


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(1 st Floor) Navrangpura, Ahmedabad-380009
फ़ोन नंबर./ PHONE No.: 079-2754 4599	फैक्स/ FAX : 079-2754 4463	E-mail:- aaahmedabad2@gmail.com

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO. STC/15-87/OA/2021

DIN : 20230264WT0000999F50

आदेश की तारीख

/ Date of Order : 08.02.2023

जारी करने की तारीख

/ Date of Issue : 08.02.2023

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव

/ UPENDRA SINGH YADAV

आयुक्त

/ COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 40 & 41 /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 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 क) प्रतियाँ संलग्न की जाएंगीम 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 (1) F.No. STC/15-87/OA/2020 dated 23.04.2021 and (2) STC/15-87/OA/2020 dated 23.04.2021 against M/s. Dipak Vinodbhai Patel, 907, Behind Janta Dairy, Ramnagar, Sabarmati, Ahmedabad -380005.

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 40 & 41 /2022-23

M/s. Dipak Vinodbhai Patel, 907, Behind Janta Dairy, Ramnagar, Sabarmati, Ahmedabad -380005, were issued two SCNs (1) F. No. STC/15-87/OA/2021 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad and (2) F. No. STC/15-88/OA/2021 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

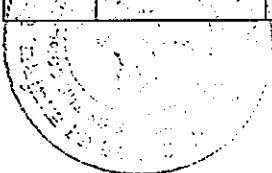
BRIEF FACTS OF THE CASE PERTAINING TO THE TWO SCNs ISSUED TO M/S. DIPAK VINODBHAI PATEL, ARE AS FOLLOWS:**SCN No. STC/15-87/OA/2021 dated 23.04.2021**

M/s. Dipak Vinodbhai Patel, 907, Behind Janta Dairy, Ramnagar, Sabarmati, Ahmedabad -380005 (hereinafter referred to as the 'assessee' for the sake of brevity) were engaged in providing taxable services, and were holding Service Tax Registration No. AMQPP6055JSD002.

2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)" and "Total Amount Paid/Credited under 194C, 194H, 194I, 194J (value from 26AS)" in respect of M/s. Dipak Vinodbhai Patel, was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17, and details of the said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. It appeared from the Third Party Data provided by CBDT of the said assessee for the F.Y. 2015-16 and 2016-17, that the said assessee had declared less taxable value in their Service Tax Returns (ST-3) for F.Y. 2015-16 and 2016-17 when the same was compared with the Service related taxable value declared in their ITR/Form 26AS ("Sales/Gross Receipts from Services OR Total Amount paid /Credited Under 194C, 194H, 194I, 194J") for 2015-16 and 2016-17. The difference in value as observed for F.Y. 2015-16 and 2016-17, was as under:

Sr. No.	F.Y.	Taxable Value as per ST-3 Returns (In Rs.)	Gross Receipts From Services (Value from ITR/26AS) (in Rs.)	Difference between Value of Services from ITR/26AS and Gross Value in Service Tax Returns (in Rs.)	Resultant Service Tax Short Paid (in Rs.)
1	2015-16	0	178360259	178360259	25862238
2	2016-17	0	144226118	144226118	21633918
			322586377		47496156



Therefore, it appeared that the said assessee had short /not paid service tax to the extent of Rs. 4,74,96,156/- (including Cess) on the differential value of Rs. 32,25,86,377/-.

4. As per Section 68 of the Finance Act, 1994 every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B in such manner and within such period which is prescribed under Rule 6 of the Service tax Rules 1994. In the instant case, it appeared that the assessee had not paid service tax for FY 2015-16 and 2016-17 as worked out as above.

5. No data was shared by the CBDT, for the period FY 2017-18 (upto June-2017) and the assessee also had failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of issuance of SCN, it was not possible to quantify the short payment of Service Tax, if any, for the period FY 2017-18 (upto June-2017).

Unquantified demand at the time of issuance of SCN.

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

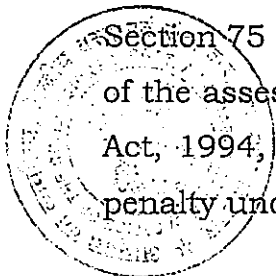
'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the assessee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (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. As per the provisions of Section 70 (Furnishing of Returns) of the Finance Act, 1994, every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return by disclosing wholly & truly all material facts in their service tax returns (ST-3 Returns). The form, manner and frequency of return have been prescribed under Rule 7 of Service tax Rules 1994. In the instant case, it also appeared that the assessee had not assessed the tax dues properly on services rendered by them and had also failed to file correct ST-3 Returns, thereby violating the provisions of Section 70(1) of the Finance Act, 1994 read with Rule 7 of Service Tax Rules 1994.

7. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay the interest at applicable rate. Since, the assessee had failed to pay service tax liabilities in the prescribed time limit on the provision of services by them, the interest also appeared to be recoverable under Section 75 of the Finance Act, 1994 alongwith the service tax payable by them.

8. Therefore, it appeared that the said assessee had contravened (i) the provision of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules 1994 in as much as they had failed to pay/short paid/ deposit service tax to the extent of Rs. 4,74,96,156/- by declaring less value in their ST-3 Returns vis-à-vis their ITR/Form 26AS in such manner and within such period prescribed with respect to the taxable services provided by them (ii) the provision of Section 70 of Finance Act, 1994 in as much as they had failed to assess their service tax liabilities under Rules 2(1)(d) of Service Tax Rules, 1994.

9. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value, that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 and 2016-17. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding providing of services by them, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 4,74,96,156/- on the differential value of service as worked out herein above. Thus, it appeared that the act of omission on the part of the assessee had resulted into non payment of service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of service tax. Therefore, the service tax not paid by the assessee 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 at appropriate rate under Section 75 of the Finance Act, 1994. Since, the above act of omission on the part of the assessee constituted offence punishable under Section 78 of the Finance Act, 1994, the assessee also appeared to have rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.



10. The assessee was given opportunity to appear for pre-SCN consultation on 22.04.2021, but the same was not attended by them.

11. Therefore, Show Cause Notice No. STC/15-87/OA/2021 dated 23.04.2021 was issued to the assessee asking them as to why:

- (i) The demand for Service Tax to the extent of Rs. 4,74,96,156/- (Rupees Four Crore Seventy Four Lakh Ninety Six Thousand One Hundred Fifty Six only) short/ not paid by them in FY 2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of Finance Act,1994.
- (ii) Interest at the appropriate rate should not be demanded and recovered from them under Section 75 of the Finance Act,1994.
- (iii) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994.
- (iv) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for their failure to assess their correct Service Tax liability and their failure to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

SCN No. STC/15-88/OA/2021 dated 23.04.2021

12. The assessee was also issued second SCN F.No. STC/15-88/OA/2021 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad on the basis of third party data shared by the CBDT. The subject SCN was issued to the assessee in respect of Service Tax Registration No. AMQPP6055JSD001. In this case also, it appeared that the assessee had declared less taxable value in their Service Tax Returns (ST-3) for F.Y. 2015-16 and 2016-17 when the same was compared with the Service related taxable value declared in their ITR/Form 26AS ("Sales/Gross Receipts from Services OR Total Amount paid /Credited Under 194C, 194H, 194I, 194J") for 2015-16 and 2016-17. The difference in value as observed for F.Y. 2015-16 and 2016-17, was as under:

Sr. No.	F.Y.	Taxable Value as per ST-3 Returns (In Rs.)	Gross Receipts From Services (Value from ITR/26AS) (in Rs.)	Difference between Value of Services from ITR/26AS and Gross Value in Service Tax Returns (in Rs.)	Resultant Service Tax Short Paid (in Rs.)
1	2015-16	0	178360259	178360259	25862238
2	2016-17	0	144226118	144226118	21633918
			322586377		47496156

Therefore, it appeared that the said assessee had short /not paid service tax to the extent of Rs. 4,74,96,156/- (including Cess) on the differential value of Rs. 32,25,86,377/-.

13. The facts and ground leading to issuance of this SCN are same as the facts and grounds contained in SCN No. STC/15-87/OA/2021 dated 23.04.2021, which have already been narrated herein above. Therefore, the facts and grounds for issuance of SCN No. STC/15-88/OA/2021 dated 23.04.2021 are not repeated herein in order to avoid duplication.

14. Show Cause Notice No. STC/15-88/OA/2021 dated 23.04.2021 was issued to the assessee asking them as to why:

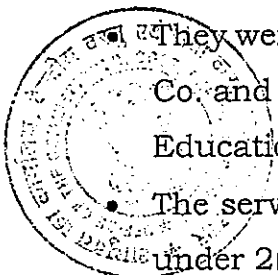
- (i) The demand for Service Tax to the extent of Rs. 4,74,96,156/- (Rupees Four Crore Seventy Four Lakh Ninety Six Thousand One Hundred Fifty Six only) short/ not paid by them in FY 2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of Finance Act, 1994.
- (ii) Interest at the appropriate rate should not be demanded and recovered from them under Section 75 of the Finance Act, 1994.
- (iii) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994.
- (iv) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for their failure to assess their correct Service Tax liability and their failure to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

DEFENCE REPLY:

15. The assessee vide their letter dated 21.05.2021 (received on 28.05.2021) tendered their written submission, wherein they have denied the allegation made in the SCN No. STC/15-87/OA/2021 dated 23.04.2021 and have also contended that :

They were running the business in the name of M/s. Shree Hari Construction Co. and had provided works contract services to Gujarat Council for Primary Education (Sarva Siksha Abhiyan).

The service provided by them were exempt service as the same were covered under 2(i) of Section 66B of Finance Act, 1994 read with Section 102.



The assessee vide their letter dated 18.01.2022 (received on 25.01.2022) tendered further submission, wherein they have reiterated the arguments tendered under their earlier submission. They have also claimed that the notification no. 23/2007-Service Tax dated 22.06.12 as amended, Notification No. 10/2017 -Service tax, exempts the services from levy of service tax under Section 66B of the Finance Act, 1994. They have enclosed Income Tax Return for AY 2015-16, Form 26AS for FY 2015-16 and 2016-17. They have further stated that the service of civil construction of schools under Sarva Siksha Abhiyan were covered under 2(i) of Section 66B of the Finance Act, 1994 read with Section 102, thus, they were not liable to pay service tax.

The assessee vide their letter dated 12.01.2023 tendered further submissions, however, it is seen that they have simply reiterated their earlier submissions, but in support of their defence, they have forwarded some documents as under:

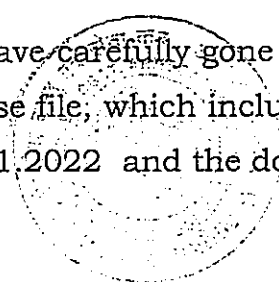
- Form 26AS for FY 2011-12 to 2016-17 (for FY 2011-12 to 2014-15)
- Some Copies of Work Order/ Agreements with RA Bills (The details of documents are given in subsequent para herein after)

PERSONAL HEARING:

16. Personal Hearings for both the SCNs were granted to the assessee on 19.01.2022, 20.12.2022, 27.04.2022, 20.05.2022, 17.06.2022, 25.07.2022, 06.09.2022, 13.10.2022 and 16.11.2022. The assessee had not responded to any of communication sent for personal hearing except for personal hearing granted on 25.07.2022. The assessee vide their letter dated 25.07.2022, had sought extension of time and had requested for another date for personal hearing. Therefore, they were granted another date of personal hearing on 06.09.2022. Even thereafter they were given two more opportunities for defending their case in person. 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 many opportunities offered for defending their case in person. 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 two SCNs, the defence replies dated 21.05.2021 and 18.01.2022 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-19 above for defending their case. Under the circumstances, left with no recourse, I take up the matter for adjudication proceeding ex-parte on the basis of records/documents available, since ample opportunities have already been given to the assessee to attend and defend their case in person and matter can not be kept hanging indefinitely.

18.1 In this connection, I find that Hon'ble Supreme Court, High Courts and Tribunals, in several judgments/decision, have held that *ex-parte* decision will not amount to violation of principles of Natural Justice, when sufficient opportunities for personal hearing have been given for defending the case.

In support of the same, I rely upon the following judgments/orders as under:-

a) Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. COLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), has observed that;

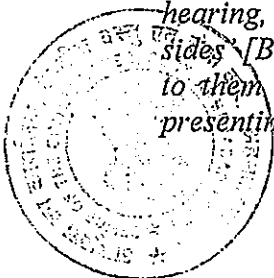
"Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.

(Emphasis Supplied)"

b) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, deciding on 13-9-1963, has observed that;

"Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the assessee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made thereunder which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]

(Emphasis supplied)"



(c) Hon'ble High Court of Delhi in the case of SAKETH INDIA LIMITED Vs. UNION OF INDIA reported in 2002 (143) E.L.T. 274 (Del.), has observed that:

"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."

19. I observe that both the SCNs dated 23.04.2021 have been issued to the assessee by the competent authority demanding service tax totally amounting to Rs. 4,74,96,156/- in both the cases. On going through the said SCNs, I find that basically the essence of the case is that data of "Sales /Gross Receipts from Services (ITR)" / "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" (as per TDS Statement-Form 26AS) were shared by the CBDT with CBIC for FY 2015-16 and 2016-17. The difference in taxable value was worked out after comparing the income declared in Form ITR/26AS vis-à-vis taxable value disclosed in ST-3 Returns. As per the said SCNs dated 23.04.2021, the difference of Rs. 32,25,86,377/- in value in both the SCNs was observed for FY 2015-16 and 2016-17, therefore, it was alleged vide SCNs dated 23.04.2021, that the assessee had short paid/not paid the service tax of Rs. 4,74,96,156/- in both the SCNs on such differential value, for providing the taxable service. Therefore, the subject SCNs were issued to the assessee. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 4,74,96,156/- in both the cases on the differential taxable value of Rs. 32,25,86,377/- for the Financial Year 2015-16 and 2016-17 as demanded under both the SCNs dated 23.04.2021, under proviso to section 73(1) of Finance Act, 1994 or not.

20. I find that the SCNs i.e. (i) STC/15-87/OA/2021 dated 23.04.2021 and (ii) STC/15-88/OA/2021 dated 23.04.2021 have been issued to the assessee with reference to Service Tax Registration No. AMQPP6055JSD002 and AMQPP6055JSD001 respectively. As can be seen from these two registration numbers, the PAN number is common in both the registration numbers. It is also pertinent to note here that the data shared by the income tax department was with reference to the specific PAN number. By using the same data, two different SCNs for demanding service tax, have been issued to the assessee for two different Service Tax Registration numbers. It is also seen from the ST-1s (Registration Application) that the assessee is a proprietorship firm and Shri Dipak Vinodbhai Patel is the proprietor of the firm. Therefore, it is quite apparent that two SCNs have been issued and service tax demands have been raised twice by using the same data of PAN number AMQPP6055J. I find that demanding of service tax twice on the amount received by the assessee as per the data shared by the income tax department is not permissible and the same is not sustainable in law. I find that the service tax registration number AMQPP6055JSD002 is the latest service tax registration number obtained by the assessee, I would therefore proceed with respect to this Service Tax Registration

Number only for considering the demand of service tax. The demand pertaining to service tax registration AMQPP6055JSD001 i.e. SCN No. STC/15-88/OA/2021 dated 23.04.2021 is liable to be dropped as the same being not permissible and sustainable in law as discussed herein above.

21. I find that the assessee in their defence reply dated 21.05.2021 and 18.05.2022, has stated that they had provided work contract services to Gujarat Council of Primary Education (known as Sarva Siksha Abhiyan). They have contested that the services provided by them were exempt service and no service tax was payable by them. For claiming the exemption they have referred to Notification No. 23/2007-Service Tax, Notification No. 10/2017-Service Tax, Section 66B(2(i)) of the Finance Act, 1994. I find that the defence replies tendered by the assessee are hazy in nature in as much as the notifications and the provisions of section of the Finance Act, 1994, cited by the assessee are irrelevant as the same do not grant the exemption from payment of service tax. I also find that the assessee has not disputed the fact of providing of services. Therefore, the issue before me is to determine the availability of exemption on provision of services by the assessee or otherwise.

22. I find that the SCN No. STC/15-87/OA/2021 dated 23.04.2021 mentions 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 Form 26AS for FY 2015-16 & 2016-17 vis-à-vis value of services considered in the impugned SCN, the same are found to be tallying with each other. Hence, it is discerned that the data has been derived from Form 26AS. Therefore, I would proceed with the data of Form 26AS shared by CBDT for deciding the matter. I also find that there is no dispute as far as the question of provision of services by the assessee is concerned. The figures of amount paid /credited for FY 2015-16 and 2016-17, as per 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	BOSCH REXROTH (INDIA) PRIVATE LIMITED	518264	194C
2	GUJARAT COUNCIL OF SCHOOL EDUCATION	155186883	194C
3	HITESH SUKHLALBHAI GAUDANI	11332169	194C
4	SANJIV N PANDYA	9521300	194C
5	SONNEBERG PLASTIC SYSTEMS INDIA PRIVATE LIMITED	1674494	194C

6	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	127149	194I(b)
	Total	178360259	

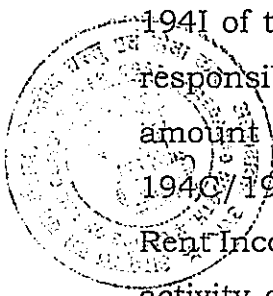
Details of FORM 26AS for FY 2016-17			
Sr. No.	Name of TDS Deductor	Amount paid/credited	Section under which TDS deducted
1	BOSCH REXROTH (INDIA) PRIVATE LIMITED	539396	194C
2	GUJARAT COUNCIL OF SCHOOL EDUCATION	136318359	194C
3	PROJECT IMPEMENTATION UNIT	6745576	194C
4	SAIKRUPA FABRICS PRIVATE LIMITED	97243	194C
5	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	525544	194I(b)
	Total	144226118	

Comparative Data

Financial Year	Amount paid as per Form 26AS (in Rs.) on which TDS has been deducted under 194C/194H of Income tax Act.	Value of services considered in the SCN (in Rs.) for computation of service tax liability of the assessee.
(A)	(B)	(C)
2015-16	178360259	178360259
2016-17	144226118	144226118
	322586377	322586377

22.1 I find that prior to 01.07.2012 i.e. before the introduction of a new system of taxation of services, tax was levied on services of specified description only. The new taxation system of services had widened the scope of levy of tax on services without specific description of service. Accordingly, any activity carried out by a person for another person for a consideration is a service as per Section 65B(44) and all services are liable to service tax under Section 66B of Finance Act, 1994 except for those services which are specified in the negative list or those service which are covered under exemption notification.

22.2 In the instant case, it is apparent from Form 26AS Data that the TDS has been deducted under 194C and 194I(b) of the Income Tax Act, 1961 by the recipient of services while making payment to the assessee. I find that the Section 194C of the Income Tax Act deals with the tax deduction at source (TDS) that is to be compulsorily deducted from any payments that have been made to any person who is a resident contractor or a subcontractor. Similarly, Section 194I of the Income Tax deals with TDS to be deducted on Rent by the person responsible for paying rent while paying Rent to the resident. Therefore, any amount paid/credited on which TDS has been deducted under Section 194C/194I from such amount, the amount paid/credited is a contract income/ Rent Income for carrying contractual /renting activities respectively. Thus, such activity on the part of assessee is apparently covered under the definition of



“Service” under Section 65B(44). Accordingly, the same is subject to the service tax under section 66B of the Finance Act, unless the services provided are covered under negative list of service or exemption notification or exclusion clause provided under definition of “Service” as per 65B(44). I find that there is no dispute as far as the receipt of the consideration from provision of service by the assessee is concerned. The assessee has not disputed the fact of provision of service. Accordingly, I am of the considered view that there is no dispute as far as the question of provision of services by the assessee is concerned.

23. As discussed earlier that the assessee’s submission for claiming the exemption from service tax is quite vague in nature as legal provision cited by them are not correct. However, I find from the written submission that they had provided works contract services to Gujarat Council for Primary Education (Sarva Siksha Abhiyan) i.e. construction service. Under such factual matrix, the unconditional benefit granted /available under the statute, must be passed on to the tax payer in the interest of justice. Though the assessee has mentioned the wrong legal provisions for claiming the exemption from service tax, for demanding the service tax, the activities/services provided by the assessee needs to be examined as to whether the service tax is leviable under Section 66B of the Finance Act, 1994 or otherwise. It is also to be examined as to whether the said service is covered under exemption notification/negative list of services or otherwise.

23.1 I find that Entry No. 12/12A/29(h) of Notification No. 25/2012-ST seem to be relevant in the subject matter, which need to be looked into. The relevant extracts / Entries of Notification No. 25/2012-ST are reproduced herein below for ready refence:

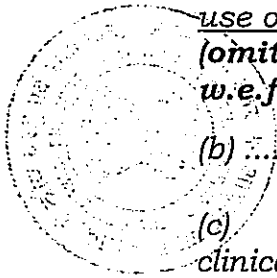
Relevant Entry Numbers of Notification No. 25/2012-ST dated 20.06.2012:

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

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

(b)

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



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

29. Services by the following persons in respective capacities –

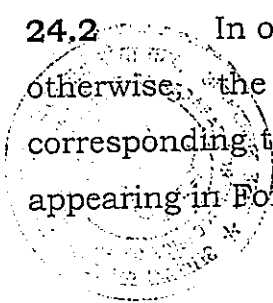
(a)

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

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

24. The assessee has provided various documents i.e. some work orders and Sub Contract Agreements entered into by them with Main Contractors, RA Bills, Invoices, in support of their arguments that the services rendered by them were exempt service. I find that the department has not adduced any documentary/tangible evidences to substantiate the allegation other than the difference in value worked out on the basis of data shared by the Income Tax Department. Therefore, the documents produced by the assessee are the only basis for deciding the matter, accordingly, I here after proceed to decide the matter on the basis of documents made available by the assessee.

24.2 In order to examine the availability of exemption from service tax or otherwise, the comparison of the aforementioned documents vis-à-vis corresponding transaction entries (payment made/credited to the assessee) as appearing in Form 26AS, is carried out as under:



- (d) canal, dam or other irrigation works
- (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
- (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;” **(omitted by Notification No. 6/2015-ST dated 1.3.2015 w.e.f.1.4.2015.)**

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

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

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

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

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

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

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

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

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

TABLE-A

Sr. No.	Work order issued by State Project Engineer, SSA Gandhinagar, Gujarat Council of Elementary Education
1	Work order No. Civil/2014-15/45564-566 dated 29.12.2014 for Construction of 23 Additional Class rooms & Electrical work in Dahod- Package DIR/ACR/DAH/1025 (Bid Price Rs. 32179349=20262704 Civil+ 11916645 Electrical)
2	Work order No. Civil/2014-15/45561-563 dated 29.12.2014 for Construction of 17 Additional Class rooms & Electrical work in Dahod- Package DIR/ACR/DAH/1026 (Bid Price Rs.23149753/- =14937328/- Civil + 8212425/- Electrical)
3	Work order No. Civil/2015-16/19729-731 dated 02.06.2015 for Construction of Additional Class rooms in Dahod- Package DIR/ACR/DAH/1074 (for Rs. 17306682/-)
4	Work order No. Civil/2015-16/19726-728 dated 02.06.2015 for Construction of 21 Additional Class rooms in Dahod- Package DIR/ACR/DAH/1078 (for Rs. 19910100/-)
5	Work order No. Civil/2015-16/32071-73 dated 07.08.2015 for Construction of 11 Additional Class rooms & Hostel in Dahod- Package DIR/ACR/DAH/1172 (for Rs. 25193801.75/-)
6	Work order No. Civil/2015-16/32074-76 dated 07.08.2015 for Construction of 07 Additional Class rooms & Hostel in Dahod- Package DIR/ACR/DAH/1173
7	Work order No. Civil/2015-16/32077-79 dated 07.08.2015 for Construction of 05 Additional Class rooms & Hostel in Dahod- Package DIR/ACR/DAH/1175 (Bid Price Rs. 20255748/-)
8	Work order No. SSA/ Civil/2016/16875-877 dated 09.05.2016 for Construction of 18 Additional Class rooms in Banaskantha - Package DIR/ACR/BK/1300 (for Rs. 12816773/-)
9	Work order No. SSA/ Civil/2016/16878-880 dated 09.05.2016 for Construction of 20 Additional Class rooms in Banaskantha - Package DIR/ACR/BK/1301 (for Rs. 13662672/-)
10	Work order No. SSA/ Civil/2016/16881-883 dated 09.05.2016 for Construction of 22 Additional Class rooms in Banaskantha - Package DIR/ACR/BK/1302 (for Rs. 15862769/-)
11	Work order No. Civil/2016/12655-657 dated 13.04.2016 for Construction of 24 Additional Class rooms & Electric work - Package DIR/ACR/BK /1284 (for Rs. 30158568/- = Rs. 17847216/- Civil + Rs. 12311352/- Electrical))
12	Work order No. SSA/Civil/2016/16872-874 dated 09.05.2016 for Construction of 22 Additional Class rooms in Banaskantha - Package DIR/ACR/BK /1299 (Rs. 15862769/-)
13	Work Order No. SSA/Civil/2016/16899-901 dated 09-05-2016 for Construction of Compound wall in RMSA School in Banaskantha - Package RMSA/BK/93 (for Rs. 12192951.50/-)
14	Work Order No. SSA/Civil/2016/12316-318 dated 11-04-2016 for Construction of Compound wall in RMSA School in Banaskantha - Package RMSA/BK/52 (for Rs. 13045103.70/-)
15	Work Order No. Civil/2016/35331-341 dated 15.09.2016 for Construction of KGBV and Electrical Work at Dahod District & Electrical Work in different district - Package DIR/DAH/1480 (Bid Price Rs.27298614/-=15536294/-Civil + 11762319.41/- Electrical)

TABLE-B

Sr. No.	Agreement Entered with State Project Director, Gujarat Council of Elementary Education, SSA Mission, Gandhinagar
1	Agreement dated 24.12.2014 entered between the State Project Director, SSA Mission, Gandhinagar and the assessee for Construction of 23 Additional Class rooms & Electrical work in Dahod- Package DIR/ACR/DAH/1025(Bid Price Rs. 32179349=20262704 Civil+ 11916645 Electrical)
2	Agreement dated 24.12.2014 entered between the State Project Director, SSA Mission, Gandhinagar and the assessee for Construction of 17 Additional Class rooms & Electrical work in Dahod- Package DIR/ACR/DAH/1026 (Bid Price Rs.23149753/-=14937328/- Civil + 8212425/- Electrical)
3	Agreement dated 05.08.2015 entered between the State Project Director, SSA Mission, Gandhinagar and the assessee for Construction of 11 Additional Class rooms & Hostel in Dahod- Package DIR/ACR/DAH/1172 (for Rs. 25193801.75/-)
4	Agreement dated 05.08.2015 entered between the State Project Director, SSA Mission, Gandhinagar and the assessee for Construction of 7 Additional Class rooms & Hostel in Dahod- Package DIR/ACR/DAH/1173 (for Rs. 21823452.19/-)
5	Agreement dated 05-08-2015 entered between the State Project Director, SSA Mission, Gandhinagar and the assessee for Construction of 05 & Hostel in Dahod District - Package DIR/ACR/DAH/1175 (Bid Price Rs. 20255748/-)
6	Agreement dated 03.05.2016 entered between the State Project Director, SSA Mission, Gandhinagar and the assessee for Construction of 18 Additional Class rooms in Banaskantha - Package DIR/ACR/BK/1300 (for Rs. 12816773/-)

7	Agreement dated 03.05.2016 entered between the State Project Director, SSA Mission, Gandhinagar and the assessee for Construction of 20 Additional Class rooms in Banaskantha - Package DIR/ACR/BK/1301 (for Rs. 13662672/-)
8	Agreement dated 03.05.2016 entered between the State Project Director, SSA Mission, Gandhinagar and the assessee for Construction of 22 Additional Class rooms in Banaskantha - Package DIR/ACR/BK/1302 (for Rs. 15862769/-)
9	Agreement dated 18.05.2016 entered between the State Project Director, SSA Mission, Gandhinagar and the assessee for Additional Electrical Work in primary school of various district - Package DIR/ACR/BK/1284 (for Rs. 9047570/-)
10	• Agreement dated 03.05.2016 entered between the State Project Director, SSA Mission, Gandhinagar and the assessee for Construction of 22 Additional Class rooms in Banaskantha - Package DIR/ACR/BK/1299 (Rs. 15862769/-)
11	Agreement dated 03.05.2016 entered between the State Project Director, SSA Mission, Gandhinagar and the assessee for Construction of Compound wall in RMSA School in Banaskantha - Package RMSA/BK/93 (for Rs. 12192951.50/-)
12	Agreement dated -April-2016 entered between the State Project Director, SSA Mission, Gandhinagar and the assessee for Construction of Compound wall in RMSA School in Banaskantha - Package RMSA/BK/52 (for Rs. 13045103.70/-)
13	Agreement dated 07.09.2016 entered between the State Project Director, SSA Mission, Gandhinagar and the assessee for Construction of KGBV at Dahod District & Electrical Work in different district - Package DIR/DAH/1482 (Bid Price Rs. 27337329.23 = Rs. 15536305.56 Civil + Rs. 11801022.67 Electrical)
14	Agreement dated 07.09.2016 entered between the State Project Director, SSA Mission, Gandhinagar and the assessee for Construction of KGBV at Dahod District & Electrical Work in different district - Package DIR/DAH/1480 (Bid Price Rs.27298614/-=15536294/-Civil + 11762319.41/- Electrical)

TABLE-C

FY 2015-16 (26AS vis-à-vis RA Bill /Invoices)				
Sr. No.	As per Form 26AS statement			Corresponding Documents produced by the assessee
	Name of the TDS deductor	Transaction date	Amount paid /credited (Rs.)	
1	BOSCH REXROTH (INDIA) PRIVATE LIMITED	29-06-2015	518264	No documents produced -Payment received on which TDS deducted under 194C of the Income Tax Act
	Sub Total		518264	
2	1 GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2016	385250	• No document produced which can link the payment and work/work order
	2 GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2016	5093650	• No document produced which can link the payment and work/work order
	3 GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2016	6259450	• No document produced which can link the payment and work/work order
	4 GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2016	861400	• No document produced which can link the payment and work/work order
	5 GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2016	498100	• Invoice No.16 dt. 30.03.2016 for Electrical installation work at different Primary School - Package No. DIR/ACR/DAH/1026
	6 GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2016	156200	• No document produced which can link the payment and work/work order
	7 GUJARAT COUNCIL OF SCHOOL EDUCATION	30-03-2016	3204850	• 5th RA Bill for Construction of 25ACR & Toilets-package SSA/DIR/ACR/1078
	8 GUJARAT COUNCIL OF SCHOOL EDUCATION	29-03-2016	578150	• No document produced which can link the payment and work/work order
	9 GUJARAT COUNCIL OF SCHOOL EDUCATION	29-03-2016	385600	• No document produced which can link the payment and work/work order
	10 GUJARAT COUNCIL OF SCHOOL EDUCATION	29-03-2016	129500	• No document produced which can link the payment and work/work order
	11 GUJARAT COUNCIL OF SCHOOL EDUCATION	23-03-2016	5462850	• 4th RA Bill for Construction of 05 ACR & hostel -package DIR/ACR/DAH/1175
	12 GUJARAT COUNCIL OF SCHOOL EDUCATION	22-03-2016	2533300	• Invoice No. 14/14.03.2016 for Electrical Installation Package No. DIR/ACR/DAH/1026
	13 GUJARAT COUNCIL OF SCHOOL EDUCATION	22-03-2016	638650	• 8th RA Bill -Withheld amount payment - Package No. SSA/ACR/DAH/1026
	14 GUJARAT COUNCIL OF SCHOOL EDUCATION	11-03-2016	5296700	• 3 rd RA Bill for Construction of 07 ACR, Toilets & hostel -package DIR/ACR/DAH/1173
	15 GUJARAT COUNCIL OF SCHOOL EDUCATION	09-03-2016	3492500	• 3rd RA Bil for Construction of 12 ACR & hostel -package DIR/ACR/DAH/1172

16	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-03-2016	482450	• No document produced which can link the payment and work/work order
17	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-03-2016	3088900	• 3rd RA Bil for Construction of 05 ACR & hostel -package DIR/ACR/DAH/1175
18	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-03-2016	577100	• Invoice No. 13/30.01.2016 for Electrical Installation work -7th TA Bill Package No. DIR/ACR/DAH/1026
19	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-03-2016	355500	• No document produced which can link the payment and work/work order
20	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-03-2016	216000	• No document produced which can link the payment and work/work order
21	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-03-2016	3851200	• 4th RA Bil for Construction of 25ACR & Toilets-package SSA/DIR/ACR/1078
22	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-03-2016	568250	• 7th TA Bill Package No. DIR/ACR/DAH/1026
23	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-02-2016	200000	• No document produced which can link the payment and work/work order
24	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-02-2016	7792600	• 1st RA Bil for Construction of 12 ACR & hostel -package DIR/ACR/DAH/1172
25	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-02-2016	6378800	• 2nd RA Bill for Construction of 07 ACR, Toilets & hostel -package DIR/ACR/DAH/1173
26	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-02-2016	3991350	• 2nd RA Bill for Construction of 05 ACR & hostel -package DIR/ACR/DAH/1175
27	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-02-2016	181200	• No document produced which can link the payment and work/work order
28	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-02-2016	4932600	• No document produced which can link the payment and work/work order
29	GUJARAT COUNCIL OF SCHOOL EDUCATION	28-12-2015	3709772	• 3rd RA Bill for Construction of 25ACR & Toilets-package SSA/DIR/ACR/1078
30	GUJARAT COUNCIL OF SCHOOL EDUCATION	28-12-2015	624271	• Invoice No. 06 dt. 21/12/2015 for Electrical Installation work at different Primary School - Package No. DIR/ACR/DAH/1026
31	GUJARAT COUNCIL OF SCHOOL EDUCATION	28-12-2015	1342820	• No document produced which can link the payment and work/work order
32	GUJARAT COUNCIL OF SCHOOL EDUCATION	28-12-2015	1502015	• 4th RA Bill for Construction of 18 ACR & Toilets-package SSA/ACR/DAH/1074
33	GUJARAT COUNCIL OF SCHOOL EDUCATION	04-11-2015	5466994	• 3rd RA Bill for Construction of 25ACR-package DIR/ACR/1025
34	GUJARAT COUNCIL OF SCHOOL EDUCATION	04-11-2015	5041288	• 1st RA Bill for Construction of 11 ACR & hostel -package DIR/ACR/DAH/1172
35	GUJARAT COUNCIL OF SCHOOL EDUCATION	04-11-2015	3310073	• 1st RA Bill for Construction of 07 ACR, Toilets & hostel -package DIR/ACR/DAH/1173
36	GUJARAT COUNCIL OF SCHOOL EDUCATION	03-11-2015	3489700	• 1st RA Bill for Construction of 05 ACR & Hostel -package DIR/ACR/DAH/1175
37	GUJARAT COUNCIL OF SCHOOL EDUCATION	30-10-2015	8129006	• No document produced which can link the payment and work/work order
38	GUJARAT COUNCIL OF SCHOOL EDUCATION	30-10-2015	986239	• Invoice No.09 dt. 29.10.2015 for supply of Electric goods at different Primary School - Package No. DIR/ACR/DAH/1026
39	GUJARAT COUNCIL OF SCHOOL EDUCATION	30-10-2015	209160	• No document produced which can link the payment and work/work order
40	GUJARAT COUNCIL OF SCHOOL EDUCATION	30-10-2015	193040	• No document produced which can link the payment and work/work order
41	GUJARAT COUNCIL OF SCHOOL EDUCATION	30-10-2015	817872	• No document produced which can link the payment and work/work order
42	GUJARAT COUNCIL OF SCHOOL EDUCATION	30-10-2015	252405	• Invoice No.09 dt. 29.10.2015 for supply of Electric goods at different Primary School - Package No. DIR/ACR/DAH/1026
43	GUJARAT COUNCIL OF SCHOOL EDUCATION	30-10-2015	933971	• No document produced which can link the payment and work/work order
44	GUJARAT COUNCIL OF SCHOOL EDUCATION	30-10-2015	4201505	• No document produced which can link the payment and work/work order
45	GUJARAT COUNCIL OF SCHOOL EDUCATION	13-10-2015	1388991	• No document produced which can link the payment and work/work order
46	GUJARAT COUNCIL OF SCHOOL EDUCATION	13-10-2015	281363	• No document produced which can link the payment and work/work order
47	GUJARAT COUNCIL OF SCHOOL EDUCATION	06-10-2015	3805508	• No document produced which can link the payment and work/work order
48	GUJARAT COUNCIL OF SCHOOL EDUCATION	29-09-2015	386885	• No document produced which can link the payment and work/work order
49	GUJARAT COUNCIL OF SCHOOL EDUCATION	29-09-2015	2639913	• No document produced which can link the payment and work/work order

	50	GUJARAT COUNCIL OF SCHOOL EDUCATION	29-09-2015	1341907	• No document produced which can link the payment and work/work order
	51	GUJARAT COUNCIL OF SCHOOL EDUCATION	28-09-2015	4724146	• 1st RA Bill for Construction of 25ACR & Toilets-package SSA/DIR/ACR/1078
	52	GUJARAT COUNCIL OF SCHOOL EDUCATION	28-09-2015	2901107	• 2nd RA Bill for Construction of 18 ACR & Toilets-package SSA/ACR//DAH/1074
	53	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-09-2015	9350293	• 2nd RA Bill for Construction of 25ACR-package DIR/ACR/1025
	54	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-09-2015	3671234	• No document produced which can link the payment and work/work order
	55	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-09-2015	3059145	• 1st RA Bill for Construction of 18 ACR & Toilets-package SSA/ACR//DAH/1074
	56	GUJARAT COUNCIL OF SCHOOL EDUCATION	04-07-2015	5914322	• 1st RA Bill for Construction of 25ACR-package DIR/ACR/1025
	57	GUJARAT COUNCIL OF SCHOOL EDUCATION	30-06-2015	6270198	• 2nd RA Bill for Construction of 15 ACR-package DIR/ACR/1026
	58	GUJARAT COUNCIL OF SCHOOL EDUCATION	05-06-2015	239100	• No document produced which can link the payment and work/work order
	59	GUJARAT COUNCIL OF SCHOOL EDUCATION	04-06-2015	248540	• No document produced which can link the payment and work/work order
	60	GUJARAT COUNCIL OF SCHOOL EDUCATION	04-06-2015	1162000	• No document produced which can link the payment and work/work order
		Sub Total		155186883	
3	1	HITESH SUKHLALBHAI GAUDANI	05-10-2015	6520219	No documents produced
	2	HITESH SUKHLALBHAI GAUDANI	31-07-2015	49103	No documents produced
	3	HITESH SUKHLALBHAI GAUDANI	29-07-2015	4762847	No documents produced
		Sub Total		11332169	
4	1	SANJIV N PANDYA	02-10-2015	3990200	• No document produced which can link the payment and work/work order
	2	SANJIV N PANDYA	01-09-2015	1010800	• No document produced which can link the payment and work/work order
	3	SANJIV N PANDYA	02-07-2015	4520300	• No document produced which can link the payment and work/work order
		Sub Total		9521300	
5	1	SONNEBERG PLASTIC SYSTEMS INDIA PRIVATE LIMITED	13-02-2016	1116375	No documents produced
	2	SONNEBERG PLASTIC SYSTEMS INDIA PRIVATE LIMITED	13-02-2016	58624	No documents produced
	3	SONNEBERG PLASTIC SYSTEMS INDIA PRIVATE LIMITED	13-02-2016	205056	No documents produced
	4	SONNEBERG PLASTIC SYSTEMS INDIA PRIVATE LIMITED	13-02-2016	294439	No documents produced
		Sub Total		1674494	
6	1	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	31-03-2016	42383	No documents produced -Payment received on which TDS has been deducted under 194I(b) of the Income Tax Act
	2	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	28-02-2016	42383	No documents produced -Payment received on which TDS has been deducted under 194I(b) of the Income Tax Act
	3	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	31-01-2016	42383	No documents produced -Payment received on which TDS has been deducted under 194I(b) of the Income Tax Act
		Sub Total		127149	
		Grand Total		178360259	

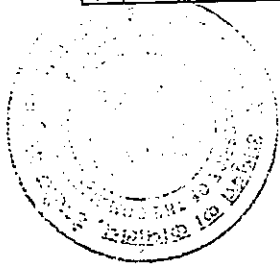


TABLE-D

FY 2016-17 (26AS vis-à-vis RA Bill /Invoices)					
Sr. No.	As per Form 26AS statement			Amount paid /credited (Rs.)	Corresponding Documents produced by the assessee
	Name of the TDS deductor	Transaction date			
1	1	BOSCH REXROTH (INDIA) PRIVATE LIMITED	31-12-2016	17388	No documents produced, TDS under Section 194C has been deducted on payment made to the assessee
	2	BOSCH REXROTH (INDIA) PRIVATE LIMITED	25-07-2016	479528	No documents produced, TDS under Section 194C has been deducted on payment made to the assessee
	3	BOSCH REXROTH (INDIA) PRIVATE LIMITED	31-05-2016	42480	No documents produced, TDS under Section 194C has been deducted on payment made to the assessee
		Sub Total		539396	
2	1	GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2017	1062232	• No document produced which can link the payment and work/work order
	2	GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2017	325458	• Invoice No. 01 dated 28.03.2017 for Electrical Installation work at different Primary School in Bharuch District - Package No. DIR/ACR/DAH/1482
	3	GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2017	589162	• Invoice No. 7/28.03.2017 for Electrical work- Package No. DIR/ACR/BK/1284
	4	GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2017	1728172	• 5th RA Bill for Construction of 24 Additional Class Rooms and electrical work - Package DIR/ACR/BK/1284
	5	GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2017	4726697	• 4th RA Bill for Construction of 22 Additional Class Rooms - Package DIR/ACR/BK/1299
	6	GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2017	90168	• Invoice No. 1 dated 29.03.2017 for Electrical Installation work at different Primary School - Package DIR/ACR/DAH/1480
	7	GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2017	7778890	• 3rd RA Bill for Construction of 20 Additional Class Rooms - Package DIR/ACR/BK/1301
	8	GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2017	5573389	• 4th RA Bill for Construction of 22 Additional Class Rooms - Package DIR/ACR/BK/1302
	9	GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2017	243854	• No document produced which can link the payment and work/work order
	10	GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2017	484547	• Invoice No. 01 dated 28.03.2017 for Electrical Installation work at different Primary School in Bharuch District - Package No. DIR/ACR/DAH/1482
	11	GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2017	175327	• Invoice No. 7/28.03.2017 for Electrical work- Package No. DIR/ACR/BK/1284
	12	GUJARAT COUNCIL OF SCHOOL EDUCATION	31-03-2017	962220	• Invoice No. 1 dated 29.03.2017 for Electrical Installation work at different Primary School - Package DIR/ACR/DAH/1480
	13	GUJARAT COUNCIL OF SCHOOL EDUCATION	29-03-2017	158795	• Invoice No. 06/03.03.2017 for Electrical Work - Package No. DIR/ACR/DAH/1284
	14	GUJARAT COUNCIL OF SCHOOL EDUCATION	29-03-2017	871265	• Invoice No. 06/03.03.2017 for Electrical Work - Package No. DIR/ACR/DAH/1284
	15	GUJARAT COUNCIL OF SCHOOL EDUCATION	22-03-2017	1291196	• No document produced which can link the payment and work/work order
	16	GUJARAT COUNCIL OF SCHOOL EDUCATION	22-03-2017	989792	• No document produced which can link the payment and work/work order
	17	GUJARAT COUNCIL OF SCHOOL EDUCATION	17-03-2017	1559113	• 6th RA Bill for Construction of Multi level ACR & Hostel-package -1175
	18	GUJARAT COUNCIL OF SCHOOL EDUCATION	15-03-2017	665438	• No document produced which can link the payment and work/work order
	19	GUJARAT COUNCIL OF SCHOOL EDUCATION	15-03-2017	2363307	• No document produced which can link the payment and work/work order
	20	GUJARAT COUNCIL OF SCHOOL EDUCATION	09-03-2017	4648391	• 2nd RA & Final Bill for Construction of Compound wall at RMSA School (5) - Package RMSA/BK/93
	21	GUJARAT COUNCIL OF SCHOOL EDUCATION	18-02-2017	2014686	• Copy of Journal Voucher of Guj. Council of Elementary Education- Payment for Primary School - Package No. 1284
	22	GUJARAT COUNCIL OF SCHOOL EDUCATION	18-02-2017	4461336	• Copy of Journal Voucher of Guj. Council of Elementary Education- Payment for Primary School - Package No. 1284

23	GUJARAT COUNCIL OF SCHOOL EDUCATION	17-02-2017	5820648	• 3rd RA Bill for Construction of 24 Additional Class Rooms and electrical work - Package DIR/ACR/BK/1284
24	GUJARAT COUNCIL OF SCHOOL EDUCATION	14-02-2017	1449562	• 3rd RA Bill for Construction of Compound wall at RMSA School (6) - Package RMSA/BK/52
25	GUJARAT COUNCIL OF SCHOOL EDUCATION	13-02-2017	215308	• No document produced which can link the payment and work/work order
26	GUJARAT COUNCIL OF SCHOOL EDUCATION	13-02-2017	730142	• No document produced which can link the payment and work/work order
27	GUJARAT COUNCIL OF SCHOOL EDUCATION	09-02-2017	454200	• No document produced which can link the payment and work/work order
28	GUJARAT COUNCIL OF SCHOOL EDUCATION	09-02-2017	3702038	• No document produced which can link the payment and work/work order
29	GUJARAT COUNCIL OF SCHOOL EDUCATION	30-01-2017	1127042	• Copy of Journal Voucher of Guj. Council of Elementary Education- for Payment for Primary School - Package No. 1026
30	GUJARAT COUNCIL OF SCHOOL EDUCATION	27-01-2017	1578596	• Copy of Journal Voucher of Guj. Council of Elementary Education- for Payment for Primary School - Package No. 1026
31	GUJARAT COUNCIL OF SCHOOL EDUCATION	25-01-2017	2500000	• No document produced which can link the payment and work/work order
32	GUJARAT COUNCIL OF SCHOOL EDUCATION	19-01-2017	2138849	• No document produced which can link the payment and work/work order
33	GUJARAT COUNCIL OF SCHOOL EDUCATION	13-01-2017	3192118	• No document produced which can link the payment and work/work order
34	GUJARAT COUNCIL OF SCHOOL EDUCATION	13-01-2017	2342345	• No document produced which can link the payment and work/work order
35	GUJARAT COUNCIL OF SCHOOL EDUCATION	28-10-2016	1515932	• No document produced which can link the payment and work/work order
36	GUJARAT COUNCIL OF SCHOOL EDUCATION	28-10-2016	2162807	• No document produced which can link the payment and work/work order
37	GUJARAT COUNCIL OF SCHOOL EDUCATION	27-10-2016	2694643	• No document produced which can link the payment and work/work order
38	GUJARAT COUNCIL OF SCHOOL EDUCATION	27-10-2016	2643541	• No document produced which can link the payment and work/work order
39	GUJARAT COUNCIL OF SCHOOL EDUCATION	27-10-2016	2219039	• No document produced which can link the payment and work/work order
40	GUJARAT COUNCIL OF SCHOOL EDUCATION	27-10-2016	930090	• No document produced which can link the payment and work/work order
41	GUJARAT COUNCIL OF SCHOOL EDUCATION	27-10-2016	1810577	• No document produced which can link the payment and work/work order
42	GUJARAT COUNCIL OF SCHOOL EDUCATION	26-10-2016	1371510	• No document produced which can link the payment and work/work order
43	GUJARAT COUNCIL OF SCHOOL EDUCATION	25-10-2016	4275733	• No document produced which can link the payment and work/work order
44	GUJARAT COUNCIL OF SCHOOL EDUCATION	25-10-2016	1403153	• No document produced which can link the payment and work/work order
45	GUJARAT COUNCIL OF SCHOOL EDUCATION	19-10-2016	3419147	• 1st RA Bill for Construction of 18 Additional Class Rooms - Package DIR/ACR/BK/1300
46	GUJARAT COUNCIL OF SCHOOL EDUCATION	04-10-2016	1281538	• No document produced which can link the payment and work/work order
47	GUJARAT COUNCIL OF SCHOOL EDUCATION	04-10-2016	6864632	• No document produced which can link the payment and work/work order
48	GUJARAT COUNCIL OF SCHOOL EDUCATION	04-10-2016	440351	• No document produced which can link the payment and work/work order
49	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-10-2016	841634	• No document produced which can link the payment and work/work order
50	GUJARAT COUNCIL OF SCHOOL EDUCATION	06-09-2016	817434	• No document produced which can link the payment and work/work order
51	GUJARAT COUNCIL OF SCHOOL EDUCATION	06-09-2016	1379387	• No document produced which can link the payment and work/work order
52	GUJARAT COUNCIL OF SCHOOL EDUCATION	03-09-2016	5650366	• RA & Final Bill I for Construction of Compound wall at RMSA School (5) - Package RMSA/BK/93
53	GUJARAT COUNCIL OF SCHOOL EDUCATION	02-09-2016	2086815	• No document produced which can link the payment and work/work order
54	GUJARAT COUNCIL OF SCHOOL EDUCATION	02-09-2016	2513536	• 1st RA Bill for Construction of 24 Additional Class Rooms and electrical work - Package DIR/ACR/BK/1284
55	GUJARAT COUNCIL OF SCHOOL EDUCATION	01-09-2016	3824134	• 5th RA Bill for Construction of Multi level ACR -package -1175
56	GUJARAT COUNCIL OF SCHOOL EDUCATION	24-08-2016	2663969	• 1st RA Bill for Construction of 20 Additional Class Rooms - Package DIR/ACR/BK/1301

	57	GUJARAT COUNCIL OF SCHOOL EDUCATION	24-08-2016	4111661	• 2nd RA Bill for Construction of Compound wall at RMSA School (6) - Package RMSA/BK/52
	58	GUJARAT COUNCIL OF SCHOOL EDUCATION	30-06-2016	2847549	• Invoice No. 12/20.06.2012 for Electrical Installation work at different Primary Schools - Package No. DIR/ACR/DAH/1025
	59	GUJARAT COUNCIL OF SCHOOL EDUCATION	30-06-2016	920073	• Invoice No. 12/20.06.2012 for Electrical Installation work at different Primary Schools - Package No. DIR/ACR/DAH/1025
	60	GUJARAT COUNCIL OF SCHOOL EDUCATION	22-06-2016	5700696	• 1st RA Bill for Construction of Compound wall at RMSA School (6) - Package RMSA/BK/52
	61	GUJARAT COUNCIL OF SCHOOL EDUCATION	11-05-2016	810025	• Invoice No. 10 dated 26.04.2016 for Electrical Installation Work at different Primary Schools in Dahod District - Package DIR/ACR/DAH/1026
	62	GUJARAT COUNCIL OF SCHOOL EDUCATION	11-05-2016	1104104	• No document produced which can link the payment and work/work order
		Sub Total		136318359	
3	1	PROJECT IMPEMENTATION UNIT	24-03-2017	1090323	No documents produced, TDS under Section 194C has been deducted on payment made to the assessee
	2	PROJECT IMPEMENTATION UNIT	24-03-2017	2625310	No documents produced, TDS under Section 194C has been deducted on payment made to the assessee
	3	PROJECT IMPEMENTATION UNIT	24-10-2016	1298230	No documents produced, TDS under Section 194C has been deducted on payment made to the assessee
	4	PROJECT IMPEMENTATION UNIT	27-09-2016	1731713	No documents produced, TDS under Section 194C has been deducted on payment made to the assessee
		Sub Total		6745576	
4	1	SAIKRUPA FABRICS PRIVATE LIMITED	28-02-2017	97243	No documents produced, TDS under Section 194C has been deducted on payment made to the assessee
		Sub Total		97243	
5	1	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	31-03-2017	46620	No documents produced -Payment received on which TDS deducted under 194I(b) of the Income Tax Act
	2	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	28-02-2017	46620	No documents produced -Payment received on which TDS deducted under 194I(b) of the Income Tax Act
	3	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	31-01-2017	46620	No documents produced -Payment received on which TDS deducted under 194I(b) of the Income Tax Act
	4	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	31-12-2016	46620	No documents produced -Payment received on which TDS deducted under 194I(b) of the Income Tax Act
	5	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	30-11-2016	42383	No documents produced -Payment received on which TDS deducted under 194I(b) of the Income Tax Act
	6	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	31-10-2016	42383	No documents produced -Payment received on which TDS deducted under 194I(b) of the Income Tax Act
	7	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	30-09-2016	42383	No documents produced -Payment received on which TDS deducted under 194I(b) of the Income Tax Act
	8	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	31-08-2016	42383	No documents produced -Payment received on which TDS deducted under 194I(b) of the Income Tax Act
	9	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	30-07-2016	42383	No documents produced -Payment received on which TDS deducted under 194I(b) of the Income Tax Act
	10	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	30-06-2016	42383	No documents produced -Payment received on which TDS deducted under 194I(b) of the Income Tax Act
	11	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	31-05-2016	42383	No documents produced -Payment received on which TDS deducted under 194I(b) of the Income Tax Act
	12	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	30-04-2016	42383	No documents produced -Payment received on which TDS deducted under 194I(b) of the Income Tax Act
		Sub Total		525544	
		Grand Total		144226118	

TABLE-E

Sr. No.	Copies of Agreements entered by the assessee with M/s. Sanjiv N Pandya
1	Agreement dated 30.06.2012 entered between M/s. Sanjiv N Pandya and the assessee for subcontracting the work of Construction of Classrooms to the assessee - Package No SSAM/ACR/DAH/608 (@ 15% Lesser than Bid Price i.e. Rs. 2,19,02,963/-)
2	Agreement dated 30.06.2012 entered between M/s. Sanjiv N Pandya and the assessee for subcontracting the work of Construction of Classrooms to the assessee - Package No SSAM/ACR/DAH/609 (@ 15% Lesser than Bid Price i.e. Rs. 2,29,12,491/-)
3	Agreement dated 27.01.2014 entered between M/s. Sanjiv N Pandya and the assessee for subcontracting the work of Construction of Classrooms to the assessee - Package No SSAM/ACR/GAN/788 (@ 22% Lesser than Bid Price i.e. Rs. 2,80,09,285/-)
4	Agreement dated 27.01.2014 entered between M/s. Sanjiv N Pandya and the assessee for subcontracting the work of Construction of Classrooms to the assessee - Package No SSAM/ACR/DAH/817 (@ 16% Lesser than Bid Price i.e. Rs. 1,87,53,395/-)

TABLE-F

Sr. No.	Copies of RA Bill – issued to M/s. Sanjiv N Pandya	Amount (in Rs.)
1	• 2nd RA Bill dated 19.03.2014 for Construction of School at Nardipur -package N. SSAM/ACR/GAN/788	1736735
2	• 3rd RA Bill dated 03.06.2014 for Construction of School at Nardipur -package N. SSAM/ACR/GAN/788	4337274
3	• 4th RA Bill dated 19.08.2014 for Construction of School at Nardipur -package N. SSAM/ACR/GAN/788	7922059
4	• 5th RA Bill dated 06.02.2015 for Construction of School at Nardipur -package N. SSAM/ACR/GAN/788	2546558
5	• 7th RA Bill dated 23.03.2015 for Construction of School at Nardipur -package N. SSAM/ACR/GAN/788	4956853
6	• 8 th RA Bill dated Nil for Construction of School at Nardipur -package N. SSAM/ACR/GAN/788	1816566
7	• 1st RA Bill dated Nil for Construction of Multi level ACR -package No -609	2934359
8	• 3rd RA Bill dated 08.03.2013 for Construction of Multi level ACR -package No -609	4660350
9	• 4th RA Bill dated 28.03.2013 for Construction of Multi level ACR -package No -609	3492022
10	• 5th RA Bill dated 18.06.2013 for Construction of Multi level ACR -package No -609	2931170

It is pertinent to mention here that the assessee has also provided documents i.e, some work orders, Form 26AS and Balance Sheet (for FY 2014-15) relating to FY 2011-12 to 2014-15. Since the same are not relevant in the matter, the same are not described/listed here.

24.3 On going through the above documents vis-à-vis payments made as per Form 26AS, in light of the legal position as discussed hereinabove, the following observations can be drawn with respect to leviability of service tax on services rendered by the assessee.

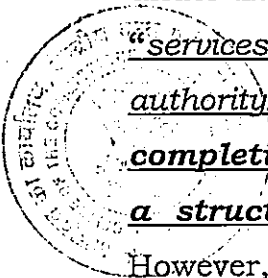
- The assessee had received the payments from (i) M/s. Bosch Rexroth (India) Pvt Ltd., (ii) M/s. Hitesh Sukhlalbai Gaudani, (iii) M/s. Sonneberg Plastic Systems India Pvt. Ltd., (iv) M/s. Healthcare Interactive India Private Limited, (v) Project Implementation Unit and (vi) M/s. Saikrupa Fabrics Interactive India Pvt. Ltd. However, the assessee has neither produced any documents to substantiate their claim for exemption from

service tax nor has mentioned anything in their written submission, about the provision of services to these entities. As evident from Form 26AS and as discussed hereinabove, the amount paid/credited to the assessee, is the contract income/ Rent Income for carrying contractual /renting activities, the activities carried out by the assessee in lieu of consideration, is apparently covered under the definition of "Service" under Section 65B(44). Thus, service tax is leviable under Section 66B of the Finance Act, 1994. I find that the onus lies on the assessee to establish that the services rendered by them are covered under the ambit of the exemption notification. I find that the assessee has failed in establishing the same. Thus, I am constrained to hold that the assessee is not eligible for exemption as claimed by them on provision of services to these entities.

- The payments of Rs. 15,51,86,883/- and Rs. 13,63,18,359/- were made to the assessee by Gujarat Council of School Education (which has Subsumed Gujarat Council of Elementary Education) during FY 2015-16 and 2016-17. According to the work orders and agreements (as per TABLE-A & B), the assessee was to provide services to Gujarat Council of School Education (GCSE), by way of "Construction of Class Rooms, Hostel and Electrical Works in Primary Schools", and against which the assessee has received the payment from them. As apparent from the website of Gujarat Council of School Education (GCSE), it is an administrative agency of Department of Education of Gujarat Government. The council is responsible for administration of primary education in the state as well as implementing state level agency for implementing of SAMGRA SHIKSHA project. Further, the Council has been registered under the Societies Registration Act 1860 and is directly under the control of the state government, and they undertake the functions as entrusted to them by the government. Therefore, GCSE qualifies to be the governmental authority. Thus, the service provided by the assessee by way of constructing of Class Rooms, Hostel and Electrical work (composite work) to Government authority, is squarely covered under the services described under E.No. 12A(b) read with Section 102 of the Finance Act, 1994 i.e.

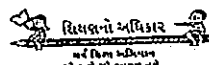
"services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a structure meant predominantly for use as an educational".

However, the other conditions of the said entry such as the contract having been entered into prior to 01.03.2015 and on which appropriate



stamp duty, wherever applicable, had been paid before that date, are also required to be satisfied for being eligible for exemption for services tax. On going through the list of work orders and agreements as per TABLE-A and B, the services provided in relation to two work orders /agreements i.e. Package No. DIR/ACR/DAH/1025 & DIR/ACR/DAH/1026 both dated 29.12.2014, satisfy all the criteria laid down under Sr. No. 12A(b) of Notification No. 25/2012-ST dated 20.06.2012 read with Section 102 of the Finance Act, 1994. Accordingly, in my opinion the assessee is not liable to pay service tax on services provided under work order/agreements in relation to Package No. DIR/ACR/DAH/1025 & DIR/ACR/DAH/1026 both dated 29.12.2014, as the same qualifies to be exempt services. It is also discerned that that the services provided with relation to the rest of the work orders/agreements, are not eligible for exemption from payment of service tax as the work order/ agreements have been issued /entered after 01.03.2015, thus, the criteria for being exempt services as laid down under Entry No. 12A(b) of Notification No. 25/202-ST read with Section 102 of Finance Act, 1994, are not fulfilled. Accordingly, I hold that the assessee is liable to pay service tax on services provided with relation to work order /agreements issued/entered into after 01.03.2015.

Images of Sample Work Orders:


Gujarat Council of Elementary Education
 Sarva Shiksha Abhiyan (SSA)
 Sector No. 17, Gandhinagar - 382 017
 Gujarat State
 Phone No. 079 - 23255069, 23234939
 Fax No. 079 - 2322436
 Helpline No. 1800-233-7965
 Date: 29/12/2014
 Ref: Civil/2014-157 42564-566

ISSUE OF NOTICE TO PROCEED WITH THE WORK

To,
 M/s. Shree Hari Construction Co.
 907, Ambica Chowk,
 Ramnagar, Sabarmati,
 Ahmedabad - 380 005.

Dear Sir,

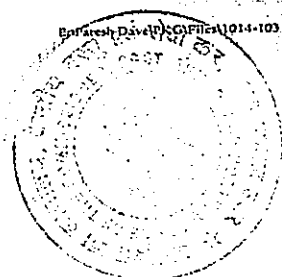
Pursuant to your furnishing the requisite security as stipulated in ITB Clause 28.1 and signing of the contract for the construction of (23) Additional classrooms in Dahod district & Electrical work in Primary Schools of Panchmahal & Vadodara District. Package No. DIR/ACR/DAH/1025 @ bld price of Rs. 32179349/- (20262704/- Civil + 11916645/- Electrical) (Rupees Three Crore Twenty One Lac Seventy Nine Thousand Three Hundred Forty Nine Only) you are hereby instructed to proceed with the execution of the said works in accordance with the contract documents.

Yours faithfully,

[Signature]
 State Project Engineer
 SSA, Gandhinagar

Copy To: -

- District Primary Education Officer, Dist: Dahod, Panchmahal, Vadodara
- District Project Engineer, Dist: Dahod, Panchmahal, Vadodara



Gujarat Council of Elementary Education
 Sarva Shiksha Abhiyan (SSA)
 Sector No. 17, Gandhinagar - 382 017
 Gujarat State
 Phone No. 079 - 23235069, 23234939
 Fax No. 079 - 23234367
 Helpline No. 1800-233-7965

Ref: Civil/2014-15/ACR/67-563 Date: 29.12.14

ISSUE OF NOTICE TO PROCEED WITH THE WORK

To,
 M/s. Shree Hari Construction Co.
 907, Ambica Chowk,
 Ramnagar, Sabarmati-
 Ahmedabad - 380 005.

Dear Sir,

Pursuant to your furnishing the requisite security as stipulated in ITB Clause 28.1 and signing of the contract for the construction of (17) Additional classrooms in Dahod district & Electrical work in Primary Schools of Dahod District - Package No. DIR/ACR/DAH/1026 @ bid price of Rs. 23149753/- (14937328/- Civil + 8212425/- Electrical) (Rupees Two Crore Thirty One Lac Forty Nine Thousand Seven Hundred Fifty Three Only) you are hereby instructed to proceed with the execution of the said works in accordance with the contract documents.

Yours faithfully,

[Signature]
 State Project Engineer
 SSA, Gandhinagar

Copy To: -

- District Primary Education Officer, Dist: Dahod
- District Project Engineer, Dist: Dahod

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17

Gujarat Council of Elementary Education
 Sarva Shiksha Abhiyan (SSA)
 Sector No. 17, Gandhinagar - 382 017
 Gujarat State
 Phone No. 079 - 23235069, 23234939
 Fax No. 079 - 23234367
 Helpline No. 1800-233-7965

Ref: Civil/2016/ACR/65/ Date: 13.11.16

ISSUE OF NOTICE TO PROCEED WITH THE WORK

To,
 M/s. Shree Hari Construction Co.
 907, Ambica Chowk,
 Ramnagar, Sabarmati,
 Ahmedabad - 380005.

Dear Sir,

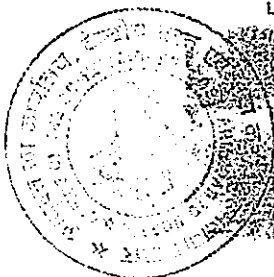
Pursuant to your furnishing the requisite security as stipulated in the Clause 28 and signing of the contract for the construction of 24 Additional Classroom in Banaskantha District and electrical work in various districts - Package No. DIR/ACR/BK/1284 @ bid price of Rs. 3058568.00 (17847216.00/- CIVIL + 12311352.00/- Electrical) (Rupees Three Crore One Lakhs Fifty Eight Thousand Five Hundred Sixty Eight Only) you are hereby instructed to proceed with the execution of the said works in accordance with the contract documents.

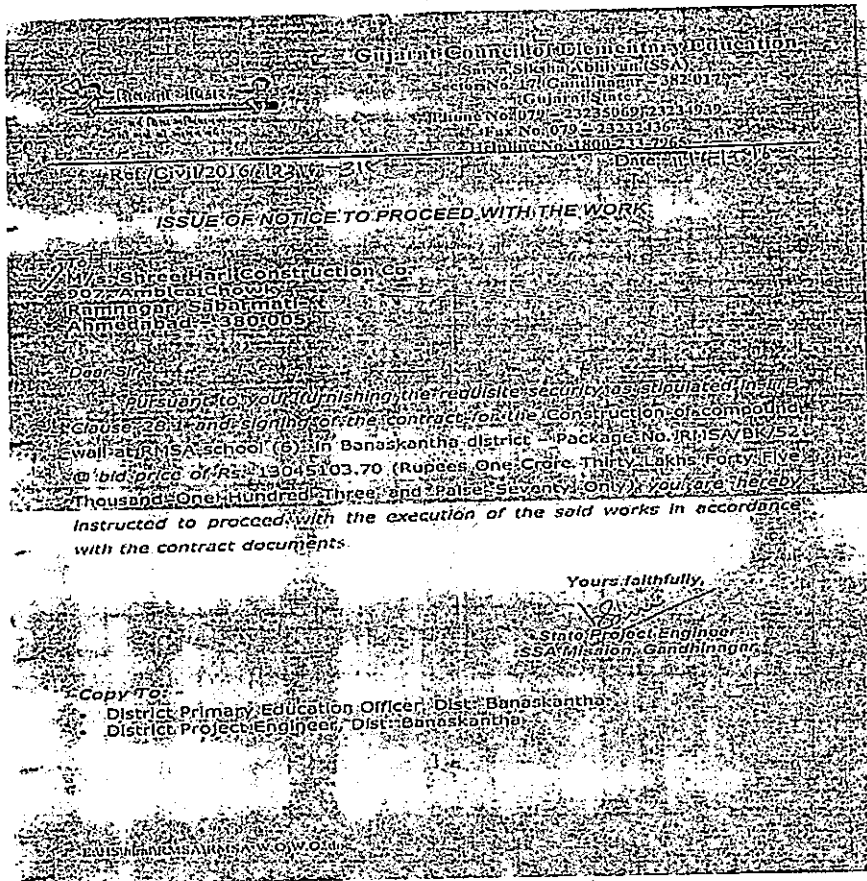
Yours faithfully,

[Signature]
 State Project Engineer
 SSA Mission Gandhinagar

Copy To: -

- District Primary Education Officer, Dist: Banaskantha
- District Project Engineer, Dist: Banaskantha





➤ The assessee has received payments of Rs. 95,21,300/- from M/s. Sanjiv N Pandya during FY 2015-16. The assessee has produced the copies of Sub Contract Agreements entered with M/s. Sanjiv N Pandya and RA Bills issued to M/s. Sanjiv N Pandya, as listed in Table-E & F. The amount mentioned in these documents is found to be not tallying with the amount paid to the assessee as per Form 26AS. The assessee has not mentioned anything in their written submission about the mismatch of the figures. The assessee has produced copies of RA Bill (TABLE-F), totally amounting to Rs. 3,73,33,946/- against the payment amounting to Rs. 95,21,300/- received by the assessee during FY 2015-16. Further, the said documents pertains to the past period i.e. prior to 2015-16. The assessee has not produced any documents/evidence by which the payment received by them as per Form 26AS, can be linked with the services mentioned in the documents (As per TABLE-E and F) produced by them. Under such circumstances, I can not come to a definite conclusion that the payment received by the assessee is for services provided as per the said documents. Accordingly, the assessee, again, fails to establish that the services provided by them were exempt service. Thus, I hold that the assessee is liable to pay service tax on provision of service to M/s. Sanjiv N Pandya during FY 2015-16. .

- Further, it is also discerned from the documents available on records that the services provided were covered under negative list of services as provided under Section 66D of the Finance Act, 1994.

24.4 From the aforementioned observations, the following facts are emerging.

FY 2015-16			
Sr. No.	Name of the recipient of services	Amount received for the services (in Rs.)	Exemption under Noti. No. 25/2012-ST available or not
1	BOSCH REXROTH (INDIA) PRIVATE LIMITED	518264	Not available
2	GUJARAT COUNCIL OF SCHOOL EDUCATION	155186883	Available as well not available
3	HITESH SUKHLALBHAI GAUDANI	11332169	Not available
4	SANJIV N PANDYA	9521300	Not available
5	SONNEBERG PLASTIC SYSTEMS INDIA PRIVATE LIMITED	1674494	Not available
6	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	127149	Not available
	TOTAL	178360259	

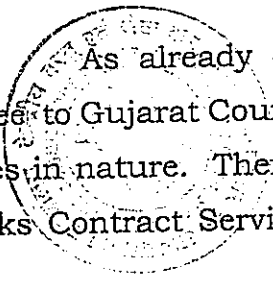
FY 2016-17			
Sr. No.	Name of the recipient of services	Amount received for the services (in Rs.)	Exemption under Noti. No. 25/2012-ST available or not
1	BOSCH REXROTH (INDIA) PRIVATE LIMITED	539396	Not available
2	GUJARAT COUNCIL OF SCHOOL EDUCATION	136318359	Available as well not available
3	PROJECT IMPEMENTATION UNIT	6745576	Not available
4	SAIKRUPA FABRICS PRIVATE LIMITED	97243	Not available
5	HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED	525544	Not available
	TOTAL	144226118	

25. As can be clearly seen from the above observations, the assessee has failed to establish that the service rendered by them were eligible for exemption from payment of service tax except in case of service provided to Gujarat Council of School Education with respect to two work orders/agreements for Package No. DIR/ACR/DAH/1025 & DIR/ACR/DAH/1026 both dated 29.12.2014 as the same being covered under Entry No. 12A(b) of Notification No. 25/2012-ST dated 20.06.2012 read with Section 102 of the Act. I am of the considered view that a person who claims exemption or concession has to establish beyond doubt that he is indeed entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly. If exemption is available on complying with certain conditions, the conditions have to be complied with. In support of my view, I rely on decision of the Supreme Court in the matter of Commissioner of C.Ex., New Delhi vs. Hari Chand Shri Gopal, reported in [2010(260)ELT3(SC)].

26. As regards services provided to Gujarat Council of School Education, I find from the work order/ agreements that the assessee was to provide services to Gujarat Council of School Education (GCSE), by way of "Construction of Class Rooms, Hostel and Electrical Works in Primary Schools". The services provided by the assessee to GCSE is composite service in nature as the same involves supply of goods and services. Thus, the services provided to Gujarat Council of School Education qualifies to be works contract service as well. It is also seen from copies of work orders and Agreement that the assessee was awarded work of construction of classrooms, hostel and electrical work by Gujarat Council of School Education, total amounting to Rs. 32,80,56,433/- during FY 2015-16 to 2016-17, and the assessee was paid Rs. 29,15,05,242/- by Gujarat Council of School Education during FY 2015-16 & 2016-17. The assessee has produced the RA Bill/Invoices totally amounting to Rs. 18,25,61,738/- against the payment amounting to Rs. 29,15,05,242/- received during FY 2015-16 to 2016-17. The assessee has furnished RA bills /invoices/vouchers in more than 60% cases. The total value of work awarded as per work orders /agreements issued/entered during FY 2015-16 and 2016-17 is higher than the total payments received from Gujarat Council of School Education. Considering this factual position, the services provided by the assessee to Gujarat Council of School Education, can be safely considered to be works contract service even in those cases where the assessee has not produced RA Bill/invoices.

26.1 In respect of services provided to the persons other than Gujarat Council of School Education, the assessee has not provided any documents/evidences for FY 2015-16 to 2016-17, therefore, the exact nature of services rendered by them, is not ascertainable. Accordingly, it is also not ascertainable whether the benefit of exemption /concession /abatement is available to the assessee or otherwise. In absence of any documents, the benefit of exemption as claimed by the assessee can not extended on provision of services to persons other than Gujarat Council of School Education.

26.2 As already discussed hereinabove, the services provided by the assessee to Gujarat Council of School Education, qualifies to be Works Contract Services, in nature. Therefore, I find that the abatement available with respect to works Contract Service under Service Tax (Determination of Value) Rules,



2006 (Valuation Rules), needs to be taken into account while computing the service tax liability of the assessee.

26.3 The value of service portion in execution of works contract has to be determined as per Service Tax (Determination of Value) Rules, 2006 (Valuation Rules). Accordingly, in case of works contracts entered into for execution of "Original Works", service tax shall be payable on Forty Percent of the total amount charged for the works contract. In other case of works contract (i.e. other than Original Work, including repair, maintenance, finishing services), the service tax shall be payable on Seventy Percent of the total amount charged for the works contract. As per the explanation – 2 appended to Rule 2A of Valuation Rules, such abatement in value under Valuation Rules is subject to the condition that no cenvat credit of duties or cess paid on any inputs, used in or in relation to the said works contract is availed by the provider of service. As per the documents, the services provided by the assessee to Gujarat Council of School Education appears to be "New Construction" in nature, therefore, the service appears to be covered under the meaning of "Original Work" as provided under Valuation Rules. Since, the assessee had not filed service tax registration during 2015-16 and 2016-17, therefore, no question of availment of cenvat credit arises. Therefore, I find that the assessee is required to pay service tax on 40% of the amount charged by them in respect of service provided to Gujarat Council of School Education.

26.4 Having considered the above legal and factual position/discussion, the service tax liability of the assessee has been worked out herein under on the basis of amount paid to the assessee as per Form 26AS.

Calculation for Service tax payable for 2015-16							Remarks
Sr.No.	As per Form 26AS		Abatement under valuation Rules (Rate)	Net Taxable Value (After abatement)	Service Tax Rate %	Service Tax Payable	
	Dt. of transaction	Amount paid to the assessee (Value of service provided)					
FY 2015-16							
	BOSCH REXROTH (INDIA) PRIVATE LIMITED						
	29/06/2015	518264	100%	518264	14	72557	
	GUJARAT COUNCIL OF SCHOOL EDUCATION						
1	31/03/2016	385250	60%	154100	14.5	22345	
2	31/03/2016	5093650	60%	2037460	14.5	295432	
3	31/03/2016	6259450	60%	2503780	14.5	363048	

4	31/03/2016	861400	60%	344560	14.5	49961	
5	31/03/2016	498100	60%	199240	14.5	0	Exempt/wo 1026
6	31/03/2016	156200	60%	62480	14.5	9060	
7	30/03/2016	3204850	60%	1281940	14.5	185881	
8	29/03/2016	578150	60%	231260	14.5	33533	
9	29/03/2016	385600	60%	154240	14.5	22365	
10	29/03/2016	129500	60%	51800	14.5	7511	
11	23/03/2016	5462850	60%	2185140	14.5	316845	
12	22/03/2016	2533300	60%	1013320	14.5	0	Exempt/wo 1026
13	22/03/2016	638650	60%	255460	14.5	0	Exempt/wo 1026
14	11/03/2016	5296700	60%	2118680	14.5	307209	
15	09/03/2016	3492500	60%	1397000	14.5	202565	
16	01/03/2016	482450	60%	192980	14.5	27982	
17	01/03/2016	3088900	60%	1235560	14.5	179156	
18	01/03/2016	577100	60%	230840	14.5	0	Exempt/wo 1026
19	01/03/2016	355500	60%	142200	14.5	20619	
20	01/03/2016	216000	60%	86400	14.5	12528	
21	01/03/2016	3851200	60%	1540480	14.5	223370	
22	01/03/2016	568250	60%	227300	14.5	32959	
23	01/02/2016	200000	60%	80000	14.5	11600	
24	01/02/2016	7792600	60%	3117040	14.5	451971	
25	01/02/2016	6378800	60%	2551520	14.5	369970	
26	01/02/2016	3991350	60%	1596540	14.5	231498	
27	01/02/2016	181200	60%	72480	14.5	10510	
28	01/02/2016	4932600	60%	1973040	14.5	286091	
29	28/12/2015	3709772	60%	1483909	14.5	215167	
30	28/12/2015	624271	60%	249708	14.5	0	Exempt/wo 1026
31	28/12/2015	1342820	60%	537128	14.5	77884	
32	28/12/2015	1502015	60%	600806	14.5	87117	
33	04/11/2015	5466994	60%	2186798	14	0	Exempt/wo 1025
34	04/11/2015	5041288	60%	2016515	14	282312	
35	04/11/2015	3310073	60%	1324029	14	185364	
36	03/11/2015	3489700	60%	1395880	14	195423	
37	30/10/2015	8129006	60%	3251602	14	455224	
38	30/10/2015	986239	60%	394496	14	0	Exempt/wo 1026
39	30/10/2015	209160	60%	83664	14	11713	
40	30/10/2015	193040	60%	77216	14	10810	
41	30/10/2015	817872	60%	327149	14	45801	
42	30/10/2015	252405	60%	100962	14	0	Exempt/wo 1026
43	30/10/2015	933971	60%	373588	14	52302	
44	30/10/2015	4201505	60%	1680602	14	235284	
45	13/10/2015	1388991	60%	555596	14	77783	
46	13/10/2015	281363	60%	112545	14	15756	
47	06/10/2015	3805508	60%	1522203	14	213108	
48	29/09/2015	386885	60%	154754	14	21666	
49	29/09/2015	2639913	60%	1055965	14	147835	
50	29/09/2015	1341907	60%	536763	14	75147	
51	28/09/2015	4724146	60%	1889658	14	264552	
52	28/09/2015	2901107	60%	1160443	14	162462	
53	01/09/2015	9350293	60%	3740117	14	0	Exempt/wo 1025
54	01/09/2015	3671234	60%	1468494	14	205589	
55	01/09/2015	3059145	60%	1223658	14	171312	
56	04/07/2015	5914322	60%	2365729	14	0	Exempt/wo 1025
57	30/06/2015	6270198	60%	2508079	14	0	Exempt/wo 1026
58	05/06/2015	239100	60%	95640	14	13390	
59	04/06/2015	248540	60%	99416	14	13918	
60	04/06/2015	1162000	60%	464800	14	65072	
HITESH SUKHLALBHAI GAUDANI							
1	05/10/2015	6520219	100%	6520219	14	912831	
2	31/07/2015	49103	100%	49103	14	6874	
3	29/07/2015	4762847	100%	4762847	14	666799	
SANJIV N PANDYA							
1	02/10/2015	3990200	100%	3990200	14	558628	

2	01/09/2015	1010800	100%	1010800	14	141512	
3	02/07/2015	4520300	100%	4520300	14	632842	
SONNEBERG PLASTIC SYSTEMS INDIA PRIVATE LIMITED							
1	13/02/2016	1116375	100%	1116375	14.5	161874	
2	13/02/2016	58624	100%	58624	14.5	8500	
3	13/02/2016	205056	100%	205056	14.5	29733	
4	13/02/2016	294439	100%	294439	14.5	42694	
HEALTHCARE INTERACTIVE INDIA PRIVATE LIMITED							
1	31/03/2016	42383	100%	42383	14.5	6146	
2	28/02/2016	42383	100%	42383	14.5	6146	
3	31/01/2016	42383	100%	42383	14.5	6146	
Grand Total		178360259				10229281	

Calculation for Service tax payable for 2016-17							
Sr. No.	As per Form 26AS		Abatement under valuation Rules (Rate)	Net Taxable Value (After abatement)	Service Tax Rate %	Service Tax Payable	Remarks
	Dt. of transaction	Amount paid to the assessee (Value of service provided)					
FY 2016-17							
BOSCH REXROTH (INDIA) PRIVATE LIMITED							
1	31/12/2016	17388	100%	17388	15	2608	
2	25/07/2016	479528	100%	479528	15	71929	
3	31/05/2016	42480	100%	42480	14.5	6160	
GUJARAT COUNCIL OF SCHOOL EDUCATION							
1	31/03/2017	1062232	60%	424893	15	63734	
2	31/03/2017	325458	60%	130183	15	19527	
3	31/03/2017	589162	60%	235665	15	35350	
4	31/03/2017	1728172	60%	691269	15	103690	
5	31/03/2017	4726697	60%	1890679	15	283602	
6	31/03/2017	90168	60%	36067	15	5410	
7	31/03/2017	7778890	60%	3111556	15	466733	
8	31/03/2017	5573389	60%	2229356	15	334403	
9	31/03/2017	243854	60%	97542	15	14631	
10	31/03/2017	484547	60%	193819	15	29073	
11	31/03/2017	175327	60%	70131	15	10520	
12	31/03/2017	962220	60%	384888	15	57733	
13	29/03/2017	158795	60%	63518	15	9528	
14	29/03/2017	871265	60%	348506	15	52276	
15	22/03/2017	1291196	60%	516478	15	77472	
16	22/03/2017	989792	60%	395917	15	59388	
17	17/03/2017	1559113	60%	623645	15	93547	
18	15/03/2017	665438	60%	266175	15	39926	
19	15/03/2017	2363307	60%	945323	15	141798	
20	09/03/2017	4648391	60%	1859356	15	278903	
21	18/02/2017	2014686	60%	805874	15	120881	
22	18/02/2017	4461336	60%	1784534	15	267680	
23	17/02/2017	5820648	60%	2328259	15	349239	
24	14/02/2017	1449562	60%	579825	15	86974	
25	13/02/2017	215308	60%	86123	15	12918	
26	13/02/2017	730142	60%	292057	15	43809	
27	09/02/2017	454200	60%	181680	15	27252	

28	09/02/2017	3702038	60%	1480815	15	222122	
29	30/01/2017	1127042	60%	450817	15	67623	Exempt /wo 1026
30	27/01/2017	1578596	60%	631438	15	94716	Exempt /wo 1026
31	25/01/2017	2500000	60%	1000000	15	150000	
32	19/01/2017	2138849	60%	855540	15	128331	
33	13/01/2017	3192118	60%	1276847	15	191527	
34	13/01/2017	2342345	60%	936938	15	140541	
35	28/10/2016	1515932	60%	606373	15	90956	
36	28/10/2016	2162807	60%	865123	15	129768	
37	27/10/2016	2694643	60%	1077857	15	161679	
38	27/10/2016	2643541	60%	1057416	15	158612	
39	27/10/2016	2219039	60%	887616	15	133142	
40	27/10/2016	930090	60%	372036	15	55805	
41	27/10/2016	1810577	60%	724231	15	108635	
42	26/10/2016	1371510	60%	548604	15	82291	
43	25/10/2016	4275733	60%	1710293	15	256544	
44	25/10/2016	1403153	60%	561261	15	84189	
45	19/10/2016	3419147	60%	1367659	15	205149	
46	04/10/2016	1281538	60%	512615	15	76892	
47	04/10/2016	6864632	60%	2745853	15	411878	
48	04/10/2016	440351	60%	176140	15	26421	
49	01/10/2016	841634	60%	336654	15	50498	
50	06/09/2016	817434	60%	326974	15	49046	
51	06/09/2016	1379387	60%	551755	15	82763	
52	03/09/2016	5650366	60%	2260146	15	339022	
53	02/09/2016	2086815	60%	834726	15	125209	
54	02/09/2016	2513536	60%	1005414	15	150812	
55	01/09/2016	3824134	60%	1529654	15	229448	
56	24/08/2016	2663969	60%	1065588	15	159838	
57	24/08/2016	4111661	60%	1644664	15	246700	
58	30/06/2016	2847549	60%	1139020	15	170853	Exempt/wo 1025
59	30/06/2016	920073	60%	368029	15	55204	Exempt/wo 1025
60	22/06/2016	5700696	60%	2280278	15	342042	
61	11/05/2016	810025	60%	324010	14.5	46981	Exempt/wo 1026
62	11/05/2016	1104104	60%	441642	14.5	64038	
PROJECT							
IMPEMENTATION UNIT							
1	24/03/2017	1090323	100%	1090323	15	163548	
2	24/03/2017	2625310	100%	2625310	15	393797	
3	24/10/2016	1298230	100%	1298230	15	194735	
4	27/09/2016	1731713	100%	1731713	15	259757	
SAIKRUPA FABRICS							
PRIVATE LIMITED							
1	28/02/2017	97243	100%	97243	15	14586	
HEALTHCARE							
INTERACTIVE INDIA							
PRIVATE LIMITED							
1	31/03/2017	46620	100%	46620	15	6993	Renting
2	28/02/2017	46620	100%	46620	15	6993	Renting
3	31/01/2017	46620	100%	46620	15	6993	Renting
4	31/12/2016	46620	100%	46620	15	6993	Renting
5	30/11/2016	42383	100%	42383	15	6357	Renting
6	31/10/2016	42383	100%	42383	15	6357	Renting
7	30/09/2016	42383	100%	42383	15	6357	Renting
8	31/08/2016	42383	100%	42383	15	6357	Renting
9	30/07/2016	42383	100%	42383	15	6357	Renting
10	30/06/2016	42383	100%	42383	15	6357	Renting
11	31/05/2016	42383	100%	42383	14.5	6146	Renting
12	30/04/2016	42383	100%	42383	14.5	6146	Renting
Grand Total:		144226118				9360801	



26.5 Having considered these factual and documentary evidences available on record, I find that the assessee has failed to establish that the services rendered by them were exempt service as claimed by them except for the services provided in some cases to Gujarat Council of School Education. Accordingly, the assessee is liable to pay service tax of Rs. 1,95,90,082/- (Rs. 1,02,29,281/- for FY 2015-16 + Rs. 93,60,801/- for Rs. 2016-17) under section 66B read with Rule 2 of Service Tax Rules 1994 for rendering taxable services by them. Therefore, I hold that the assessee has failed to pay service tax amounting to Rs. 1,95,90,082/- , which was required to be paid under Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules 1994 for taxable services provided during FY 2015-16 and 2016-17 by them. Since, the assessee is liable to pay service tax of Rs. 1,95,90,082/- out of total demand of Service Tax of Rs. 4,74,96,156/-, the rest of demand of Service Tax of Rs. 2,79,06,074/- is liable to be dropped on merit being incorrect and legally not sustainable. Therefore, I hold that the assessee is required to pay service tax of Rs. 1,95,90,082/- and thus, the same is required to be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

27. Based on above facts and discussion, I find that the assessee has contravened the provisions of (i) Section 68 and 66B of the Finance Act, 1994 read with Rules 2 and 6 of the Service Tax Rules 1994, in as much as they have not paid service tax to the tune of Rs. 1,95,90,082/- though they were liable to pay the same on provision of taxable services (ii) Section 70 of Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994 in as much as they have failed to assess their correct service tax liability and have failed to file ST-3 Returns for the FY 2015-16 and 2016-17.

28. I also find that Section 75 of Finance Act, 1994 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate for the period by which crediting of tax or part thereof is delayed. I thus hold that the assessee is also liable to pay the interest on the demand of service Tax of Rs. 1,95,90,082/-.

29. From the facts and discussion aforementioned, I find that in the instant case the assessee had not paid service tax 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. They had not filed the service tax returns thereby not disclosing the taxable services rendered by them. Thus, the assessee

had suppressed the material facts from the Department by not showing their actual taxable income in the ST-3 Returns and also by not paying the Service Tax due on them. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax payers' behaviour. The responsibility on the tax payer to voluntarily make information disclosures is much greater in the system of self-assessment. The omission or commission on the part of the assessee has clearly demonstrated their intention to evade payment of service tax, as they were very much aware of the unambiguous provisions of Finance Act, 1994 and Rules made there under. They have failed to disclose to the department at any point of time, the fact regarding the claiming of exemption without being eligible under Notification No. 25/2012-ST as discussed in forgoing paras during FY 2015-16 & 2016-17. These facts would not have come to light if the department had not initiated inquiry on the basis of data shared by the Income Tax Department. Moreover, the government has from the very beginning placed full trust on the assessee, accordingly measures like self assessment etc. based on mutual trust and confidence have been put in place. Further, the assesseees are not required to maintain any statutory or separate records under the Excise / service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for purpose of excise & Service tax laws. Moreover, returns are also filed online without any supporting documents. All these operates on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provision is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is also evident that such fact of contravention and non paying the service tax by not declaring taxable value of the service provided, as discussed earlier, on the part of the assessee came to the notice of the department only when the inquiry was initiated by the department. In the case of *Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241*, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In *2009 (23) STT 275, in case of Lalit Enterprises vs. CST Chennai*, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the

extended period under proviso to Section 73(1) of the Finance Act, 1994. By invoking the extended period of time of 5 years, service tax totally amounting to Rs. 1,95,90,082/- (Rs. 1,02,29,281/- for FY 2015-16 + Rs. 93,60,801/- for Rs. 2016-17) is required to be recovered along with applicable interest under Section 75 of the Finance Act, 1994 from the assessee.

30. Thus, for the same reasons as discussed above, I find that the assessee have not paid the service tax by resorting to suppression of facts and contravention of the provisions of law with intent to evade payment of the tax. The Hon'ble Supreme Court has settled the issued in the case of UOI Vs. Dharmendra Textiles Processors reported in [2008(231) ELT 3(SC)] and further clarified in the case of UOI vs. RAJASTHAN SPINNING & WEAVING MILLS reported in [2009 (238) E.L.T. 3 (S.C.)]. The Hon'ble Supreme Court has held that the presence of malafied intention is not relevant for imposing the penalty and *mens rea* is not an essential ingredient for penalty for tax delinquency which is a civil obligation. Accordingly, I hold that the assessee have rendered themselves liable for penalty in terms of the provision of Section 78 of the Finance Act, 1994.

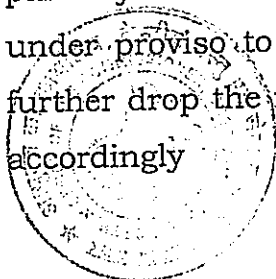
31. As regards, the proposal for imposition of penalty under Section 77(2) of the Finance Act, 1994, I find that the assessee has failed to assess their service tax liability and has failed to file correct service tax returns as required under Section 70 of the Finance Act, 1994 read with Rule 7 of Service 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.

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

ORDER

(Show Cause Notice No. STC/15-87/OA/2021 dated 23.04.2021)

- (i) I hereby confirm the demand of service tax of Rs. 1,95,90,082/- (Rs. 1,02,29,281/- for FY 2015-16 + Rs. 93,60,801/- for Rs. 2016-17) (Rs. One Crore Ninety Five Lakh Ninety Thousand Eighty Two only) out of the total demand of service tax of Rs. 4,74,96,156/- for FY 2015-16 & 2016-17, not paid by the assessee and order to recover the same from the assessee under proviso to Sub-section (1) of Section 73 of Finance Act, 1994. I further drop the rest of the demand of Service Tax of Rs. 2,79,06,074/- accordingly



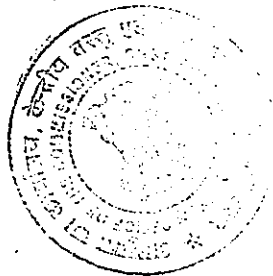
- (ii) I order to charge Interest at the appropriate rate on the demand of Service tax of Rs. 1,95,90,082/- and to recover the same from the assessee under Section 75 of the Finance Act, 1994;
- (iii) I impose penalty of Rs. 1,95,90,082/- on the assessee under the provision of Section 78 of the Finance 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.

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

ORDER

(Show Cause Notice No. STC/15-88/OA/2021 dated 23.04.2021)

I hereby drop the proceedings initiated against M/s. Dipak Vinodbhai Patel, 907, Behind Janta Dairy, Ramnagar, Sabarmati, Ahmedabad-380005, vide Show Cause Notice F. No. STC/15-88/OA/2021 dated 23.04.2021.



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

By Regd. Post AD./Hand Delivery
F.No. STC/15-87/OA/2021

Date: .02.2023.

To
M/s. Dipak Vinodbhai Patel,
907, Behind Janta Dairy,
Ramnagar, Sabarmati,
Ahmedabad -380005

Copy to:

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

[Handwritten signature]
09-02-23