


<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>
<p>फ़ोन नंबर/ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. **STC/15-231/OA/2021-22**

DIN-20221264WT000082128E

आदेश की तारीख	/	Date of Order : 15.12.2022
जारी करने की तारीख	/	Date of Issue : 15.12.2022
द्वारा पारित/Passed by -		
	उपेन्द्र सिंह यादव	/ UPENDRA SINGH YADAV
	आयुक्त	/ COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-29/2022-23

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 अंग्रेषित 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 क)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.

8. 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/15-231/OA/2021-22 dated 23.04.2021 issued to M/s. Mukesh A. Patel, 205, Appollo Arcade, Nr. Nirman Tower, R.C. Technical Road, Chandlodiya, Ahmedabad - 382481 (Gujarat).

ORDER-IN-ORIGINAL NO. AHM-EXCUS - 29/2022-23

M/s. Mukesh A. Patel, 205, Appollo Arcade, Nr. Nirman Tower, R.C. Technical Road, Chandlodiya, Ahmedabad - 382481 (Gujarat) were issued Show Cause Notice No. STC/15-231/OA/2021-22 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/15-231/OA/2021-22 dated 23.04.2021 are as follows:

1. 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 M/s. Mukesh A. Patel, Nr. Nirman Tower, 205, Appollo Arcade, R.C. Technical Road, Chandlodiya, Ahmedabad - 382481 (Gujarat) (hereinafter referred to as the "Assessee" for sake of brevity) was carried out by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17 and 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 rendered such taxable services without obtaining registration and thereby had also not made the payment of applicable Service Tax on the services rendered.
2. 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 not covered under the Negative List as given in the Section 66D of the Finance Act, 1994, as amended from time to time.
3. Due to non-availability of any other information on records, the service tax liability of the 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.
4. By the act of rendering taxable services without any statutory compliance of the provisions of the Finance Act, 1994/Service Tax rules, 1994 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 69(1) of the Finance Act, 1994 read with Notification No. 33/2012-Service Tax dated 26.06.2012 in as much as they had failed to obtain Service Tax Registration
- 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 had also failed to furnish returns in such form i.e. ST3 Returns, in such manner and at such frequency as mandated
- 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
- v. Section 77 of the Finance Act, 1994, in as much as they had failed to file correct and true ST3 Returns.

5. No data was shared by the CBDT for the subsequent period of 2017-18 (Upto June 2017), therefore at the time of issuance of Show Cause Notice it was not possible to quantify non-payment of Service Tax if any, for the period of F.Y. 2017-18, (Upto June 2017).

5.1. Unquantified demand at the time of issuance of SCN.

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

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

6. Accordingly, 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 also to be recovered from the assessee.

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 was also 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 obtain service tax registration/furnish the information called for and appeared to have contravened various provision of Finance Act, 1994 and Rules made there under, thereby rendering themselves liable for penalty under Section 77(1)(a), 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 per the Table-A below:-

TABLE-A

(Amount in Rs)				
Sl. No.	F.Y.	TOTAL SALE OF SERVICES (ITR)	Service Tax rate	Service Tax Payable
1	2015-16	6,92,86,206/-	14.5%	1,00,46,499/-
2	2016-17	23,47,59,728/-	15%	3,52,13,959/-
TOTAL		30,40,45,934/-		4,52,60,459/-

10. It appeared that the assessee had not obtained Service Tax Registration from the department for the services provided by them during F.Y. 2015-16 to F.Y. 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. 4,52,60,459/-**

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. Therefore, a Show Cause Notice No. STC/15-231/OA/2021-22 dated 23.04.2021 was issued by the Commissioner, Central GST & Central Excise, Ahmedabad North to the Assessee (M/s. Mukesh A. Patel) asking them as to why;

- (i) Service Tax of Rs. 4,52,60,459/- which was not paid for the financial year 2015-16 and 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), as and when 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.

DEFENCE REPLY:

12. The assessee vide their letter dated 18.06.2021 (received by the department on 21.06.2021) submitted their reply to the Show Cause Notice dated 23.04.2021, wherein they have inter alia stated as under –

- a. That they are Government and Semi-Government Contractors and are engaged in providing service of Works Contract etc. and have filed all their income tax returns under Income Tax law.

- b. That as per the details mentioned in para 2 of the notice, any such data received by CBDT for such period is subject to clarification as per their Income return.
- c. That their Service Tax liability was subject to clarification of their Works Contract service of Government and Semi-Government infrastructure and building development; that they were already registered under GVAT Act, 2005; that they have filed all returns under GVAT Act, 2005 and made all compliance of their Tax liability; the Tax credit reflected in 26AS is with regard to Government and Semi-Government building Contract Service provided to State Government and local authorities which has already been disclosed in their Income Tax Returns.
- d. That the SCN issuing authority has erred in proposing levy of interest under provision of Section 75 of the Finance Act, 1994 as they are providing exempted service which are not liable for Service Tax and therefore no interest for delayed payment of Service Tax can be charged.
- e. That obtaining Service Tax registration was required only when the aggregate of service exceeds the limit as prescribed under the law; that in the instant case they have neither charged nor collected any Service Tax from their clients.
- f. That the provisions of Section 73(1) have been wrongly invoked in the SCN; that the SCN ought to have been issued within 30 months from the due date of filing the return.
- g. That the SCN has been issued only for the reason that the turnover in the Income Tax records does not match with the turnover in the Service Tax records.; that the reason for such mismatch has been conveniently ignored by the officers even when pointed citing the exemption notifications and RCM; that the SCN will not pass the test of validity if and when challenged.
- h. That the SCN claiming difference between IT return and ST return is merely a roving and fishing inquiry without even bothering to find that the Assessee is neither liable to either register under Service Tax nor collect and pay Service Tax as per various notifications issued by Central Government; thus the extended period cannot be invoked and the SCN ought to have been issued within 30 months of relevant date.
- i. That for the SCN to be valid, both the following conditions must have been fulfilled –

1. Service Tax should have been underpaid/not paid/excess refund
AND

2. It should have happened due to fraud, collusion by the party

That if only 1 is satisfied then the limitation period is 30 months; and if both 1 and 2 both are satisfied only then the 5 years period is applicable; that in the instant case none of the above conditions are satisfied; that there is no underpayment or excess refund due to specific exemption or RCM notifications; hence there cannot possibly be a valid SCN under section 73(1)

j. That if necessary, they desire to provide further clarification with the written explanation; that they are ready to produce necessary document if any required during the adjudication process.

13. The assessee, vide their letter dated 19.05.2022 have submitted the following documents –

- a. Party-wise Sales register for the period 2015-16 and 2016-17
- b. Audit Report with P/L and B/S for the period 2015-16 and 2016-17
- c. Xerox copies of all invoices
- d. Xerox copies of sub-contract agreements

13.1. The assessee, further vide their letter dated 14.09.2022 have submitted the following documents –

- i. Xerox copies of 26AS for the period 2015-16 and 2016-17.
- ii. Xerox copies of original contract R/A invoices w.r.t. M/s. Niyati Construction Co.
- iii. Xerox copies of original contract R/A invoices w.r.t. M/s. Paresh S. Patel.
- iv. Xerox copies of original contract R/A invoices w.r.t. M/s. Pratibha Industries Ltd. J/V Hindustan Projects.
- v. Xerox copies of original contract R/A invoices w.r.t. M/s. JSIW Infrastructure Pvt. Ltd.

PERSONAL HEARING:

14. Personal hearings were granted to the assessee on 05.05.2022, 24.05.2022, 20.06.2022, 27.07.2022, 08.09.2022. However the Assessee did not appear for personal hearing on any of the above mentioned dates. Finally the personal hearing was fixed on 17.10.2022 and the same was attended by

Shri Akash C. Nayak, Chartered Accountant and Shri Chetan H. Shah, Accountant, on behalf of the Assessee. During the course of personal hearing Shri Akash Nayak reiterated the contents of their written submission dated 21.06.2021 and additional documents submitted vide letters dated 19.05.2022 and 14.09.2022. He also submitted that the Assessee has provided services of Works Contract services to the Government and local authorities and their work is exempted vide 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 21.06.2021, the documents submitted vide letters dated 19.05.2022/14.09.2022 and oral submissions made by the assessee during the course of personal hearing on 17.10.2022. 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.
- iii. Whether the Service Tax can be demanded under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time or not.

16. I find that the genesis of the demand has arisen from the analysis of the 26AS and ITR of the Assessee by the CBDT for the period 2015-16 and 2016-17 and the same being shared with the department. On the basis of the information shared by the CBDT, it was found that during the year 2015-16 and 2016-17, the Assessee has rendered services and had received income on such services without payment of service tax on such income. Therefore the SCN dated 23.04.2021 was issued to the Assessee demanding service tax of Rs. 4,52,60,459/- (Rs. 1,00,46,499/- + Rs. 3,52,13,959/-) on the value of total taxable service, provided by the Assessee amounting to Rs. 30,40,45,934/- (Rs. 6,92,86,206/- + Rs. 23,47,59,728/-) for F.Y. 2015-16 and 2016-17.

17. However, on going through the figures appearing in the Form 26AS, I find the figures of Gross receipts from services, mentioned in SCN are exactly double of the amount paid/credited to the Assessee as appearing in Form 26AS for the years 2015-16 and 2016-17. In order to verify the apparent difference, examination figures of Form 26AS vis-à-vis figures of income reflected in the SCN is felt necessary. Accordingly, the details of income reflected in Form 26AS and the said SCN dated 23.04.2021, is as under -

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 under section 194 C of the Income Tax Act, 1961	
		2015-16	2016-17
1	District Panchayat, Gandhinagar	1565662	4407947
2	Executive Engineer	189832	6517
3	Paresh S. Patel	11255882	0
4	JSIW Infrastructure Pvt. Ltd.	0	21510818
5	Executive Engineer Ahmedabad Irrigation Department	131727	203645
6	Project Implementation Unit	0	10272098
7	Niyati Construction Company	21500000	0
8	Hindustan Project	0	80978839
9	Total	3,46,43,103	11,73,79,864
10	Double of (9)	6,92,86,206	23,47,59,728
11	As per SCN dated 23.04.2021, Gross receipt from services	6,92,86,206	23,47,59,728
12	Difference (10-9)	3,46,43,103	11,73,79,864

17.1. I find that the SCN dated 23.04.2021 mentions the sharing of data from ITR/26AS, and mentions specifically, that the 26AS data, has been considered for computing the tax liability upon the assessee. On going through the data of 26AS for F.Y. 2015-16 & 2016-17, I find that the Gross amount/receipt from the provision of Services, as shown in the SCN dated 23.04.2021, is not correct and the same is exactly double of the amount paid/credited to the Assessee as per Form 26AS as reflected above in preceding para No. 17. Accordingly, I hold that the demand on the excess amount of Rs. 15,20,22,967/- (Rs. 3,46,43,103/- plus Rs. 11,73,79,864/-) is not sustainable and the same is required to be dropped. Further, I also hold that instead of Rs. 30,40,45,934/- (Rs. 6,92,86,206/- plus Rs. 23,47,59,728/-) the amount of Rs. 15,20,22,967/- (Rs. 3,46,43,103/- plus Rs. 11,73,79,864/-) appearing in Form 26AS for the period 2015-16 and 2016-17 is the correct amount for deciding the Service Tax liability of the Assessee.

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

Sl. No.	Particulars	2015-16	2016-17
1	Total Income as per Form 26AS	3,46,43,103/-	11,73,79,864/-
2	Income as per Profit & Loss Account	2,80,36,911/-	13,28,06,333/-

18.1. However, 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 Form 26AS of the Assessee for the 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 Form 26AS for the same period.

19. 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. 15,20,22,967/- (Rs. 3,46,43,103/- plus Rs. 11,73,79,864/-) for the Financial Year 2015-16 and 2016-17.

20. 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 defense reply dated 21.06.2021, 19.05.2022 and 14.09.2022 that they had provided Works Contract Services to government and their only contention is that the services provided by them are exempted services. Accordingly, I find that there is no dispute as far as the provision of services and also receipt of income on provision of such services by the assessee for the Financial Year 2015-16 and 2016-17 as given below:

Sl. No.	Year	Total Taxable Value (Rs.)
1	2015-16	3,46,43,103/-
2	2016-17	11,73,79,864/-
	TOTAL	15,20,22,967/-

20.1 I also find that it has been stated in the SCN that the Service Tax liability not paid by the Assessee during the Financial Year 2017-18 (upto June, 2017), should be ascertained in future and such Service Tax should be demanded and recovered from the Assessee under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.

20.2 As regards the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the SCN dated 23.04.2021, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. I find that no information has been received from the Income Tax department for the period F.Y.2017-18 (upto June, 2017) and the assessee has also not provided any details/information/ documents for the F.Y.2017-18 (upto June, 2017). Further, since the department has also not adduced any information/evidence and the reason for the non disclosure has also not been made known to the department, I refrain myself from entering in to the period of F.Y.2017-18 (upto June, 2017) to determine liability or otherwise of assessee for service tax.

21. 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. In order to ascertain the claim of the Assessee that the services rendered by them were eligible for exemption under Notification No. 25/2012-ST, it is necessary to analyze the RA Bills, Work Orders and Contract Agreements submitted by them during the course of adjudication proceedings. The details of the RA Bills, Work Orders and Contract Agreements submitted by them are under -

21.1 Work Orders

1. Work Order No. 8A/GJ/2013-14/553 dated 17.07.2014 issued to M/s. Niyati Construction Co., Vadodara issued by Executive Engineer, National Highway Division, Ahmedabad for "Construction of C.C. service road and improving of drainage arrangement beside service road on NH-8A (new NH-47) between Km. 18/600 to 22/600 near Changodar village in the State of Gujarat". They have also submitted corresponding contract agreement dated 14.08.2014 with M/s. Niyati Construction Co., Vadodara for the work pertaining to subject work order No. 8A/GJ/2013-14/553 dated 17.07.2014.
2. Work Order No. BLD:42/2013/2671 dated 27.12.2013 issued to M/s. Paresh S. Patel, Himmatnagar issued by Executive Engineer Ahmedabad (R&B) Division, Ahmedabad for "Construction of New Court Building at Dholka, Dist. Ahmedabad". They have also

submitted corresponding contract agreement dated 16.01.2014 with M/s. Paresh S. Patel, Himmatnagar for the work pertaining to subject work order No. BLD:42/2013/2671 dated 27.12.2013

3. Work Order No. AB-4/EPC/Sauni Yojna/L4-P1/42 dated 01.03.2014 issued to M/s. Pratibha Industries Ltd. – Yogiraj (JV), Mumbai issued by Executive Engineer, Project Construction Division No. 4, Rajkot for “Engineering, Procurement and Construction (EPC) Contract for construction of Pumping Station at Limdi Bhogavo II Reservoir and Supplying and laying of twin MS Pipeline (pumping) of 3000 mm dia (ID) and plate thickness of 17.5 mm from Pumping Station to Intermediate Pumping Station at chainage 18.317 km. (18.317 km. length near Nagdaka Village) with all allied works etc. complete including operation and maintenance of the commissioned project for 10 years”. They have also submitted corresponding contract agreement dated 12.07.2016 with M/s. Pratibha Industries Ltd. – Yogiraj (JV), Mumbai for the work pertaining to subject work order No. AB-4/EPC/Sauni Yojna/L4-P1/42 dated 01.03.2014
4. Work Order No. AB-2/Sauni Yojna/EPC/L3-P4/ACPT/4088 dated 21.11.2016 issued to M/s. JSIW Infrastructure Pvt. Ltd., Ahmedabad issued by Executive Engineer, Rajkot Irrigation Project Division, Rajkot for “Engineering, Procurement and Construction (EPC) Contract for construction of Pumping Station at ch.66.29 km. near Machhu-I reservoir & supplying and laying MS pipe line of 3000 mm dia (ID) with plate thickness of 18 mm from ch.66.29 km. (Machhu-I) to ch.97.29 km. (Aji-I) (31.00 km length) with all allied works etc. complete including operation and maintenance of the commissioned project for 10 years”. They have also submitted corresponding contract agreement dated 03.01.2017 with M/s. JSIW Infrastructure Pvt. Ltd., Ahmedabad for the work pertaining to subject work order No. AB-2/Sauni Yojna/EPC/L3-P4/ACPT/4088 dated 21.11.2016
5. Work Order No. No. BV/TC/Vs/252/57/ 2016 dated 10.02.2016 in favour of the Assessee issued by the Executive Engineer, District Panchayat, Gandhinagar for construction of new roads in Mansa Taluka.
6. Work Order No. PIU/ACs/PHC/Gandhinagar/561/2016 dated 10.02.2016 in favour of the Assessee issued by Chief Engineer, Project Implementation Unit, Commissionerate of Health, Gandhinagar for

new construction of sub-centre compound wall, CC Road at Adaraj Moti, Kolwada 2, Uvarsad, Dist. Gandhinagar

7. Work Order No. PIU/ACs/PHC/SC/Gandhinagar/670/2016 dated 19.02.2016 in favour of the Assessee issued by Chief Engineer, Project Implementation Unit, Commissionerate of Health, Gandhinagar for new construction of sub-centre compound wall, CC Road at Unava 2, Dabhoda, Adalaj 2, Sughad, Dist. Gandhinagar

21.2 Summary of recipient-wise RA bills

Sl. No.	Name of the Recipient of Service	Work Order No. & date	2015-16	2016-17
			RA Bill Submitted	RA Bill Submitted
1	District Panchayat, Gandhinagar	No. BV/TC/VS/252/57/2016 dated 10.02.2016	1565662 0	118010 4289937
2	Paresh S. Patel	BLD:42/2013/2671 dated 27.12.2013	4270819 1011729 5595443 377891	0 0 0 0
3	Executive Engineer Ahmedabad Irrigation Department	AB/TC/6284 dtd. 26.12.2012	131727	0
4	Niyati Construction Company	No. 8A/GJ/2013-14/553 dated 17.07.2014	21500000	0
5	JSIW Infrastructure Pvt. Ltd.	No. AB-2/Sauni Yojna/EPC/L3-P4/ACPT/4088 dated 21.11.2016	0 0	15510818 6000000
6	Project Implementation Unit	No. PIU/ACs/PHC/Gandhinagar/561/2016 dated 10.02.2016 and No. PIU/ACs/PHC/SC/Gandhinagar/670/2016 dated 19.02.2016	0 0 0 0	4040054 0 2034099 1247185
7	Hindustan Project	No. AB-4/EPC/Sauni Yojna/L4-P1/42 dated 01.03.2014	0 0 0 0 0 0 0 0 0	0 2027946 12197929 7228560 5426041 1539759 23810267 24635548 1629136
TOTAL			34453271	111735289

21.3 I find that the Assessee has blandly claimed that they are engaged in activity of Works contract services for government and the services provided by them are exempted services under Notification 25/2012-ST dated 20.06.2012. The Assessee has not stated specifically as to under which entry of Notification No. 25/2012-ST their activity is exempted, but on the basis of work orders and RA bills submitted by them it is observed that they have provided the following services –

- i. Construction of Road
- ii. Laying of water supply pipeline
- iii. Construction of Compound Wall and CC Road at Public Health Centre
- iv. Construction of Civil Structure (Building for Court)

The relevant exemption notification and the relevant entries in which these services fall are as under –

Sl. No.	Nature of work	Relevant exemption notification Number	Entry Number of the Notfn.
1	Construction of Road	25/2012-ST dtd. 20.06.2012	13(a)
2	Laying of water supply pipeline	-do-	12(e)
3	Construction of Compound Wall and CC Road at Public Health Centre	25/2012-ST dtd. 20.06.2012 and 9/2016-ST dtd. 01.03.2016	12(A)(a)
4	Construction of Civil Structure (Building for Court)	9/2016-ST dtd. 01.03.2016	12(A)(a)

To appreciate the issue in the correct perspectives, relevant extracts/entries of Notification No. 25/2012-ST and 9/2016-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)
- (e) *pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or*
- (f)

“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)

(c)

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,)

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

21.4 Accordingly, as far as the services of "Construction of Road" and "Laying of water supply pipeline", I find that the same are exempted in terms of Entry No. 13(a) and 12(e) respectively of Notification No. 25/2012-ST. As far as services of "Construction of Civil Structure" is concerned I find that the same is also exempted vide Entry No. 12(A)(a) of Notification No. 25/2-12-ST (inserted vide Notification No. 9/2016- ST dated, 1.3.2016 w.e.f.1.3.2016) subject to the condition that the contract for such work should have been entered prior to 1st March 2015. Before proceeding further, I find it necessary to reproduce the value of taxable services rendered by the Assessee under the category of "Construction of Civil Structure", which is as below -

Sl. No.	Name of the Recipient of Service	Work Order No. & date	2015-16	2016-17
			RA Bill Submitted	RA Bill Submitted
1	Paresh S. Patel	BLD:42/2013/2671 dated 27.12.2013	11255882	0
2	Project Implementation Unit	No. PIU/ACs/PHC/ Gandhinagar/561/2016 dated 10.02.2016 and No. PIU/ACs/PHC/SC/ Gandhinagar/670/2016 dated 19.02.2016	0	10272098

21.5 As far as, services to M/s. Paresh S. Patel are concerned, on the basis of the work order No. BLD:42/2013/2671 dated 27.12.2013, I find that

the Assessee has provided the service of "Construction of New Court Building at Dholka, Dist. Ahmedabad" to the Executive Engineer Ahmedabad (R&B) Division, Ahmedabad as a sub-contractor to M/s. Paresh S. Patel. Accordingly, their activity is covered under the Entry No. 12(A)(a) of notification No. 25/2012-ST (Inserted vide Notification No. 9/2016- ST dated, 1.3.2016 w.e.f.1.3.2016)". Further since the date of W.O. is 27.13.2013, the condition of contract being entered prior to 01.03.2015 mandated in the said Entry No. 12A(a) for being eligible for exemption, is also fulfilled here. Accordingly, I hold that the Assessee is eligible for exemption on their income of Rs. 1,12,55,882/- for the services provided to M/s. Paresh S. Patel.

21.6 As far as, Services to Project Implementation Unit are concerned, on the basis of the work order No. PIU/ACs/PHC/ Gandhinagar/561/2016 dated 10.02.2016 and No. PIU/ACs/PHC/SC/ Gandhinagar/670/2016 dated 19.02.2016, I find that the Assessee has provided the service of "new construction of sub-centre compound wall, CC Road" to the Chief Engineer, Project Implementation Unit, Commissionerate of Health, Gandhinagar. Accordingly, their activity is covered under the Entry No. 13(a) for construction Road and also Entry 12(A)(a) of notification No. 25/2012-ST (Inserted vide Notification No. 9/2016- ST dated, 1.3.2016 w.e.f.1.3.2016)" for construction of compound wall. However, both work orders are dated 10.02.2016 and 19.02.2016 i.e. after 01.03.2015. Since the date of W.O. are of Feb 2016, the condition of contract being entered prior to 01.03.2015 mandated in the said Entry No. 12A(a) for being eligible for exemption, is not fulfilled here. Even though the income earned by the Assessee for construction of Road is liable for exemption, the income earned by them from construction of compound wall is taxable in terms of Entry 12(A)(a) as discussed above. Further, since the taxpayer has not given any bifurcation of income as to from which activity they have earned the income w.r.t. their service rendered to Project Implementation Unit, I hold that the total income of the Assessee amounting to Rs. 1,02,72,098/- received by them from Project Implementation Unit is taxable and they are liable to pay Service Tax on this income.

21.7 From scrutiny of the documents viz. Work Orders and RA Bills, submitted by the Assessee w.r.t. Project Implementation Unit as discussed above, it is apparent that the service provided to Project Implementation Unit are evidently classifiable under Works Contract Service. Accordingly, I also 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). Further, I find that as per the provisions of Service Tax (Determination of Value) Rules, 2006 (Valuation Rules), 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 per the Work Order issued by Project Implementation Unit, the assessee was to carry out the work of "new construction of sub-centre compound wall, CC Road" the work awarded being "New Construction" the same falls within the ambit of "Original Work". Accordingly, the value of service portion in case of works contract service provided to Project Implementation Unit, will be 40% of the amount charged by the assessee for the said work.

21.8 Having considered the above legal and factual position, the Service Tax payable on amount received for providing taxable service by the assessee from Project Implementation Unit as per Form 26AS, the applicable service tax liability has been worked out herein as under -

Sr. No.	As per Form 26AS		Abatement under valuation Rules (Rate)	Net Taxable Value (After abatement and Percentage Liability)	Service Tax Rate %	Service Tax Payable
	Date. of transaction	Amount paid to the assessee (Value of service provided)				
1	16-02-2017	4040054	60%	1616022	15	242403
2	27-10-2016	2950760	60%	1180304	15	177046
3	23-08-2016	2034099	60%	813640	15	122046
4	03-08-2016	1247185	60%	498874	15	74831
TOTAL		10272098		4108839		616326

22. I find that the Assessee has submitted RA bills along with the Work Orders for most of the income entries reflected in the 26AS. Therefore after considering/allowing the exemption for the amounts reflected in the R.A. Bills, the summarized taxable value for the period 2015-16 and 2016-17 is worked out as under -

Sl. No.	Year	Gross Total Taxable Value (Rs.)	Value deductible on the basis of documents given	Net Taxable Value (Rs.) (3 - 4 & 5)
1	2	3	4	6
1	2015-16	3,46,43,103/-	3,44,53,271/-	1,89,832/-
2	2016-17	11,73,79,864/-	11,17,35,289/-	56,44,575/-
TOTAL		15,20,22,967/-	14,61,88,560/-	58,34,407/-

22.1 From the above tables, it can be seen that the Assessee has submitted RA bills in majority of the 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. **15,20,22,967/-** for the year 2015-16 and 2016-17, the Assessee has submitted proof of compliance/exemption for an amount of Rs. **14,61,88,560/-** which in percentage works out to **96.16%**. Further it can also be seen from the scope of work reflected in all the work orders that except for the work of Project Implementation Unit, as discussed in the preceding para, they have provided the work related to Construction of Road and Laying of Water Supply Pipeline which are exempted in terms of Notification No. 25/2012-ST.

22.2 Therefore considering the fact, that the Assessee 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 are not able to submit the proof of some portion of income, that too, for 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. 58,34,407/- as worked out in para 22 above.

22.3 Accordingly, I hold that the Assessee is liable to pay the Service Tax on the amount of Rs. **1,02,72,098/-** on the demand raised against them vide the SCN dated 23.04.2021. I also hold that the remaining amount i.e. **29,37,73,836/-** is not liable for payment of Service Tax.

23. I also find that the Assessee has not complied with the provisions of the Finance Act, 1994 and the Service Tax Rules, 1994 in as much as they have not obtained Service Tax registration, not declared the provision of taxable service, not assessed the value of taxable service provided by them and not paid the applicable service tax. The basis of the Show Cause Notice is the data shared by the CBDT and not on any data provided by the Assessee. Therefore, I hold that the Assessee is guilty of suppression of facts, wilful mis-statement and contravention of provisions of the Finance Act, 1994 and Service Tax Rules, 1994 with intent to evade the payment of Service Tax. Accordingly, I also hold that Service Tax has been correctly demanded vide the SCN dated 30.03.2021 under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time.

24. Therefore, on the basis of documents submitted by the Assessee, I hold that out of the total value of services of Rs. **30,40,45,934/-** for the period 2015-16 and 2016-17, they are eligible for exemption under Notification 25/2012 for the value of Rs. **29,37,73,836/-**, and they are liable to pay Service

Tax on the value of Rs. 1,02,72,098/- (Rs. **30,40,45,934/-** minus Rs. **29,37,73,836/-**). Therefore out of the total demand of Rs. 4,52,60,459/- for the period 2015-16 and 2016-17 the Assessee is liable to pay Service Tax of Rs. 6,16,326/- (@ 15% on 40% of Rs. 1,02,72,098/-) and the demand of Service Tax to the tune of Rs. 4,46,44,133/- (Rs. **4,52,60,459/-** minus Rs. **6,16,326/-**) is liable to be dropped.

25. Therefore, in view of the discussion and findings in foregoing paras, I hold that the assessee is liable to pay the Service Tax of Rs. **6,16,326/-** (Rs. Six Lakh Sixteen Thousand Three Hundred Twenty Six Only) under section 66B read with Rule 2 of Service Tax Rules 1994 for rendering taxable services as computed below –

Sl. No.	Year	Gross Total Taxable Value (Rs.)	Value deductible on the basis of duplication in computation	Value deductible on the basis of documents given	Net Taxable Value (Rs.) (3-4-5)	40% of Net Taxable Value (Col 6)	Rate of Service Tax	Service Tax Payable on the 40% of Net Taxable Value (Rs.)
1	2	3	4	5	6	7	8	9
1	2015-16	69286206	34643103	34643103	NIL	NIL	14.5%	NIL
2	2016-17	234759728	117379864	107107766	10272098	4108839	15%	616326
	TOTAL	304045934	152022967	141750869	10272098	4108839		616326

25.1 I also hold that the assessee has failed to pay service tax amounting to Rs. **6,16,326/-**, 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 F.Y. 2015-16 and 2016-17 by them and the same is required to be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

26. 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. **6,16,326/-** 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.

27. 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. 6,16,326/-.

28. 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 by not filing /showing their actual taxable income in the ST-3 Returns and also by not paying the Service Tax due to the government by 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 due 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 claiming of exemption without being eligible under Notification No. 25/2012-ST as discussed in forgoing paras during F.Y. 2015-16 and 2016-17. 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 and 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 to be 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 tantamount 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 payment of 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. 6,16,326/- (including cess) is required to be recovered along with applicable interest under Section 75 of the Finance Act, 1994 from the assessee. For the same reasons, all ingredients for imposing penalty on the assessee under Section 78 exists, therefore, the assessee is also liable for penal action under the provisions of Section 78 of the Finance Act, 1994.

29. As far as, the proposal for imposition of penalty under Section 77(1)(a), 77(1)(C) and 77(2) of the Finance Act, 1994, is concerned 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. I also find that the Assessee has failed to furnish records/information called for by the department and thereby have rendered themselves liable for penal action under Section 77(1)(c) as well.

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

ORDER

(i) I hereby confirm the demand of service tax of Rs. 6,16,326/- (Rs. Six Lakh Sixteen Thousand Three Hundred Twenty Six Only) for FY 2015-16 and 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 demand of Service Tax of Rs. 4,46,44,133/- accordingly.

- (ii) I order to charge Interest at the appropriate rate on the demand of Service tax of Rs. 6,16,326/- and to recover the same from the assessee under Section 75 of the Finance Act,1994;
- (iii) I impose penalty of Rs. 6,16,326/- on the assessee under the provision of Section 78 of the Finance Act, 1994.
- (iv) I impose penalty of Rs. 10,000/- on the assessee under the provision of Section 77(2) of the Finance Act, 1994, for failure to assess their service tax liability and also for failure to file ST-3 Returns.
- (v) 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.
- (vi) I impose penalty of Rs. 10,000/- on the assessee under the provision of Section 77(1)(c) of Finance Act, 1994 for non furnishing of records/information which were called for by the department from the assessee.

31. 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 period of thirty days.

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

Date: 15.12.2022.

By Regd. Post AD./Hand Delivery
F.No. STC/15-231/OA/2020



By Registered Post AD/By Hand Delivery
To,
M/s. Mukesh A. Patel,
205, Appollo Arcade, Nr. Nirman Tower,
R.C. Technical Road, Chandlodiya,
Ahmedabad - 382481 (Gujarat)

Copy for information to:

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

