


system

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

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

फा .सं./ F.NO. STC/15-255/OA/2021

DIN : 20230164WT0000999DAC

आदेश की तारीख /

Date of Order : 18.01.2023

जारी करने की तारीख /

Date of Issue : 18.01.2023

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव /

UPENDRA SINGH YADAV

आयुक्त /

COMMISSIONER

मूल आदेश संख्या /

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 36 /2022-23**

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

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

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

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

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

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

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

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 एक प्रतियाँ संलग्न की जाएंगी 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 Notices No. STC/15-255/OA/2021 dated 14.06.2021 against M/S Prakash Agro Mills, Nr Omkar Textile Memco, Naroda Road, Ahmedabad-380025

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 26 /2022-23**

M/S Prakash Agro Mills, Nr Omkar Textile Memco, Naroda Road, Ahmedabad-380025, having PAN No. AACFP0947R were issued SCN F. No. STC/15-255/OA/2021 dated 14.06.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

**BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S PRAKASH AGRO MILLS, ARE AS FOLLOWS:**

M/S. Prakash Agro Mills, Nr Omkar Textile Memco, Naroda Road, Ahmedabad-380025 (hereinafter referred to as the 'Assessee' for the sake of brevity) appeared to be engaged in providing taxable services. It also appeared that the assessee having PAN No. AACFP0947R, was not registered with Service tax department.

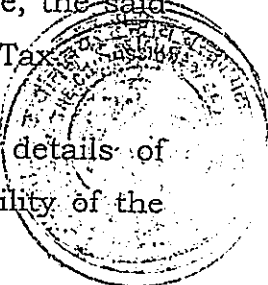
2. As per the data shared by CBDT with the Central Board of Indirect Taxes (CBIC) for F.Y.2015-16, it appeared that the assessee had earned substantial service income by way of providing taxable services, but they had neither obtained service tax registration nor paid service tax thereon.

3. A letter dated 28.01.2021 and its reminder dated 16.03.2021 were issued to the assessee with a request to produce the documents mentioned therein within a week time from the date of receipt of letter/summons. In compliance, the assessee submitted the documents, which were found to be insufficient.

4. With effect from 01.07.2012, the negative list regime had come into existence under which all services were taxable and only those services which were mentioned in negative list were exempted from service tax.

5. It further appeared that the nature of activities carried out by the assessee as Service Provider were falling under the definition of service and the said services appeared to be not covered under the negative list of services provided under Section 66D of the Finance Act, 1994 as amended from time to time. The said services also appeared to be not covered under mega exemption notification No. 25/2012-ST as amended from time to time. Hence, the said services provided by the assessee, appeared to be subject to Service Tax.

6. Since the assessee had not submitted the required details of service provided during FY 2015-16, therefore, the service tax liability of the



assessee was required to be ascertained on the basis of income mentioned in the ITR and Form 26AS filed by the assessee with Income Tax Department.

The figures/data provided by the Income Tax department were considered as the total taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.

7. The Service Tax liability was calculated 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" as provided by the Income Tax Department for the Financial Year 2015-16. By considering the said amount as taxable income, service tax liability was calculated as detailed given below:-

Sr. No.	F.Y.	Sales of services under Sales/Gross Receipts From Services (Value from ITR) or "Total Amount Paid/Credited Under Section 194C, 194I, 194H, 194J	Service Tax rate	Service Tax Payable
1	2015-16	52,02,83,173/-	14.5%	7,54,41,060/-
<b>TOTAL</b>				<b>7,54,41,060/-</b>

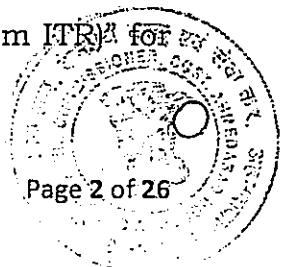
8. No data was shared by the CBDT, for the period FY 2016-17 & 2017-18 (upto June-2017), therefore, at the time of issuance of SCN it was not possible to quantify short payment of Service Tax, if any, for the period FY 2016-17 & 2017-18 (upto June-2017).

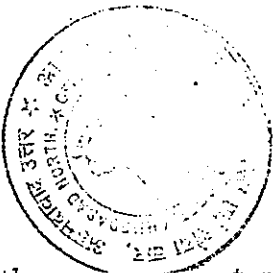
Unquantified demand at the time of issuance of SCN.

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

*'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the assessee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (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.'*

9. The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR) for





the assessment year FY 2016-17 2017-18 (upto June-2017) had not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to the department. The assessee had also failed to provide the required information even after the issuance of letter from the Department in view of which the assessable value for the year 2016-17 & 2017-18 (upto June-2017) was not ascertainable at the time of issuance of this Show Cause Notice. If any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action was to be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period FY 2016-17 & 2017-18 (upto June-2017) covered under subject Show Cause Notice, was to be recovered from the assessee.

10. The government has from the very beginning placed full trust on the service provide, accordingly measures like self assessment etc. based on mutual trust and confidence have been put in place. Further, the service provider were not required to maintain any statutory or separate records under the Excise / service tax law as considerable amount of trust was placed on the service provider and private records maintained by them for normal business purposes were accepted for purpose of excise & Service tax laws. 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. From the evidences, it appeared that the said assessee had not taken into account all the income received by them for rendering taxable services for purpose of payment of service tax and thereby evaded their service tax liabilities. The assessee appeared to have made deliberate efforts to suppress the value of taxable service to the department and appeared to have not paid the service tax in utter disregard to the requirements of law and breach of trust deposed on them. Such outright defiance of law, appeared to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

11. In light of the facts discussed herein above and evidences available on records, 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 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 declare correct value, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns in such form i.e. ST3 returns in such manner and at such frequency as required under

(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.

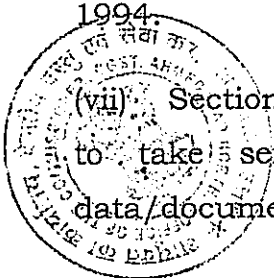
(iii) Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of Service Tax Rules 1994 in as much as they had failed to pay the service tax correctly at the appropriate rate within the prescribed time and in such manner as provided under the said provision.

(iv) Section 69(1) of the Finance Act, 1994 read with Notification No.33/2012-Service Tax dated 20.06.2012 in as much as they had failed to obtain Service Tax Registration

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

(vi) The said assessee appeared liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.

(vii) Section 77 of the Finance Act, 1994, in as much as they had failed to take service tax registration and did not provide required data/documents as called from them.

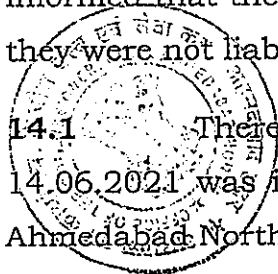


12. It appeared that the assessee had not obtained Service Tax Registration from the department for the services provided by them during FY 2015-16 to FY 2017-18 (up to June,2017) and they had responded to correspondence made by the department in order to ascertain the taxable income. It also appeared that the assessee had not paid the 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. 7,54,41,060/- 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. For the same reasons, they appeared liable to penalty under Section 78 of 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.

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

14. It also appeared that the assessee vide their letter dated 22.03.2021 had submitted that they were engaged in business of trading in grains and pulses, hence they were not liable for registration under Service Tax Act and due to clerical error the amount which ought to have been entered in sale of goods instead of sale of services for FY 2015-16. In support of their claim, the assessee had forwarded sales register and sample sales invoices for period FY 2015-16 to 2017-18. The jurisdictional Assistant Commissioner was asked to verify the documents submitted by the assessee. However, the Jurisdictional Assistant Commissioner vide their letter dated 11.06.2021 informed that the documents produced by them were insufficient to prove that they were not liable to pay service tax.

14.1 Therefore, a Show Cause Notice No. STC/15-255/OA/2021 dated 14.06.2021 was issued by the Commissioner, Central GST & Central Excise, Ahmedabad North to the assessee, asking them as to why;



- (i) Service Tax of Rs. 7,54,41,060/- which was not paid for the financial year 2015-16 as per the above table, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No CBEC-20/06/08/2020-GST.
- (ii) Service Tax liability not paid during the financial year 2016-17 & 2017-18 (up to June 2017), ascertained in future, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;
- (iv) Penalty under the provisions of Section 77(1)(a), 77(1)(c) & 77(2) of the Finance Act, 1994, as amended, should not be imposed on them.
- (v) Penalty under Section 78 of the Finance Act, 1994, as amended, should not be imposed on 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.

#### 15. DEFENCE REPLY:

The assessee vide their letter dated 21.06.2021 (received on 25.06.2021) tendered their written submission with reference to SCN dated 14.06.2021, wherein they have denied the allegation made in the SCN and have also contended that :

- They had submitted their reply on 26.03.2021 through online mode, but the documents submitted were not considered. They had also submitted the documents on 27.05.2021, but the same have not been taken on record.
- They were in business of Trading in Grains and Pulses, hence they were not required to take service tax registration.
- Due to clerical error while filing the Income Tax Return for FY 2015-16, they had shown the amount against the Sale of Services instead of Sale of Goods.



- Further, they have stated that there was no sale of services by them during FY 2016-17 to 2017-18 (upto June 2017).

The assessee submitted the following documents in support of the arguments advanced by them.

- Copy of Audit Report for FY 2015-16, 2016-17 & 2017-18
- Copy of Form 26AS for FY 2015-16, 2016-17 & 2017-18
- Copy of Sales Register for FY 2015-16, 2016-17 & 2017-18
- Sample Invoices (03 for FY 2015-16, 3 for FY 2016-17 & 3 for FY 017-18)

The assessee vide their mail dated 03.01.2022 further submitted documents as under:

- Sample Sales Invoices (53 for FY 2015-16)
- Vat Returns for FY 2015-16, 2016-17 & 2017-18
- ITR 5 for FY 2015-16, 2016-17 & 2017-18
- Purchase invoices for FY 2015-16
- Job Work invoices for FY 2015-16 ( 5 Invoices)

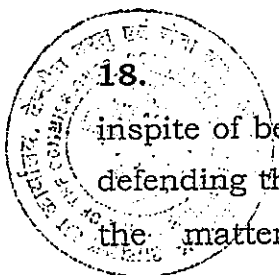
**PERSONAL HEARING:**

16. Personal Hearings were granted to the assessee on 16/18.05.2022, 02.08.2022, 22.08.2022, 14.09.2022, 21.10.2022 and 18.11.2022. However, the assessee chose not to avail any of the numerous opportunities offered for personal hearings. As can be seen, the assessee has been granted ample opportunities for defending their case in person, but they have chosen to refrain from availing the opportunities offered. I am accordingly forced to proceed in the matter on the basis of available records and to decide the case ex-parte.

**DISCUSSION AND FINDINGS:**

17. I have carefully gone through the facts of the case and records available in the case file, which include SCN, the defence reply dated 21.06.2021 and the documents submitted by the assessee.

18. I find that the assessee has failed to appear for Personal Hearing, inspite of being asked to do so repeatedly as mentioned in Para-14 above for defending their case. Under the circumstances, left with no recourse, I take up the matter for adjudication proceedings ex-parte on the basis of





“Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992.

(Emphasis Supplied)”

(d) The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEM TECH. LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II reported in 2004 (171) E.L.T. 412 (Tri. - Mumbai), has observed that;

“Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]

(Emphasis Supplied)”

(e) The Hon'ble Supreme court in the case of F.N. ROY Versus COLLECTOR OF CUSTOMS, CALCUTTA AND OTHERS reported in 1983 (13) E.L.T. 1296 (S.C.), has observed as under:

“Natural justice — Opportunity of personal hearing not availed of—Effect — Confiscation order cannot be held mala fide if passed without hearing.

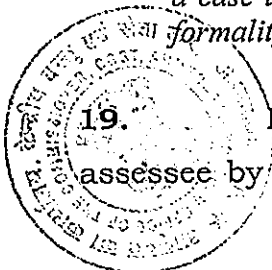
- If the petitioner was given an opportunity of being heard before the confiscation order but did not avail of, it was not open for him to contend subsequently that he was not given an opportunity of personal hearing before an order was passed. [para 28]

(Emphasis Supplied)”

(f) The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.), has observed as under;

*“7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.”*

I observe that SCN dated 14.06.2021 has been issued to the assessee by the competent authority demanding Rs. 7,54,41,060/- as service

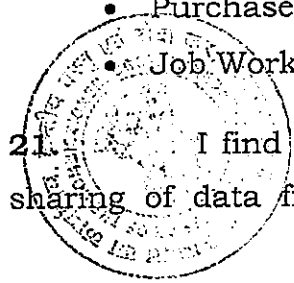


tax liability. On going through the said SCN, I find that basically the essence of the case is that data of "Sales /Gross Receipts from Services (ITR)" / "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" (as per TDS Statement-Form 26AS) were shared by the CBDT with CBIC for FY 2015-16. The figure/data provided by the CBDT was considered as the total taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994. As per the said SCN dated 14.06.2021, the assessee had received the amount of Rs. 52,02,83,173/- for provision of services during FY 2015-16, therefore, it was alleged vide SCN dated 14.06.2021, that the assessee had short paid/not paid the service tax of Rs. 7,54,41,060/- on such differential value, for providing the taxable service. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 7,54,41,060/- on the differential taxable value of Rs. 52,02,83,173/- for the Financial Year 2015-16 as demanded under SCN dated 14.06.2021, under proviso to section 73(1) of Finance Act, 1994 or not.

**20.** I find that the assessee in their defence reply dated 21.06.2021, has contested that they had not provided services during 2015-16, rather they were in business of trading of Grains and Pulses. They have further added that due to clerical error while filing the Income Tax Return for FY 2015-16, they had shown the amount against the Sale of Services instead of Sale of Goods. Further, they have stated that they had not provided any services during FY 2016-17 and 2017-18 (upto June 2017). In defence of the arguments tendered by them, the assessee have submitted the following documents.

- Copy of Audit Report for FY 2015-16, 2016-17 & 2017-18
- Copy of Form 26AS for FY 2015-16, 2016-17 & 2017-18
- Copy of Sales Register for FY 2015-16, 2016-17 & 2017-18
- Sample Sales Invoices (55 for FY 2015-16, 3 for FY 2016-17 & 3 for FY 2017-18)
- Vat Returns for FY 2015-16, 2016-17 & 2017-18
- ITR 5 for FY 2015-16, 2016-17 & 2017-18
- Purchase invoices for FY 2015-16
- Job Work invoices for FY 2015-16 ( 5 Invoices)

**21.** I find that the SCN dated 14.06.2021 makes a mention about the sharing of data from ITR/26AS, however, it does not mention specifically,



which data i.e. ITR data or 26AS data, has been considered for computing the tax liability upon the assessee. On going through the corresponding data of ITR/26AS for FY 2015-16 vis-à-vis value of services considered in the impugned SCN, the same are found to be tallying with ITR for FY 2015-16 only. Further, the said data for FY 2015-16 is also found to be tallying with amount of sale reflecting in P&L account for FY 2015-16. Accordingly, it is discerned that the value of services considered in the subject SCN has been derived from ITR for FY 2015-16. Therefore, I would proceed with the ITR data shared by CBDT for deciding the matter. The figures of Sales / amount paid / credited for FY 2015-16 & FY 2016-17, as per P&L accounts, Form 26AS and value of taxable service considered in the SCN, are reproduced herein below for ready reference:

Details of FORM 26AS for FY 2015-16			
Sr. No.	Name of TDS Deductor	Amount paid/credited	Section under which TDS deducted
1	BHARATIYA PROCESSING CO OPERATIVE FEDERATION LIMITED	1840750	194H
	TOTAL	1840750	

Details of FORM 26AS for FY 2016-17			
Sr. No.	Name of TDS Deductor	Amount paid/credited	Section under which TDS deducted
1	BHARATIYA PROCESSING CO OPERATIVE FEDERATION LIMITED	98000	194H
2	GUJARAT STATE PROCESSING CO OPERATIVE FEDERATION LIMITED	375400	194C
	TOTAL	473400	

Details of FORM 26AS for FY 2017-18 (upto June 17)			
Sr. No.	Name of TDS Deductor	Amount paid/credited	Section under which TDS deducted
1	Nil	0	----

Income from Sales as per Profit and Loss Account (in Rs.)			
	FY 2015-16	FY 2016-17	FY 2017-18
SALES	520283173	701870430	940302053

Revenue from Operations as ITR-5 (in Rs.)			
	FY 2015-16	FY 2016-17	FY 2017-18
Sale of Services	520283173	0	0
Sale of Goods	0	701870430	940302053

21.1-

It is pertinent to mention here that the amount paid /credited to the assessee as per Form 26AS for FY 2015-16, has been booked under the

head of "Other Income" as can be ascertained from P&L accounts, Income Ledgers and Job work Invoices. Since the sale of services for FY 2015-16, as considered in the SCN, does not include the other income, I refrain from entering into discussion on taxability on such income or otherwise. The assessee has produced the copies of invoices issued to M/s. BHARATIYA PROCESSING CO OPERATIVE FEDERATION LIMITED during F.Y. 2015-16, on going through the same, it is seen that the same pertains to the job work carried out by them.

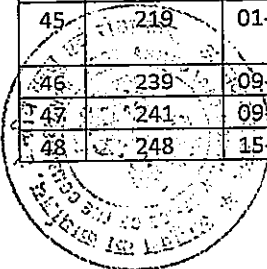
**21.2** The details of above tables are summarized herein below for comparison of value of services rendered by the assessee, as appearing in different records.

Summarized Details of above details				
FY	Amount paid as per Form 26AS (in Rs.) on which TDS has been deducted under 194C/194H of Income tax Act.	Income from Sale as per P&L Accounts (Rs.)	Value of services considered in the SCN (in Rs.) for computation of service tax liability of the assessee.	Diff. between D & B
(A)	(B)	(C)	(D)	(F)
2015-16	1840750	520283173	520283173	0
2016-17	473400	701870430	---	---
	2314150	1222153603	520283173	

**22.** I find that the assessee has contested that they have not provides services, instead they were in business of trading of grains and pulses. Therefore, the issue before me for determination is whether, the income received is from sale of grains and pulses as claimed by the assessee or otherwise. The assessee has produced sample copies of sale invoices for FY 2015-16 to FY 2017-18 as detailed below and different sales ledgers for FY 2015-16 to 2017-18 in support of their claim regarding Trading of Grains and Pulses. The facts which emerge from the scrutiny of said sale invoices are as follows:

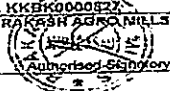
FY 2015-16- Sample Invoice details					
Sr. No.	Invoice No.	Dt of invoice	Buyer	Decription of goods	Amount (in Rs.)
1	01/15-16	01-04-2015	Ganesh Industries	Chana Dal	422562.5
2	03/15-16	06-04-2015	Banshidhar Satyanarayan	Peas Driad	277750
3	04/15-16	06-04-2015	Oc ASC Supply Depot	TOOR DAL, Chana Dal, Peas Driad, Dal Urd Whole	412600
4	5ab	09-04-2015	Triveni Traders	Toor Dal	109250
5	17A	30-04-2015	B.K. Trading Co.	Chana Dal	115920
6	20a	11-05-2015	B.K. Trading Co.	Chana Dal	990457
7	20	11-05-2015	Annpurna Traders	Masoor Dal	87500

8	23	15-05-2015	Shree Salasar Balaji Udyog	Masoor Dal	1000500
9	27	20-05-2015	Maa Khyati Enterprises	Rajma, Chana Chhilka, Chana Dal	568950
10	28a	25-05-2015	Kisan Pulses	Chana Whole	1102750
11	36	02-06-2015	Edelweiss Integrated Commodity Management Pvt. Ltd	Chana Dal	1144629.5
12	34A	01-06-2015	OC SUPPLY DEPOT ASC AHMEDABAD	Dal Moong(W), Masur Crushed, Toor Dalm Chana Dal, Rajma, Kabli Chana	495880
13	38	05-06-2015	Edelweiss Integrated Commodity Management Pvt. Ltd	Chana Dal	1208374
14	47	19-06-2015	B.K. Trading Co.	Rice	93461
15	48apo	11-07-2015	OC SUPPLY DEPOT ASC AHMEDABAD	Chana Dal, TOOR DAL, Moong Crush, Urd [C], KABLI CHANA, Peas Draid	450815
16	56	22-07-2015	Maa Khyati Enterprises	Toor Dal, Chana Dal	287207.5
17	58aa	26-07-2015	Om Trading Co.	Chana	143250
18	55	25-07-2015	Ganesh Industries	Chana Dal	887730.9
19	99	31-08-2015	Ganesh Industries	Chana Dal	710325
20	90a	22-08-2015	Kalika Das Jwala Prasad	Moong Whole	109500
21	83aa	16-08-2015	OC SUPPLY DEPOT ASC AHMEDABAD	Rajma, Kabli Chana	221800
22	78	13-08-2015	Edelweiss Integrated Commodity Management Pvt. Ltd	Toor Dal	1004300
23	101	04-09-2015	Shaman Das Traders	Moong Crush	42000
24	102a	10-09-2015	Ghanshyam Traders	Moong Whole	116250
25	105	21-09-2015	Shaman Das Traders	Moong Crush	69300
26	108aa	28-09-2015	Parmanand & Sons	Moong Mogar Dal	41250
27	125a	16-10-2015	K B K Trading Co.	Chana Dal	1086720
28	124a	15-10-2015	Paar Broking Pvt Ltd	Toor Dal, Rajma, Chana Dal, Peas Draid, Kabli Chana	499507
29	141	30-10-2015	Edelweiss Integrated Commodity Management Pvt. Ltd	Toor Dal	2146000
30	130	20-10-2015	Edelweiss Integrated Commodity Management Pvt. Ltd	Toor Dal	1931400
31	147	16-11-2015	OC SUPPLY DEPOT ASC AHMEDABAD	Chwal, Masur Crushed, Moong Crush, Kabli Chana	751250
32	149	21-11-2015	Welcome Agro	Churi	13860
33	150A	27-11-2015	Jai Industries	Yello Peas (Mutter)	883440
34	151a	30-11-2015	Paar Broking Pvt Ltd	Maur Crushed, Toor Dal	347736
35	145	03-11-2015	Edelweiss Integrated Commodity Management Pvt. Ltd	Toor Dal	2441075
36	152	07-12-2015	Sonu Traders	Chana Chhilka	108450
37	138apo	03-12-2015	OC SUPPLY DEPOT ASC AHMEDABAD	Toor Dal, Masur(W), Urd (c ) , Dal Moong(W), Chana Dal	999750
38	168	18-12-2015	Edelweiss Integrated Commodity Management Pvt. Ltd	Toor Dal	1776250
39	159	10-12-2015	Edelweiss Integrated Commodity Management Pvt. Ltd	Toor Dal	2405520
40	190a	01-01-2016	Ram Udyog	Chana Dal	136250
41	190a	01-01-2016	B.K. Trading Co.	Toor Dal	448800
42	199	05-01-2016	Sonu Traders	Chana Chhilka, Churi	201960.44
43	217	30-01-2016	Shri Krishna Roller & Flr Mill	Chana	1067820
44	200	15-01-2016	OC SUPPLY DEPOT ASC AHMEDABAD	Toor Dal, Chan Dal, Sal Urd Dhull, Dal Moong (W), Rajma	983000
45	219	01-02-2016	Edelweiss Integrated Commodity Management Pvt. Ltd	Toor Dal	2032560
46	239	09-02-2016	Shri Krishna Roller & Flr Mill	Chana	1011114
47	241	09-02-2016	Mittal Trading Gscsc	Chana Dal	999075
48	248	15-02-2016	OC SUPPLY DEPOT ASC	Toor Dal, Dal Moong, Peas	400590

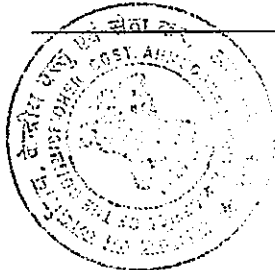


			AHMEDABAD	Draid	
49	272	14-03-2016	PM Agro Products Pvt Ltd	Masur Whole	931190
50	274	14-03-2016	Vaishnav Dall Mill	Masur Whole	254570
51	269	02-03-2016	Mittal Trading Gscsc	Toor Dal	2870000
52	273	14-03-2016	Ugam Pulses	Masur Whole	1242360
53	278a	15-03-2016	OC SUPPLY DEPOT ASC AHMEDABAD	Sugar (S-30)	337400
54	218	30-01-2016	Shri Krishna Roller & Flr Mill	Chana	1119324
55	236	08-02-2016	Edelweiss Integrated Commodity Management Pvt. Ltd	Toor Dal	2823000
					44364283.84
<b>2016-17</b>					
1	25/16-17	05-05-2016	Radhakishan Pulses	Toor Whole	1701000
2	41/16-17	30-05-2016	Edelweiss Integrated Commodity Management Pvt. Ltd	Chana Dal	1098640
3	225-16-17	06-11-2016	Vihnsu Oil Mill Pvt Ltd	Chana Dal	246680
<b>2017-18</b>					
1	39/17-18	18-06-2017	Sonu Traders	Toor Churi Atta	212500
2	06/17-18	07-04-2017	Super King Traders	Chana Dal	721440
3	24/16-17	30-05-2017	Gro Value Commodity Pvt Ltd	Toor Dal	1419360

**Sample Images of Invoices**

INVOICE					
M/s. PRAKASH AGRO MILLS MEMCO, NARODA ROAD, NEAR CHIKAR TEXTILE MILL, AHMEDABAD-380025. Pan No: AACFP0047R UAN No: GJ01A0117468 Consignee (Ship to) OC SUPPLY DEPOT ASC AHMEDABAD AHMEDABAD Buyer (Bill to) OC SUPPLY DEPOT ASC AHMEDABAD AHMEDABAD			Invoice No. 8322 Delivery Note	Dated 18-Aug-18 Mode/Terms of Payment	Other References
			Reference No & Date 8322 dt. 16-Aug-18 Buyer's Order No	Dated	
			Dispatch Doc No	Delivery Note Date	
			Dispatched through	Destination	
			Terms of Delivery		
Sl No.	Description of Goods	Quantity	Rate	per	Amount
1	RAJMA	2,000.00 Kg.	56.00	Kg.	1,12,000.00
2	KABLI CHANA	2,000.00 Kg.	54.90	Kg.	1,09,800.00
Total 4,000.00 Kg.					₹ 2,21,800.00
Amount Chargeable (In words) R Two Lakh Twenty One Thousand Eight Hundred Only					
Company's VAT TIN : 24072600129 Company's CST No. : 24572600129 Company's PAN : AACFP0947R			Company's Bank Details Bank Name : KOTAK MAHINDRA BANK LIMITED (CC) A/c No. : 2912878524 Branch & IFS Code : SHAHIBAUG & KKBK0000822 for M/s. PRAKASH AGRO MILLS		
Declaration We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.					

This is a Computer Generated Invoice





**INVOICE**

M/s. PRAKASH AGRO MILLS MEMCO, NARODA ROAD, NEAR OMKAR TEXTILE MILL, AHMEDABAD-380025. Pan No. AACFP0947R UAN No. GJ01A0117468 Consignee (Ship to) Edelweiss Commodities Services Limited Shree Dwarakesh Non Trading Corp., C/o Anagram Securities Ltd, Darshan Society Road, New Commerce Six Road Circle, Navaranpura Ahmedabad, V/U/TIN: 24073607355 Buyer (Bill to) Edelweiss Commodities Services Limited Shree Dwarakesh Non Trading Corp., C/o Anagram Securities Ltd, Darshan Society Road, New Commerce Six Road Circle, Navaranpura Ahmedabad, V/U/TIN: 24073607355	Invoice No. 145 Delivery Note Reference No & Date dt. 3-Nov-16 Buyer's Order No Dispatch Doc No. of 400 gr 071 Dispatched through GJ 1 Cv 0314 Terms of Delivery	Dated 3-Nov-16 Mode/Terms of Payment Other References Dated Delivery Note Date Destination Rajkot
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Sl. No.	Description of Goods	Quantity	Rate	per	Amount
1	TOOR DAL 453 Katta	227,500 qtl.	10,730.00	qtl	24,41,075.00
<b>Total</b>					<b>227,500 qtl. ₹ 24,41,075.00</b> E. & O.R.

Amount Chargeable (in words)  
 R Twenty Four Lakh Forty One Thousand Seventy Five Only

Company's VAT TIN : 24072600129 Company's CST No. : 24572600129 Buyer's VAT TIN : 24073607355 Company's PAN : AACFP0947R	Company's Bank Details Bank Name : KOTAK MAHINDRA BANK LIMITED (CC) A/c No. : 2912078524 Branch & IFS Code : SHAHIBAUG & KKBK0000927 for M/s. PRAKASH AGRO MILLS
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*We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.*

This is a Computer Generated Invoice

**INVOICE**

M/s. PRAKASH AGRO MILLS MEMCO, NARODA ROAD, NEAR OMKAR TEXTILE MILL, AHMEDABAD-380025. Pan No. AACFP0947R UAN No. GJ01A0117468 Consignee (Ship to) Mittal Trading Corporation madhavpura ahmedabad Buyer (Bill to) Mittal Trading Gascac	Invoice No. 269 Delivery Note Reference No & Date. dt. 2-Mar-16 Buyer's Order No Dispatch Doc No of 53 Dispatched through GJ 3 Aw 0332 Terms of Delivery	Dated 2-Mar-16 Mode/Terms of Payment Other References Dated Delivery Note Date Destination Rajkot Gascac
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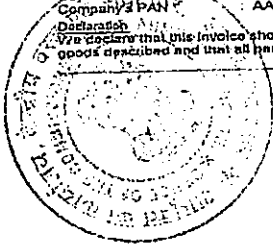
Sl. No.	Description of Goods	Quantity	Rate	per	Amount
1	TOOR DAL 500 Katta	250,000 qtl.	11,480.00	qtl	28,70,000.00
<b>Total</b>					<b>250,000 qtl. ₹ 28,70,000.00</b> E. & O.R.

Amount Chargeable (in words)  
 R Twenty Eight Lakh Seventy Thousand Only

Company's VAT TIN : 24072600129 Company's CST No. : 24572600129 Buyer's VAT TIN : 24070201158 Company's PAN : AACFP0947R	Company's Bank Details Bank Name : KOTAK MAHINDRA BANK LIMITED (CC) A/c No. : 2912078524 Branch & IFS Code : SHAHIBAUG & KKBK0000927 for M/s. PRAKASH AGRO MILLS
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*We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.*

This is a Computer Generated Invoice



**INVOICE**

M/s. PRAKASH AGRO MILLS MEMCO, NARODA ROAD, NEAR OMKAR TEXTILE MILL, AHMEDABAD-380025. Pan No: AACFP0547R UAN No: GJ01A0117468 Consignor (Ship to) Ugam Pulses 159 Sajjan Nagar, Indore Buyer (Bill to) Ugam Pulses 159 Sajjan Nagar, Indore	Invoice No 273 Delivery Note Reference No & Date dt. 14-Mar-10 Buyer's Order No. Dispatch Doc No Dispatched through Terms of Delivery	Dated 14-Mar-10 Mode/Terms of Payment Other References Dated Delivery Note Date Destination
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Sl No.	Description of Goods	Quantity	Rate	per	Amount
1	MASUR WHOLE	243.600	5,100.00	qtl.	12,42,360.00
<b>Total</b>					<b>243.600 qtl. ₹ 12,42,360.00</b> E & O E

Amount Chargeable (in words)  
 R Twelve Lakh Forty Two Thousand Three Hundred Sixty Only

Company's VAT TIN : 24072600129 Company's CST No. : 24572600129 Buyer's VAT TIN : 23601400170 Company's PAN : AACFP0547R	Company's Bank Details Bank Name : KOTAK MAHINDRA BANK LIMITED (CC) A/c No. : 2812878524 Branch & IFS Code : SHAHIBAUG & ICBCK0000827 for M/s. PRAKASH AGRO MILLS
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Declaration  
 We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.

This is a Computer Generated Invoice

**INVOICE**

M/s. PRAKASH AGRO MILLS MEMCO, NARODA ROAD, NEAR OMKAR TEXTILE MILL, AHMEDABAD-380025. Pan No: AACFP0547R UAN No: GJ01A0117468 Consignor (Ship to) Edelweiss Commodities Services Limited Shree Dwarakash Non Trading Corp., C/o Anagram Securities Ltd, Darshan Society Road, New Commerce Six Road Circle, Navrangpura Ahmedabad, Vat/Tin: 24073607388 Buyer (Bill to) Edelweiss Commodities Services Limited Shree Dwarakash Non Trading Corp., C/o Anagram Securities Ltd, Darshan Society Road, New Commerce Six Road Circle, Navrangpura Ahmedabad, Vat/Tin: 24073607388	Invoice No 145 Delivery Note Reference No & Date dt. 3-Nov-16 Buyer's Order No Dispatch Doc No dt. 400 of 071 Dispatched through GJ 1 Gy 6334 Terms of Delivery	Dated 3-Nov-16 Mode/Terms of Payment Other References Dated Delivery Note Date Destination Rajkot
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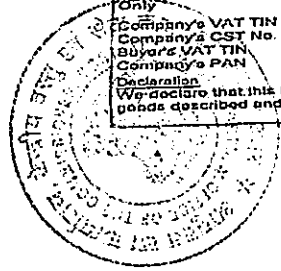
Sl No.	Description of Goods	Quantity	Rate	per	Amount
1	TOOR DAL 455 Katta	227.500	10,730.00	qtl.	24,41,075.00
<b>Total</b>					<b>227.500 qtl. ₹ 24,41,075.00</b> E & O E

Amount Chargeable (in words)  
 R Twenty Four Lakh Forty One Thousand Seventy Five Only

Company's VAT TIN : 24072600129 Company's CST No. : 24572600129 Buyer's VAT TIN : 24073607388 Company's PAN : AACFP0547R	Company's Bank Details Bank Name : KOTAK MAHINDRA BANK LIMITED (CC) A/c No. : 2812878524 Branch & IFS Code : SHAHIBAUG & ICBCK0000827 for M/s. PRAKASH AGRO MILLS
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Declaration  
 We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.

This is a Computer Generated Invoice



**INVOICE**

M/s. PRAKASH AGRO MILLS MEMCO, NARODA ROAD, NEAR OMKAR TEXTILE MILL, AHMEDABAD-380025. Pan No: AACFP0047R UAN No: GJ01A0117468 Consignee (Ship to) Pear Broking Pvt Ltd Buyer (Bill to) Pear Broking Pvt Ltd	Invoice No. : 124a Dated : 15-Oct-15 Delivery Note : Mode/Terms of Payment : Reference No. & Date : Other References : dt. 15-Oct-15 Buyer's Order No. : Dated : Dispatch Doc No. : Delivery Note Date : Dispatched through : Destination : Terms of Delivery :
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Sl No	Description of Goods	Quantity	Rate	per	Amount
1	TOOR DAL	11,000 qtl.	9,500.00	qtl.	1,05,589.00
2	RAJMA	1,800.00 Kg.	53.99	Kg.	97,182.00
3	Chana Dal	20,000 qtl.	5,000.00	qtl.	1,10,000.00
4	Pees Driad	2,400.00 Kg.	29.50	Kg.	70,800.00
5	KABLI CHANA	2,000.00 Kg.	55.98	Kg.	1,11,958.00
<b>Total</b>					<b>₹ 4,99,507.00</b> E & O.E

Amount Chargeable (in words)  
 R Four Lakh Ninety Nine Thousand Five Hundred Seven Only

Company's VAT TIN : 24072600129 Company's CST No. : 24572600129 Buyer's VAT TIN : 24073601873 Company's PAN : AACFP0947R	Company's Bank Details Bank Name : KOTAK MAHINDRA BANK LIMITED (CC) Bank No. : 2912878524 A/c No. : Branch & IFS Code : SHAHIBAUG 5 / K0000027 for M/s. PRAKASH AGRO MILLS
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**Declaration**  
 We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.

This is a Computer Generated Invoice

**INVOICE**

M/s. PRAKASH AGRO MILLS MEMCO, NARODA ROAD, NEAR OMKAR TEXTILE MILL, AHMEDABAD-380025. Pan No: AACFP0047R UAN No: GJ01A0117468 Consignee (Ship to) Ghanshyam Traders Kalapur Buyer (Bill to) Ghanshyam Traders Kalapur	Invoice No. : 102a Dated : 10-Sep-15 Delivery Note : Mode/Terms of Payment : Reference No. & Date : Other References : dt. 10-Sep-15 Buyer's Order No. : Dated : Dispatch Doc No. : Delivery Note Date : Dispatched through : Destination : Terms of Delivery :
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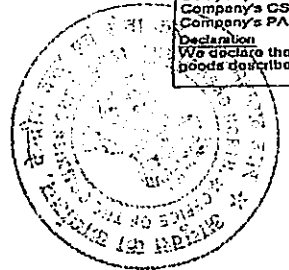
Sl No	Description of Goods	Quantity	Rate	per	Amount
1	Moong - Whole	15,000 qtl.	7,760.00	qtl.	1,16,250.00
<b>Total</b>					<b>₹ 1,16,250.00</b> E & O.E

Amount Chargeable (in words)  
 R One Lakh Sixteen Thousand Two Hundred Fifty Only

Company's VAT TIN : 24072600129 Company's CST No. : 24572600129 Company's PAN : AACFP0947R	Company's Bank Details Bank Name : KOTAK MAHINDRA BANK LIMITED (CC) Bank No. : 2912878524 A/c No. : Branch & IFS Code : SHAHIBAUG 5 / K0000027 for M/s. PRAKASH AGRO MILLS
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**Declaration**  
 We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.

This is a Computer Generated Invoice



**INVOICE**

M/s. PRAKASH AGRO MILLS MEMCO, NARODA ROAD, NEAR OMKAR TEXTILE MILL, AHMEDABAD-380025. Pan No: AACFP0847R UAN No: G101A0117488 Consignee (Ship to) Ganesh Industries- Siddhpur 209, GIDC Siddhpur, Gujarat Buyer (Bill to) Ganesh Industries- Siddhpur Siddhpur, Gujarat	Invoice No. 89 Delivery Note 012 v 8550 Reference No. & Date 89 dt. 31-Aug-18 Buyer's Order No. Dispatch Doc No. Dispatched through Patel Transport Terms of Delivery	Dated 31-Aug-18 Mode/Terms of Payment Other References Freight Sp. Pay. 4300/- (Gated) Delivery Note Date 31-Aug-18 Destination Siddhpur
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Sl. No.	Description of Goods	Quantity	Rate	per	Amount
1	Chana Dal 410 Katta	123,000 qtl.	5,775.00	qtl.	7,10,325.00
	Vatav			(-2) %	(-14,206.50)
	Loss				
<b>Total</b>					<b>123,000 qtl.</b>
					<b>₹ 8,96,118.50</b>
<i>E. &amp; O.E.</i>					

Amount Chargeable (in words)  
 ₹ Six Lakh Ninety Six Thousand One Hundred Eighteen and Fifty Only

Company's VAT TIN : 24072600129  
 Company's CST No. : 24572600129  
 Company's PAN : AACFP0847R

Company's Bank Details  
 Bank Name : KOTAK MAHINDRA BANK LIMITED (CC)  
 A/c No. : 2912878524  
 Branch & IFS Code : SHAHIBAU & KKBK0000037  
 for M/s. PRAKASH AGRO MILLS

We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.

This is a Computer Generated Invoice

**INVOICE**

M/s. PRAKASH AGRO MILLS MEMCO, NARODA ROAD, NEAR OMKAR TEXTILE MILL, AHMEDABAD-380025. Pan No: AACFP0847R UAN No: G101A0117488 Consignee (Ship to) Maa Khyati Enterprises Nr. Om Dharm Kanta, Siraspur, Delhi Buyer (Bill to) Maa Khyati Enterprises Edelweiss House, Off Cat Road, Kalina, Mumbai	Invoice No. 89 Delivery Note Reference No. & Date 88 dt. 22-Jul-18 Buyer's Order No. Dispatch Doc No. Shree Shyam Road Lines QR No. 394 Dispatched through Tr. No. RJ 62 GA 0375 Terms of Delivery THE KALUPUR COMMERCIAL CO OP BANK LTD BRANCH: MADHUPURA A/C : 03020100912 IFSC: KCCBOMDR030	Dated 22-Jul-18 Mode/Terms of Payment IMMEDIATE Other References Dated Delivery Note Date Destination
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Sl. No.	Description of Goods	Quantity	Rate	per	Amount
1	TOOR DAL 131 Katta 50kg	65,500 qtl.	1,150.00	qtl.	75,325.00
2	Chana Dal 12 Katta 50kg	6,000 qtl.	1,150.00	qtl.	6,900.00
3	Chana Dal 26 Katta 50kg	13,000 qtl.	1,150.00	qtl.	14,950.00
4	Chana Dal 10 Katta 50kg	5,000 qtl.	1,150.00	qtl.	5,750.00
5	Chana Dal 35 Katta 45kg	15,750 qtl.	1,150.00	qtl.	18,112.50
6	TOOR DAL 66 Katta 50kg Tukdi	33,000 qtl.	4,250.00	qtl.	1,40,250.00
7	Chana Dal 24 Katta 45kg	10,800 qtl.	2,400.00	qtl.	25,920.00
<b>Total</b>					<b>149,050 qtl.</b>
					<b>₹ 2,47,727.50</b>
<i>E. &amp; O.E.</i>					

Amount Chargeable (in words)  
 ₹ Two Lakh Forty Seven Thousand Seven Hundred Twenty Seven and Fifty Only

Company's VAT TIN : 24072600129  
 Company's CST No. : 24572600129  
 Buyer's VAT TIN : 07020343182  
 Company's PAN : AACFP0847R

Company's Bank Details  
 Bank Name : KOTAK MAHINDRA BANK LIMITED (CC)  
 A/c No. : 2912878524  
 Branch & IFS Code : SHAHIBAU & KKBK0000037  
 for M/s. PRAKASH AGRO MILLS

We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.

This is a Computer Generated Invoice

22.1 It is apparent from the said invoices that the assessee has raised the said sale invoices for **selling of food grains and Pulses**. It is also apparent from the said invoices that they contain the details of buyer, description of goods, Quantity/weight of goods sold, Rate and Bill amount. The sample invoices produced by the assessee for FY 2015-16, cover all their major buyers. The assessee has also provided the VAT Returns for 2015-16 to 2017-18 and copy of Income Tax Returns in Form ITR-5. On going through VAT Returns for 2015-16 to 2017-18, it is quite evident that they had income from selling of goods, the turn over as appearing in the VAT Returns are higher than the total turn over appearing in P&L accounts for 2015-16 to 2017-18. The comparison of data is as under:

F.Y	Turn Over as per VAT Returns	Income from sale as per P&L accounts	Sale of services as per SCN
2015-16	520417202	520283173	520283173
2016-17	806554366	701870430	Not ascertained at the time of SCN
2017-18	135080417 (Upto June)	940302053 (for entire FY)	Not ascertained at the time of SCN

**Image of Relevant Pages of VAT Returns:**

**For 2015-16 Q1**

VAT FORM - 201

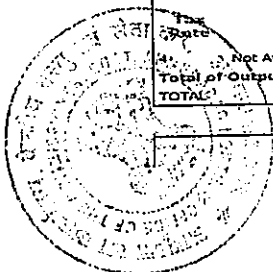
Dealer Name: PRKASH AGRO MILLS      Dealer TIN: 24072600120  
Returns From Date: 01/04/2015      To Date: 30/06/2015

Basic Details		Original	
Original/Revised		Original	
Date of original return			
Acknowledgement No. of original return			
Attach a note explaining the revisions			

Turnover of Sales and Purchases			
Description of sales and purchases	Sales	Purchases	
Total turnover	51425352	49110271	
Deduct			
Exempted from tax under section 5(1)	37128535	1666847	
Exempted from tax under section 5(2)	0	0	
Branch transfer or consignment to and from outside the State	0	0	
(a) of the goods manufactured	0	0	
Others	0	0	
Purchases not qualifying for tax credit as per section 11(8) read with section 11(5)	14015469	32441824	
Reduction as per Item 37 of Annexure-III	0		
Charges towards labour, service and other charges referred to in sub-clause (c) of clause (30) of section 2	51144004	49110271	
Total Deduction	281348	0	
<b>NET Taxable Turnover (Net Turnover - Total Deduction)</b>	<b>281348</b>	<b>0</b>	

Output Tax					
Commodity Name	HSN Code	Turnover Excluding Tax	Amount of tax payable	Additional Tax	Turnover Including Tax
Not Available		267950	10718	2680	281348
Total of Output Tax		267950	10718	2680	281348
<b>TOTAL</b>		<b>267950</b>	<b>10718</b>	<b>2680</b>	<b>281348</b>

Input Tax





**For 2015-16 Q4**

VAT FORM-201

Dealer Name **PRKASH AGRO MILLS** Dealer TIN **24072600129**  
 Returns From Date **01/01/2016** To Date **31/03/2016**

Turnover of Sales and Purchases		Sales	Purchases
Description of sales and purchases			
Total turnover		209780256	187782230
Deduct			
Exempted from tax under section 5(1)		204083382	71074812
Exempted from tax under section 5(2)		0	0
Branch transfer or consignment to and from outside the State (a) of the goods manufactured		0	0
Others		0	0
Purchases not qualifying for tax credit as per section 11(8) read with section 11(5)			0
Reduction as per item 37 of Annexure-III		3186250	114737965
Charges towards labour, service and other charges referred to in sub-clause (c) of clause (30) of section 2		0	0
Total Deduction		207269632	185812777
<b>NET Taxable Turnover (Net Turnover - Total Deduction)</b>		<b>2510624</b>	<b>1969453</b>

Tax Rate	Commodity Name	HSN Code	Turnover Excluding Tax	Amount of tax payable	Additional Tax	Turnover Including Tax
4	Not Available		2391071	95643	23910	2510624
<b>Total of Output Tax</b>						
<b>TOTAL</b>			<b>2391071</b>	<b>95643</b>	<b>23910</b>	<b>2510624</b>

Input Tax

**For FY 2016-17 Annual**

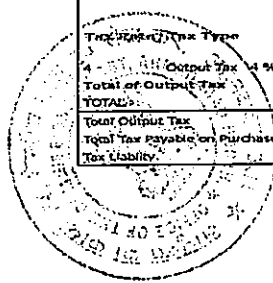
VAT FORM-205

Dealer Name **PRKASH AGRO MILLS** Dealer TIN **24072600129**  
 Returns From Date **01/04/2016** To Date **31/03/2017**

Turnover of Sales and Purchases		Sales	Purchases
Description of sales and purchases			
Total turnover		806554306	654760557
Deduct			
Exempted from tax under section 5(1)		595162265	123043900
Exempted from tax under section 5(2)		0	0
Branch transfer or consignment to and from outside the State (a) of the goods manufactured		0	0
Others		0	0
Purchases not qualifying for tax credit as per section 11(8) read with section 11(5)			826125
Reduction as per item 37 of Annexure-III		210263328	529608917
Charges towards labour, service and other charges referred to in sub-clause (c) of clause (30) of section 2		0	0
Total Deduction		805425593	65356942
<b>NET Taxable Turnover (Net Turnover - Total Deduction)</b>		<b>1128773</b>	<b>1201615</b>

<https://commerce.tax.gujarat.gov.in/vatwebsite/returnsView.do?dispatch=viewFormT205&returnId=WT10000038730387&prdFrm=01/04/2016&prdTo=31/03/2017&branchStatus=PRPL>  
<https://commerce.tax.gujarat.gov.in/vatwebsite/returnsView.do?dispatch=viewFormT205&returnId=WT10000038730387&prdFrm=01/04/2016&prdTo=31/03/2017&branchStatus=PR>  
 11/18/22, 7:29 PM

Output Tax						
Transaction Type	Commodity Name	HSN Code	Turnover Excluding Tax	Amount of tax payable	Additional Tax	Turnover Including Tax
4 - Output Tax 4 %			1075023	43000	10750	10750
<b>Total of Output Tax</b>						
<b>TOTAL</b>			<b>1075023</b>	<b>43000</b>	<b>10750</b>	<b>1128773</b>
<b>Total Output Tax</b>						<b>53750</b>
<b>Total Tax Payable on purchase of taxable goods under section 9</b>						<b>0</b>
<b>Tax Liability</b>						<b>53750</b>



For FY 2017-18 (upto June 17)



999161947778514



VAT FORM-205

Dealer Name PRKASH AGRO MILLS Dealer TIN 24072600129  
Returns From Date 01/04/2017 To Date 31/03/2018

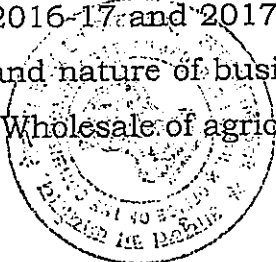
Basic Details	
Original/Revised	Original
Date of original return	
Acknowledgement No. of original return	
Attach a note explaining the revisions	

Turnover of Sales and Purchases		
Description of sales and purchases	Sales	Purchases
Total turnover	135080417	112061155
Deduct		
Exempted from tax under section 5(1)	80707759	20446775
Exempted from tax under section 5(2)	0	0
Branch transfer or consignment to and from outside the State	0	0
(a) of the goods manufactured	0	0
Others	0	0
Purchases not qualifying for tax credit as per section 11(8) read with section 11(5)		0
Reduction as per item 37 of Annexure-III	51856691	89045996
Charges towards labour, service and other charges referred to in sub-clause (c) of clause (30) of section 2	0	
	132564450	109492771
Total Deduction	2515967	2568384
NET Taxable Turnover (Net Turnover - Total Deduction)		

<https://commercialtax.gujarat.gov.in/vatwebsite/returnsView.do?dispatch=viewFormT205&returnId=WR00000384117008prdFrm=01/04/2017&prdTo=31/03/2018&branchStatus=PRPL> 1/1  
11/18/22, 8:51 PM <https://commercialtax.gujarat.gov.in/vatwebsite/returnsView.do?dispatch=viewFormT205&returnId=WR00000384117008prdFrm=01/04/2017&prdTo=31/03/2018&branchStatus=PR...>

Output Tax							
Tax Rate	Tax Type	Commodity Name	HSN Code	Turnover Excluding Tax	Amount of tax payable	Additional Tax	Turnover Including Tax
4	Output Tax 4 %			2396160	95845	23962	23962
Total of Output Tax							
TOTAL				2396160	95845	23962	2515967
Total Output Tax							119807
Total Tax Payable on Purchase of taxable goods under section 9							0
Tax Liability							119807

22.2 As regards argument of showing of amount mistakenly as “sale of service” in Income Tax Return for FY 2015-16, on going through the ITR, I find that the said ITR also mentions the nature of business to be “Trading of grains & Pulses”. Further, it also emerges from ITR-5 filed by the assessee for FY 2016-17 and 2017-18, that they were having income from “Sale of goods” only and nature of business has been shown as “Trading of grains and Pulses” and “Wholesale of agricultural raw materials”.





Relevant Extract of ITR For FY 2016-17

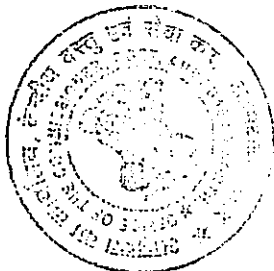
d. Total(4a + 4b + 4c)		4d	93472189
5	Total, application of funds (1e + 2c + 3e + 4d)	5	
<b>No Accounts Case</b>			
C In a case where regular books of account of business or profession are not maintained, furnish the following information as on 31st day of March, 2017, in respect of business or profession			
	1.Amount of total sundry debtors	C1	
	2.Amount of total sundry creditors	C2	
	3.Amount of total stock-in-trade	C3	
	4.Amount of the cash balance	C4	
Profit and Loss Account for the financial year 2016-17 (fill items 1 to 53 in a case where regular books of accounts are maintained, otherwise fill item 54)			
1	Revenue from operations		
	^ Sale/ Gross receipts of business (net of returns and refunds and duty or tax, if any)		

Page 7

Acknowledgement Number : 258036021261017

Assessment Year : 2017-18

		i	701870430
i.	Sale of goods		
ii.	Sale of services	ii	0
iii.	Other operating revenues (specify nature and amount)		
	Nature	Amount	
iii	Total		0
iv.	Total (i + ii + iii + iv + v)	Aiv	701870430
B	Gross receipts from Profession	B	0
C	Duties, taxes and cess, received or receivable, in respect of goods and services sold or supplied		
i.	Union Excise duties	i	0
ii.	Service tax	ii	0
iii.	VAT/ Sales tax	iii	0
iv.	Any other duty, tax and cess	iv	0
v.	Total (i + ii + iii + iv)	Cv	0
D	Total Revenue from operations (Aiv + B + Cv)	ID	701870430
2	Other income		
i.	Rent	L	0
ii.	Commission	ii	553678
iii.	Dividend income	iii	0
iv.	Interest income	iv	990304
v.	Profit on sale of fixed assets		0
vi.	Profit on sale of investment being securities chargeable to Securities Transaction Tax (STT)		0
vii.	Profit on sale of other investment	vii	0
viii.	Profit on account of currency fluctuation	viii	0
ix.	Agricultural income	K	0
x.	Any other income (specify nature and amount)		
	Nature	Amount	
1	discount		15318
2	VATAV		10376250
3	LIASONING CHARGES		473400
4	Settlement a/c		11092
5	OTHER INCOME		306760
x	Total		11182829
xi	Total of other income (i + ii + iii + iv + v + vi + vii + viii + ix + x)	2xi	12726811
3	Closing Stock		



## Relevant Extract of ITR For FY 2017-18:

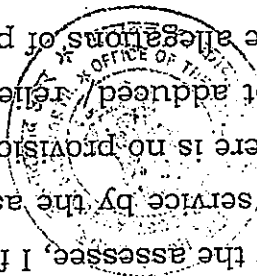
Acknowledgement Number : 361737501301018

Assessment Year : 2018-19

1		Revenue from operations			
A	Sales/ Gross receipts of business (net of returns and refunds and duty or tax, if any)				940302053
i.	Sale of goods			i	0
ii.	Sale of services			ii	0
iii.	Other operating revenues (specify nature and amount)				
		Nature		Amount	
iii	Total				0
iv.	Total (i + ii + iii + iv + v)			Aiv	940302053
B	Gross receipts from Profession			B	0
C	Duties, taxes and cess, received or receivable, in respect of goods and services sold or supplied				
i.	Union Excise duties			i	0
ii.	Service tax			ii	0
iii.	VAT/ Sales tax			iii	0
iv.	Central Goods & Service Tax (CGST)			iv	0
v.	State Goods & Services Tax (SGST)			v	0
vi.	Integrated Goods & Services Tax (IGST)			vi	0
vii.	Union Territory Goods & Services Tax (UTGST)			vii	0
viii.	Any other duty, tax and cess			viii	0
ix.	Total (i + ii + iii + iv + v + vi + vii + viii)			Cv	0
D	Total Revenue from operations (Aiv + B + Cv)			D	940302053
2		Other income			
i.	Rent				0
ii.	Commission			ii	0
iii.	Dividend income			iii	0
iv.	Interest income			iv	822381
v.	Profit on sale of fixed assets			v	0
vi.	Profit on sale of investment being securities chargeable to Securities Transaction Tax (STI)			vi	0
vii.	Profit on sale of other investment			vii	0
viii.	Profit on account of currency fluctuation			viii	0
ix.	Agricultural income			ix	0
x.	Any other income (specify nature and amount)				
		Nature		Amount	
1	Weight Difference				82826
2	Rebate & Discount				1552964
3	Quality Difference				421489
4	Foreign Fluctuation Income				22948

Page 8

22.3 The documentary evidences available on records and the documents produced by the assessee inescapably leads me to conclude that the assessee had not provided taxable services, rather they were engaged in trading of pulses/ grains. I also find that the activity of trading of goods is not covered under the ambit of meaning of "Service" as provided under Section



24. From the above factual, legal position and documents submitted by the assessee, I find the allegation of non payment of service tax on provision of service by the assessee as per the subject SCN, is evidently not correct, as there is no provision of service by the assessee. I find that the department has not adduced / relied upon any other evidence or investigation to substantiate the allegations of provision of service as well as non payment of service tax by the assessee. Having considered these factual and documentary evidences available on records, I find that the assessee is not required to pay service tax

23. On perusing the above legal definitions, I find that the definition of "Service" excludes - any activity that constitutes only a transfer in title of goods or immovable property by way of sale, gift or in any other manner. Therefore, in view of the above legal definition, the activity of selling of goods by the assessee is found to be not covered under the definition of "service" as provided under the Finance Act, 1944. Hence, service tax is not leviable under 66B of Finance Act, 1944 on selling of goods/trading of goods by the assessee. I also find the activity of "Trading of goods" is also covered under the negative list of services provided under Section 66D of Finance Act, 1944. Therefore, I find that the assessee is not liable to pay any service tax as demanded under the subject SCN as their activity of selling of goods being not covered under the definition of "service".

*(25) "goods" means every kind of movable property other than actionable claim and money; and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;*

Goods have been defined under clause (25) of Section 65B of the Finance Act, 1994:

- (a) an activity which constitutes merely,—
  - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
  - (ii) .....
  - (b) .....

*(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—*

reference:  
65B(44) of Finance Act, 1994. The same is reproduced herein under for ready

as demanded in the subject SCN. Thus, the subject SCN is liable to be dropped on merits as the same being incorrect and legally not sustainable.

25. In view of the aforementioned detailed discussion and in view of the facts and circumstances pertaining to the subject case, the demand is not tenable in law. Accordingly, I do not consider it necessary to delve on the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise for imposing penalty.

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

**ORDER**

I hereby drop the proceedings initiated against M/S Prakash Agro Mills, Nr Omkar Textile Memco, Naroda Road, Ahmedabad-380025, vide Show Cause Notice F. No. STC/15-255/OA/2021 dated 14.06.2021.



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

By Regd. Post AD./Hand Delivery  
F.No. STC/15-255/OA/2021

Date: .01.2023.

To,

M/S Prakash Agro Mills,  
Nr Omkar Textile Memco,  
Naroda Road,  
Ahmedabad-380025

Copy to:

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