rule 6 (4C) of the ST Rules	0	0	0
E7	By Book Adjustment in the case of specified Govt Departments	0	0	0
E8	Total Education Cess paid E8 = ( E1 + E2 + E3 + E4 + E5 + E6 + E7 )	0	0	0

PART-F SECONDARY AND HIGHER EDUCATION CESS PAID IN CASH AND THROUGH CENVAT CREDIT				
SI.No	Quarter	Oct-Dec	Jan-Mar	Total
			0	0
F1	In cash	0	0	0
F2	By CENVAT Credit (not applicable where the Service Tax is liable to be paid by the recipient of service)	0	0	0
F3	By adjustment of amount paid as Service Tax in advance under Rule 6 (1A) of the ST Rules	0	0	0
F4	By adjustment of excess amount paid earlier as Service Tax and adjusted, by taking credit of such excess Service Tax paid, in this period under Rule 6(3) of the ST Rules	0	0	0
F5	By adjustment of excess amount paid earlier as Service Tax and adjusted in this period under Rule 6(4A) of the ST Rules	0	0	0
F6	By adjustment of excess amount paid earlier as Service Tax in respect of service of Renting of Immovable Property, on account of non-availment of deduction of Property Tax paid and adjusted in this period under Rule 6 (4C) of the ST Rules	0	0	0
F7	By Book Adjustment in the case of specified Govt Departments	0	0	0



**CENTRAL BOARD OF EXCISE AND CUSTOMS**  
Ministry of Finance - Department of Revenue

Form ST-3

(Return under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994)

Following Issues have been found in your return :

PART A GENERAL INFORMATION					
A1	ORIGINAL RETURN	Yes	REVISED RETURN	No	
A2	STC Number	ABBPP5471ASD001	A3	Name of the Assessee	GAYATRI CONSTRUCTION
Address of Registered Unit		SAHAJANAND APPARTMENT B/42 NR.AGRASEN VIDHYALAY GURUKUL ROAD MEMNAGAR MEMNAGAR			
Commissionerate		SERVICE TAX - AHMEDABAD	Division	SERVICE TAX DIVISION-I - AHMEDABAD ST	Range : RANGE-II
A4	Financial Year	2016-2017	A5	Return for the Period	October-March

**RETURN FILING DETAILS**

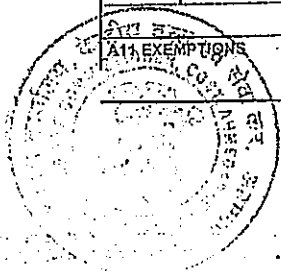
Due date for filing of this return	25/04/2017
Actual date of filing	26/04/2017
No of days beyond due date	1

A6		
A6.1	Has the Assessee opted to operate as "Large Taxpayer" Unit ["Y"/"N"] (As defined under Rule 2(e) (ca) of the Central Excise Rules, 2002 read with Rule 2 (1) (c)(cc) of the Service Tax Rules, 1994)	No
A6.2	If reply to column A6.1 is "Y", name of Large Taxpayer Unit opted for	
A7	Premises Code Number	SD0102A001
A8	Constitution of the Assessee	Proprietorship

A9	Taxable Service(s) for which Tax is being paid	Sub Clause
	Description of Taxable Services	Works contract service (2222a)

Taxable Service for which Tax is being paid: Works contract service

A10 Assessee is liable to pay Service Tax on this taxable service as			
A10.1	A Service Provider under Section 58(1)	Yes	A10.2 A Service Receiver under Section 68(2)
	A10.3 A Service Provider under partial reverse charge under proviso to Section 58(2)	No	A10.4 A Service Receiver under partial reverse charge under proviso to Section 68(2)
	A10.5 If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service	0	A10.6 If covered by A10.4 above, then the percentage of Service Tax Payable as Recipient of Service
			0



A11.1		Has the assessee availed benefit of any exemption Notification ('Y'/'N')		N
A11.2	If reply to A11.1 is 'Y', Please furnish Notification No. and Sl. No. in the Notification under which such exemption is availed			Sl. No.
Sl. No	Notification Number			
1				
A12 ABATEMENTS				Y
A12.1	Has any abatement from the value of services been claimed ('Y'/'N')			
A12.2	If reply to A12.1 is 'Y', Please furnish Notification No. and Sl. No. in the Notification under which such abatement is availed			Sl. No.
Sl. No	Notification Number			1
1	024/2012-S.T.			
A13 PROVISIONAL ASSESSMENT				N
A13.1	Whether provisionally assessed ('Y'/'N')			
A13.2	If reply to A13.1 is 'Y', please furnish Provisional Assessment Order No. and Date			Date
Provisional Assessment Order No.				
<b>PART B VALUE OF TAXABLE SERVICE AND SERVICE TAX PAYABLE</b>				
<b>PART - B1 FOR SERVICE PROVIDER</b>				
Sl. No	Quarter	Oct-Dec	Jan-Mar	Total
B1.1	Gross Amount (excluding amounts received in advance, amounts taxable on receipt basis, for which bills/invoices/challans or any other documents may not have been issued) for which bills/invoices/challans or any other documents are issued relating to service provided or to be provided (including export of service and exempted service)	0	19639538	19639538
B1.2	Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued	0	0	0
B1.3	Amount taxable on receipt basis under third proviso to Rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued	0	0	0
B1.4	Amount taxable for services provided for which bills/invoices/challans or any other documents have not been issued	0	0	0
B1.5	Money equivalent of other considerations charged, if any, in a form other than money	0	0	0
B1.6	Amount on which Service Tax is payable under partial reverse charge	0	0	0
B1.7	Gross Taxable Amount B1.7 = ( B1.1 + B1.2 + B1.3 + B1.4 + B1.5 + B1.6 )	0	19639538	19639538
B1.8	Amount charged against export of service provided or to be provided	0	0	0
B1.9	Amount charged for exempted service provided or to be provided (other than export of service given at B1.8 above)	0	0	0
B1.10	Amount charged as Pure Agent	0	11783723	11783723
B1.11	Amount claimed as abatement	0	3927908	3927908
B1.12	Any other amount claimed as deduction, please specify	Value on which tax payable under reverse charge by recipient	0	15711631
B1.13	Total Amount Claimed as Deduction B1.13 = ( B1.8 + B1.9 + B1.10 + B1.11 + B1.12 )	0	3927907	3927907
B1.14	NET TAXABLE VALUE B1.14 = ( B1.7 - B1.13 )			
B1.15	Service Tax Rate-wise break up of NET TAXABLE VALUE (B1.14): Advalorem Rate			

Sl.No	Taxable Rate					Taxable Value		
	Tax Rate %	Swachh Bharat Cess %	Krishi Kalyan Cess %	Education Cess Rate %	Secondary And Higher Education Cess Rate %	Oct-Dec	Jan-Mar	Total
1	0	0	0	0	0	0	0	0
2	14	0.5	0.5	0	0	0	3927907	3927907
B1.16	Specific Rate (applicable as per Rule 6 of ST Rules)							
Sl.No	Taxable Rate					Taxable Units		
	Specific Rate	Swachh Bharat Cess %	Krishi Kalyan Cess %	Education Cess Rate %	Secondary And Higher Education Cess Rate %	Oct-Dec	Jan-Mar	Total
1	0	0	0	0	0	0	0	0
B1.17	Service Tax payable					0	549908	549908
B1.18	Less R and D Cess payable					0	0	0
B1.19	Net Service Tax payable B1.19 = ( B1.17 - B1.18 )					0	549908	549908
B1.20	Education Cess payable					0	0	0
B1.21	Secondary and Higher Education Cess payable					0	0	0
B1.22	Swachh Bharat Cess payable based on entries in B1.15					0	19640	19640
B1.23	Swachh Bharat Cess payable based on entries in B1.16					0	0	0
B1.24	Total Swachh Bharat Cess payable(B1.22 + B1.23)					0	19640	19640
B1.25	Krishi Kalyan Cess payable based on entries in serial number B1.15					0	19640	19640
B1.26	Krishi Kalyan Cess payable based on entries in serial number B1.16					0	0	0
B1.27	Total Krishi Kalyan Cess payable B1.27 = B1.25+B1.26					0	19640	19640

**PART - C SERVICE TAX PAID IN ADVANCE**

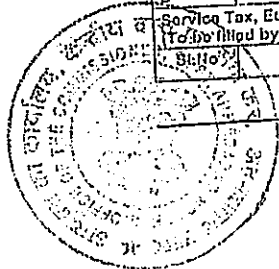
Amount of Service Tax paid in advance under sub-rule (1A) of Rule 6 of ST Rules

Sl.No	Quarter	Oct-Dec	Jan-Mar	Total
C1	Amount of Service Tax deposited in advance	0	0	0
C1.1	Swachh Bharat Cess deposited in advance	0	0	0
C1.2	Krishi Kalyan Cess deposited in advance	0	0	0
C2	Amount of Education Cess deposited in advance	0	0	0
C3	Amount of Secondary and Higher Education Cess deposited in advance	0	0	0
C4	Challan Nos. and Amount			
Sl. No	Challan Number (CIN)	Amount		
1		0		

**PART - D SERVICE TAX PAID IN CASH AND THROUGH CENVAT CREDIT**

Service Tax, Education Cess, Secondary and Higher Education Cess, Swachh Bharat Cess and other amounts paid (to be filled by a person liable to pay Service Tax and not to be filled by an Input Service Distributor)

Sl.No	Quarter	Oct-Dec	Jan-Mar	Total



Sl.No	Quarter	Oct-Dec	Jan-Mar	Total
D1	In cash	0	549908	549908
D2	By CENVAT Credit (not applicable where the Service Tax is liable to be paid by the recipient of service)	0	0	0
D3	By adjustment of amount paid as Service Tax in advance under Rule 6(1A) of the ST Rules	0	0	0
D4	By adjustment of excess amount paid earlier as Service Tax and adjusted, by taking credit of such excess Service Tax paid, in this period under Rule 6(3) of the ST Rules	0	0	0
D5	By adjustment of excess amount paid earlier as Service Tax and adjusted in this period under Rule 6(4A) of the ST Rules	0	0	0
D6	By adjustment of excess amount paid earlier as Service Tax in respect of service of Renting of Immovable Property, on account of non-availment of deduction of Property Tax paid and adjusted in this period under Rule 6 (4C) of the ST Rules	0	0	0
D7	By Book Adjustment in the case of specified Govt Departments	0	549908	549908
D8	Total Tax paid D8 = ( D1 + D2 + D3 + D4 + D5 + D6 + D7 )	0	549908	549908
<b>PART-DA SWACHH BHARAT CESS (SBC) PAID IN CASH AND THROUGH ADJUSTMENTS</b>				
Sl.No	Quarter	Oct-Dec	Jan-Mar	Total
DA1	Swachh Bharat Cess Paid in Cash	0	19640	19640
DA2	By adjustment of amount paid as SBC in advance under Rule 6(1A) of the ST Rules	0	0	0
DA3	By adjustment of excess amount paid earlier as SBC and adjusted, by taking credit of such excess SBC paid, in this period under Rule 6(3) of the ST Rules	0	0	0
DA4	By adjustment of excess amount paid earlier as SBC and adjusted in this period under Rule 6(4A) of the ST Rules	0	0	0
DA4.1	By adjustment of excess amount paid earlier as Krishi Kalyan Cess in respect of service of Renting of Immovable Property, on account of non-availment of deduction of property tax paid and adjusted in this period under Rule 6(4C) of the ST Rules	0	0	0
DA5	By Book adjustment in the case of specified Government departments	0	0	0
DA6	Total Swachh Bharat Cess Paid DA6 = DA1 + DA2 + DA3 + DA4 + DA5	0	19640	19640
<b>PART-DB KRISHI KALYAN CESS (KKC) PAID IN CASH AND THROUGH CENVAT CREDIT</b>				
Sl.No	Quarter	Oct-Dec	Jan-Mar	Total
DB1	In cash	0	19640	19640
DB2	By CENVAT credit (not applicable where the service tax is liable to be paid by the recipient of service)	0	0	0
DB3	By adjustment of amount paid as service tax in advance under Rule 6(1A) of the ST Rules	0	0	0
DB4	By adjustment of excess amount paid earlier as service tax and adjusted, by taking credit of such excess service tax paid, in this period under Rule 6(3) of the ST Rules	0	0	0
DB5	By adjustment of excess amount paid earlier as service tax and adjusted in this period under Rule 6(4A) of the ST Rules	0	0	0
DB6	By adjustment of excess amount paid earlier as service tax in respect of service of Renting of Immovable Property, on account of non-availment of deduction of property tax paid and adjusted in this period under Rule 6(4C) of the ST Rules	0	0	0
DB7	By book adjustment in the case of specified Government departments	0	0	0
DB8	Total Krishi Kalyan Cess paid DB8=DB1+DB2+DB3+DB4+DB5+DB6+DB7	0	19640	19640
<b>PART-E EDUCATION CESS PAID IN CASH AND THROUGH CENVAT CREDIT</b>				
Sl.No	Quarter	Oct-Dec	Jan-Mar	Total

19.4



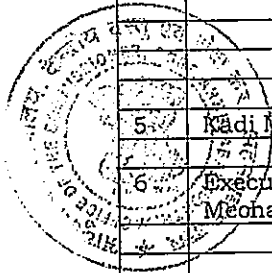
Therefore after considering/allowing the exemption for the amounts reflected in the R.A. Bills, the taxable value reflected in their ST-3 returns, the summarized taxable value for the period 2015-16 and 2016-17 worked out as under -



5	N.P. Canal Division No. 4/4	10547	Not submitted
6	Executive Engineer Irrigation & Mechanical Division 7	1182175	Submitted
		1375000	Submitted
		747000	Submitted
		327953	Submitted
		235000	Submitted
		640655	Submitted
		67872	Submitted
		534523	Submitted
		103535	Submitted
		1002803	Submitted
		921300	Submitted
		1223961	Submitted
		2720060	Submitted
		2822672	Submitted
		4949852	Submitted
7	Sardar Sarovar Nigam Limited Ex Eng NP Canal Div No. 4/5	291296	Not submitted
8	Executive Engineer Irri. Mech. DN No. 6 Rajkot	412178	Submitted
		353245	Submitted
	<b>TOTAL</b>		

**2016-17**

Sl. No.	Name of the Recipient as being reflected in 26AS	Amount Reflected in 26AS	RA submitted/ not submitted	Bill
1	Ajanta Energy Private Limited	20228726	Service Tax has been paid	
2	Executive Engineer	55099	Not submitted	
		1809936	Submitted	
3	Executive Engineer Narmada Project main Canal Division No. 2	8107500	Not submitted	
		1827408	Not submitted	
4	Executive Engineer Narmada Project Canal Mechanical Division, Gandhinagar	985236	Submitted	
5	Irrigation Mech Division No. 3	77000	Submitted	
		10695	Submitted	
		562032	Submitted	
		692370	Submitted	
		571530	Submitted	
		12430	Submitted	
		209626	Submitted	
5	Kadi Municipality	281452	Not submitted	
6	Executive Engineer Irrigation & Mechanical Division 7	32560	Not submitted	
		65744	Submitted	
		127230	Submitted	
		191932	Submitted	
		264631	Submitted	
		158113		
		702257	Submitted	
		1308630	Submitted	
		2694470	Submitted	
		522022	Submitted	
		1912465	Submitted	
7	Sujalam Suflam Spreading Canal Division No. 1, Sabarkantha	136680	Not submitted	
		45024	Not submitted	
8	Executive Engineer Irri. Mech. DN No. 1 Vadodara	239200	Not submitted	



9	Executive Engineer Irri. Mech. DN No. 6 Rajkot	511334	Not submitted
		668951	Submitted
	<b>TOTAL</b>		

From the above tables, it can be seen that the Assessee has submitted RA bills in majority cases and even in those cases where the RA bills are not submitted, it can be seen from the Form 26AS that the income is from the Government Authority. In numeric terms, out of the total value of Services of Rs. 13,64,21,144/- for the year 2015-16 and 2016-17, the Assessee has submitted proof of compliance/exemption for an amount of Rs. 11,35,56,294/- which in percentage works out to terms 83.24%. Further as submitted by the Assessee, it can also be seen from the scope of work reflected in all the work orders that they are providing the work related to Dam Gate for various government department/authorities.

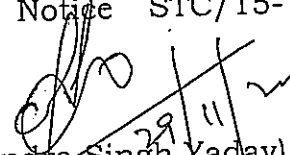
Therefore considering the fact, that the Assessee has correctly discharged their Service Tax liability w.r.t. the taxable services rendered by them; that they have submitted substantial proof in support of their claim of having rendered services which were exempted under Notification No. 25/2012-ST; that just because they were not able to submit the proof of some portion of income, that too, on services rendered to the Government department, it would be improper and incorrect on my part to assume that they are liable for Service Tax on the amount of Rs. 2,28,64,850/- as worked out in para 19.4 above. Accordingly, I hold that the Assessee is not liable to pay the Service Tax on the demand raised against them vide the SCN dated 23.04.2021.

21. In view of the facts and circumstances pertaining to the case, I find that the demand is not tenable. Accordingly I also do not consider it necessary to delve in the merits of invoking extended period of limitation which has been discussed in the SCN at length. For the same reasons, I am also not entering into discussions on the need or otherwise of imposing penalty. Therefore, from the factual matrix as discussed in the foregoing paras, I pass the following order: -



**ORDER**

I hereby drop the proceedings initiated against M/s. Viralbhai Shankerlal Patel, B-42, Sahjanand Apartment, Near Maharaja Agresen School, Memngar, Ahmedabad - 380052, vide Show Cause Notice STC/15-113/OA/2021 dated 23.04.2021

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

**By Registered Post AD/By Hand Delivery**  
F.No. STC/15-113/OA/2021

Date: \_\_.11.2022.

To,  
M/s. Viralbhai Shankerlal Patel,  
B-42, Sahjanand Apartment,  
Near Maharaja Agresen School,  
Memngar,  
Ahmedabad - 380052  
(GUJARAT)

Copy for information to:

1. The Principal Chief Commissioner of CGST & Central Excise, Ahmedabad Zone.
2. The Deputy/Asst. Commissioner, Division-VII, CGST & C.Ex., Ahmedabad North.
3. The Superintendent, Range-II, Division-VII, CGST & C.Ex., Ahmedabad North.
4. The Superintendent (Systems), Hq., CGST & C.Ex., Ahmedabad North.
5. Guard File.



