


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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. **STC/15-216/OA/2021-22**

DIN-20230364WT000000D6C6

आदेश की तारीख	/	Date of Order : 02.03.2023
जारी करने की तारीख	/	Date of Issue : 02.03.2023
द्वारा पारित/Passed by -		
उपेन्द्र सिंह यादव	/	UPENDRA SINGH YADAV
आयुक्त	/	COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-43/2022-23

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice No. STC/15-216/OA/2021-22 dated 23.04.2021 issued to M/s. Hiteshkumar Dhirajlal Kukadiya, Shop No. 7, Vasant Vihar Shopping Center, Kathwada, Naroda, Ahmedabad - 382330

ORDER-IN-ORIGINAL NO. AHM-EXCUS - 43/2022-23

M/s. Hiteshkumar Dhirajlal Kukadiya (PAN No. AMBPK5970A), Shop No. 7, Vasant Vihar Shopping Center, Kathwada, Naroda, Ahmedabad - 382330 were issued Show Cause Notice No. STC/15-216/OA/2021-22 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

Brief facts of the case pertaining to Show Cause Notice No. STC/15-216/OA/2021-22 dated 23.04.2021 are as follows:

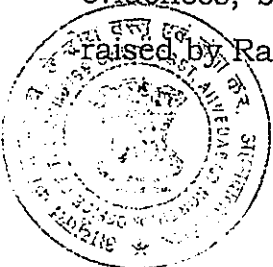
1. Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" by M/s. Hiteshkumar Dhirajlal Kukadiya (PAN No. AMBPK5970A), Shop No. 7, Vasant Vihar Shopping Center, Kathwada, Naroda, Ahmedabad - 382330 (hereinafter referred to as "Assessee" for sake of brevity) was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

2. On going through the data received from Income Tax department (CBDT data) for the Financial Year 2015-2016, it was found that the Assessee had shown 'Gross receipt from Service' in their Income Tax Return, however, the said Assessee had neither obtained valid Service Tax Registration nor paid Service Tax. The details of the value shown in Income Tax return for F.Y 2015-16 is as below: -

Table - A

F.Y.	Basic value as per ITR/P&L account (Rs)	Resultant Service tax not paid (Rs.)
2015-16	Rs.16,01,44,211/-	Rs. 2,32,20,911/-

3. Letters/e-mail dated 09.03.2021 was issued to the Assessee by the jurisdictional range office, requesting clarification regarding the service turnover as mentioned in the Table-A above with certified documentary evidences, but the Assessee did not submit any reply w.r.t. the observations raised by Range office.



4. 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 noticee 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.

5. From the facts available on record, it appeared that the "Total Amount Paid / Credited under Section 194C, 194H, 194I, 194J OR Sales / Gross Receipts from Services (From ITR)" for the period 2016-17 & 2017-18 (upto June 2017) had not been disclosed by the Income Tax Department and the Assessee too, even after the issuance of letters and reminders from the Department, had not submitted the same. Therefore, the assessable value for the period 2016-17 & 2017-18 (upto June 2017) was not ascertainable at the time of issuance of the Show Cause Notice. Consequently, if any other amount was to be disclosed by any other sources / agencies, against the same Assessee, action was to be initiated against the said Assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period 2016-17 & 2017-18 (upto June 2017) was to be recoverable from the said Assessee accordingly.

6. As per Section 69 of the Finance Act, 1994 .— *"(1) Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.*

(2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an

application for registration within such time and in such manner and in such form as may be prescribed

6.1 In the instant case, it appeared that the Assessee had failed to obtain Service Tax registration and thereby violated the provisions of Section 69 of the Finance Act, 1994.

7. Further, as per Section 68 of the Finance Act, 1994 *“(1) Every person providing taxable service to any person shall pay service tax at the rate specified in Section [66B] in such manner and within such period as may be prescribed.*

(2) Notwithstanding anything contained in sub-section (1), in respect of [such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section [66B] and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.”

7.1 In the instant case, it appeared that the Assessee had failed to pay the service tax on the taxable services provided by them and thereby contravened the provisions of Section 68 of the Finance Act, 1994.

8. It also appeared that Assessee had contravened the provisions of (1) Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 and (2) Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994 in as much as they had failed to take service tax registration and make payment of Service Tax to the extent of **Rs. 2,32,20,911/- for F.Y.2015-16** as per their Income Tax Return/ Form 26AS/P&L account.

9. It was also noticed that at no point of time, the Assessee had disclosed or intimated to the Department regarding receipt/providing of Service, which had come to the notice of the Department only after going through the CBDT Data generated for the Financial Year 2015-2016. The Government had, from the very beginning, placed full trust on the Assessee and accordingly measures like self assessment etc, based on mutual trust and confidence are in place. From the evidences, it appeared that the Assessee had knowingly suppressed the facts regarding receipt of/providing of services by

them. It appeared that the above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appeared to be recoverable from them under the provisions of Section 73 of the Finance Act, 1994 by invoking proviso under sub-section (1) of Section 73 read with the Notification issued on 27.06.2020 under Section 6 of The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 dated 31.03.2020, along with interest thereof, at appropriate rate, under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constituted an offence of the nature specified under Section 68 & Section 69 of the Finance Act, 1994, it appeared that the Assessee had rendered themselves liable for penalty under Section 77 (1) (a) & Section 78 of the Finance Act, 1994.

10. Therefore, the Assessee (M/s. Hiteshkumar Dhirajlal Kukadiya) were issued a Show Cause Notice dated 23.04.2021 asking them as to why;

- a) The demand of Service Tax to the extent of **Rs. 2,32,20,911/- for F.Y. 2015-16** not paid by them, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- b) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- c) Penalty should not be imposed upon them under the provisions of Section 77 (1) (a) of the Finance Act 1994, for their failure to take Service Tax Registration;
- d) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994, for non-payment of service tax by knowingly suppressing the facts from the department with intent to evade the payment of service tax

DEFENCE REPLY:

11. The Assessee vide their letter dated 15.06.2021 submitted their reply to the Show Cause Notice dated 23.04.2021, wherein they have inter alia stated as under –

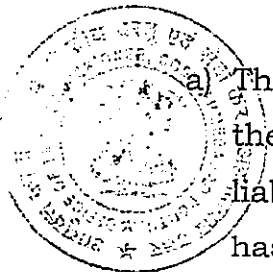
1. That they are in the business of manufacturing and supply of furniture products and civil structure works of Government Department, Government Authority and Local Authority;
2. That as per the show cause notice their sale of service for F.Y. 2015-16 has been shown as Rs. 16,01,44,211/- but the actual sale of their firm in the financial year 2015-16 is Rs. 9,00,23,039/-; that such sales consist of either supply of furniture or by way of Civil Works to Government, Local Authority or Government Authority. The bifurcation of their sale is as under –

Sales Bifurcation	Amount (Rs.)
Government Works Contract	2,77,99,104/-
Supply to Local Authority	3,04,38,301/-
Government Sub-Works Contract	3,08,12,051/-
Other Work	9,73,883/-
Total Sales as per Audit Report	9,00,23,039/-

3. That the supply of goods to the local authority i.e. Rs. 3,04,38,301/- is out of purview of service tax.
4. That since the major part of their sale is Civil Works to Government, Local Authority or Government Authority, as per Notification No. 25/2012-ST dated 20.06.2012 of the Central Government, the services rendered by them are exempt from service tax liability

11.1 The Assessee vide their further reply dated 19.05.2022 have submitted as under -

- a) That with respect to the income from "Other Work" i.e. Rs. 9,73,883/-, they have made payment of Service Tax of Rs. 28,243/- (50% of total liability of Rs. 56,485/-). The total Service Tax liability of Rs. 56,485/- has been worked out @ 14.5% on Rs. 3,89,553/- (40% of 9,73,883/-)
- b) That the remaining 50% of the tax of Rs. 28,243/- was to be paid by the recipient of Service as the recipient being Private Limited Company under RCM.



11.2 The Assessee vide their letter dated 19.05.2022 also submitted the following documents -

- i. IT Return Copy and Audit Report with Financial Statements of F.Y. 2015-16
- ii. 26AS copy of F.Y. 2015-16
- iii. Tender Award Copy
- iv. Sales Working Sheet for F.Y. 2015-16
- v. Service Tax Challan No. 00536 dtd. 28.09.2016 for Rs. 28,243/-.
- vi. Service Tax Challan No. 04371 dtd. 17.10.2016 for Rs. 7,02,989/- and Challan No. 00543 dtd. 28.09.2016 also for Rs. 7,02,989/-

PERSONAL HEARING:

12. Personal hearings were granted to the Assessee on 06.05.2022, 25.05.2022, 22.06.2022, 28.07.2022, 09.09.2022, 18.10.2022 and 17.11.2022. The Assessee on 09.09.2022 sought adjournment of the personal hearing, but did not appear for personal hearing on any of the above mentioned other dates which were fixed for personal hearings.

12.1 In view of the non-appearance of the Assessee for the personal hearing and considering that they have already been given 7 opportunities which the Assessee has chosen not to avail, I am left with no option but to proceed to decide the issue on the basis of the facts available on record as the matter cannot be left hanging indefinitely.

12.2 In this connection, I find that Hon'ble Supreme Court, High Courts and Tribunals have, 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 to the noticee 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;

Recent decision of this 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."

DISCUSSION AND FINDINGS:

13. I have carefully gone through the facts of the case and records available in the case file, the Show Cause Notice dated 23.04.2021, the defence reply dated 15.06.2021 and 19.05.2022, and the documents submitted vide letter dated 19.05.2022 by the Assessee. Accordingly, I find that the following issues are required to be decided by me as an adjudicating authority –

- i. Whether the Service Tax has been correctly demanded vide the Show Cause Notice dated 23.04.2021.
- ii. Whether the Assessee is entitled for the exemption as claimed by them.

14. I find that the genesis of the demand has arisen from the analysis of the 26AS and ITR of the Assessee by the CBDT and the same being shared with the department for the period 2015-16. The CBDT found that during the year 2015-16, the Assessee had rendered services and had received income on such services. Therefore, for verification of the apparent non-payment of Service Tax by the Assessee, the department, through the jurisdictional range office vide letter dated 09.03.2021, had sought clarification from the Assessee regarding the taxability of the services rendered by them and the income received on such rendering of services. However, the Assessee did not submit any response/compliance to the department in response to the department's letter dated 09.03.2021. Therefore, the department had no option but to issue a formal demand for recovery of unpaid Service Tax from the Assessee. Accordingly SCN dated 23.04.2021 was issued to the Assessee demanding service tax of **Rs. 2,32,20,911/-** on the value of total services, provided by the Assessee amounting to **Rs. 16,01,44,211/-** for F.Y. 2015-16.

15. I find that the Show Cause Notice states that the income relied on for computing the Service Tax liability and for making the demand thereof for the year 2015-16, the figures of **ITR/P&L account** have been taken into account. However, from the perusal of facts on record I find that the Show Cause Notice has been raised on the basis of income reflected in the Form 26AS as disclosed by the tax deductor under section 194C of the Income Tax Act, of the Assessee for the relevant F.Y. 2015-16, and therefore, for the sake of

consistency in computation of tax, I would also rely on the income reflected in the 26AS for the period 2015-16. I find that Section 194C of the Income Tax Act deals with the tax deduction at source (TDS) that is to be compulsorily deducted from any payments that have been made to any person who is a resident contractor or a subcontractor. Therefore, any amount paid/credited on which TDS has been deducted under Section 194C is a contract income. Accordingly, I find that there is no dispute as far as the question of provision of services by the assessee is concerned.

16. Accordingly, I find that the 1st issue which requires determination as of now is whether the assessee is liable to pay service tax on the total taxable value of Rs. **16,01,44,211/-** for the Financial Year 2015-16.

17. I also find that the Assessee has contested the computation of the value of taxable services of Rs. **16,01,44,211/-** in the SCN and stated that as per the notice it has been shown that their sale of service for F.Y. 2015-16 is Rs. 16,01,44,211/- but their actual sale in that financial year was Rs. 9,00,23,039/- only. They have also submitted copy of their Tax Audit Report for the period 2015-16 which reflects their sales income as Rs. 9,00,23,039/-. A clarification was sought from the jurisdictional division office in this regard vide letter F.No. STC/15-216/OA/2021-22 dated 16.06.2022. The division office vide letter F.No. IV/16-02/Adjudication/2022-23 dated 31.08.2022 have also confirmed that the actual taxable value for the year 2015-16 is 6.44387 crores only (Rs. 6,44,43,866/- in actual terms) instead of Rs. 16,01,44,211/- as proposed in the SCN; that as per records the income for the year 2016-17 is 9.570035 crores only (Rs. 9,57,00,345/- in actual terms); that the total income for 2015-16 and 2016-17 is Rs. 16,01,44,211/- which was mistakenly proposed for the F.Y. 2015-16 only.

17.1 Further, I also find that even though there is a discussion in the SCN regarding the unquantified demand for the period of 2016-17 and 2017-18 (April 2017 to June 2017), there is no mention of such demand for the period 2016-17 and 2017-18 in charging paras of the Show Cause Notice. The Service Tax has been demanded only for the period 2015-16 in the SCN. Therefore, even though the value of the taxable services (Rs. 9,57,00,345/-) rendered by the Assessee during the period 2016-17 has been confirmed by the JAC as discussed in para 17 above, I am not in a position to decide the taxability of such income received by the Assessee during the period 2016-17 as it would involve traversing beyond the purview of SCN for the simple reason that, there is no demand made for the period 2016-17 in the charging section of the SCN.

Further, I rely on the following case laws in support of my decision of not deciding the taxability on the income of the Assessee for the period 2016-17 -

- a. **The Hon'ble Supreme Court in the matter of COMMISSIONER OF CUSTOMS, MUMBAI Versus TOYO ENGINEERING INDIA LIMITED [2006(201) E.L.T.513(S.C.)] has observed as under -**

"16. Learned counsel.....These grounds did not find mention in the show cause notice as well. The Department cannot be travel beyond the show cause notice. Even in the grounds of appeals these points have not been taken"

- b. **The Hon'ble Supreme Court in the matter of COMMISSIONER OF CENTRAL EXCISE Versus GAS AUTHORITY OF INDIA LTD. [2008(232) E.L.T.7(S.C.)] has observed as under -**

"7. As repeatedly held by this Court, show cause notice is the foundation of the Demand under Central Excise Act and if the show cause notice in the present case itself proceeds on the basis that the product in question is a by-product and not a final product, then, in that event, we need not answer the larger question of law framed hereinabove.

8. We express no opinion on the merits of the question framed hereinabove. We are dismissing these appeals only on the facts of the present case and only on the ground that there is no allegation made in the show cause notice that Lean Gas is the final product."

- c. **The Hon'ble Supreme Court in the matter of COMMISSIONER OF C. EX., NAGPUR Versus BALLARPUR INDUSTRIES LTD. 2007(215) E.L.T.489(S.C.)] has observed as under -**

"21. Before concluding, we may mention that, in the present case, the second and the third show cause notices are alone remitted. The first show cause notice dated 21-5-1999 is set aside as time-barred. However, it is made clear that Rule 7 of the Valuation Rules, 1975 will not be invoked and applied to the facts of this case as it has not been mentioned in the second and the third show cause notices. It is well settled that the show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest. If there is no invocation of Rule 7 of the Valuation Rules 1975 in the show cause notice, it would not be open to the Commissioner to invoke the said rule."

17.2 Accordingly, I find that for the purpose of the Service Tax liability for the period 2015-16, the actual taxable income of the Assessee is Rs. 6,44,43,866/- only instead of Rs. 16,01,44,211/- as erroneously quoted in the SCN, and therefore no tax is leviable on the amount of Rs. 9,57,00,345/- (Rs. 16,01,44,211/- minus Rs. 6,44,43,866/-). Therefore, considering the fact that the value computed in the SCN for demanding Service Tax for the period is factually wrong, I hold that the demand of Service Tax on the alleged taxable income of Rs. 9,57,00,345/- out of the total value of Rs. 16,01,44,211/- for the period 2015-16 is incorrect and untenable/unsustainable. Accordingly, I also

hold the demand of Service Tax of Rs. 1,38,76,550/- (@14.5 on Rs. 9,57,00,345/-) out of the total demand of Rs. 2,32,20,911/- is not sustainable and the same is liable to be dropped.

18. I find that the SCN states that the Assessee has neither obtained Service Tax Registration nor paid any Service Tax. However, from the documents/facts available on records, I find that the Assessee is having Service Tax Registration No. AMBPK5970ASD001 and they have submitted copies of one Service Tax Challan for Rs. Rs. 28,243/- and two challans for Rs. 7,02,989/- each, as mentioned in para 11.1 and 11.2 above. Further, on perusal of the status of filing of ST-3 return in the departmental portal, it is found that the Assessee had indeed filed one ST-3 return for April 2015 to September 2015 for the period 2015-16. However, they had filed a NIL return without reflecting any taxable value and they have also not shown any payment of Service Tax. The details of the said ST-3 return as appearing in the departmental portal is as below –

Table - B

Sl. No.	Period	Due Date of filing ST-3 return	Date of filing ST-3 return	No. of days delayed in filing the ST-3 return
1	April 2015 to September 2015	25-10-2015	26-10-2015	1

Scanned copies of the relevant pages of the above mentioned ST-3 return is reproduced below for reference -





Ministry of Finance - Department of Revenue
Central Board of Indirect Taxes and Customs



Form ST - 3

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

Observation Report

Sl.No.	Code	Error	Remarks
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PART - A - General Information

A1.	Original Return	Yes
	Revised Return	No
A2.	STC Number	AMBPK5970ASD001
	Return Number	AMBPK5970ASD001_SD0602A001_ST3_042015
A3.	Name of the Assessee	HITESHBHAI D KUKADIYA
	Trade Name	GREEN ENTERPRISE
	Commissionerate	
	Division	DIVISION-1 - NARODA
	Range	RANGE I
	Address of Registered Unit	VASANT VIHAR SHOPPING CENTRE, SHOP NO-7 AHMEDABAD, 382330
	Due date filing for this return	25/10/2015
	Actual date of filing	26/10/2015
	No. of days beyond due date	1
A4.	Financial Year	2015-2016
A5.	Return for the period	April-September
A6.		
A6.1.	Has the Assessee opted to operate as "Large Taxpayer" Unit ["Y/N"] (As defined under Rule 2(e) (a) of the Central Excise Rules, 2002 read with Rule 2 (1) (c)(cc) of	No
A6.2.	If reply to column A6.1 is "Y", name of Large Taxpayer Unit opted for	
A7.	Premises Code Number	SD0602A001
A8.	Constitution of assessee	Proprietorship/Individual

A9 - Taxable Service(s) for which Tax is being paid

Description of Taxable Services	Sub Clause
Construction services other than residential complex, including commercial/industrial buildings or civil structures	(zzzq)
Construction of residential complex service	(zzzh)
Works contract service	(zzza)

Taxable Services for which Tax is being paid: Construction services other than residential complex, including commercial/industrial buildings or civil structures

A10 - Assessee is liable to pay Service Tax on this taxable service as

	A Service Provider under Section 68(1)	Yes
A10.1	A Service Receiver under Section 68(2)	No
A10.2	A Service Provider under partial reverse charge under provision to Section 68(2)	No
A10.3	A Service Receiver under partial reverse charge under provision to Section 68(2)	No
A10.4	If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service	0%
A10.5	If covered by A10.4 above, then the percentage of Service Tax Payable as Recipient of Service	0%

A11 - Exemptions

A11.1	Has the assessee availed benefit of any exemption Notification ("Y/N")	No
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A12 - Abatements

A12.1	Has any abatement from the value of services been claimed ("Y/N")	No
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A13 - Provisional Assessment

A13.1	Whether provisionally assessed ("Y/N")	No
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PART - B - Value of Taxable Service and Service Tax Payable

PART B1 - For Service Provider

Sl.No.	Quarter	Apr-Jun	Jul-Sep	Total	
B1.1	Gross Amount (excluding amounts received in advance, amounts taxable on receipt basis, for which bills/invoices/challans or any other documents may not have been issued) for which bills/invoices/challans or any other documents are issued relating to service provided or to be provided (including export of service and exempted service)	0	0	0	
B1.2	Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued	0	0	0	
B1.3	Amount taxable on receipt basis under third proviso to Rule 4(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued	0	0	0	
B1.4	Amount taxable for services provided for which bills/invoices/challans or any other documents have not been issued	0	0	0	
B1.5	Money equivalent of other considerations charged, if any, in a form other than money	0	0	0	
B1.6	Amount on which Service Tax is payable under partial reverse charge	0	0	0	
B1.7	Gross Taxable Amount B1.7 = (B1.1 + B1.2 + B1.3 + B1.4 + B1.5 + B1.6)	0	0	0	
B1.8	Amount charged against export of service provided or to be provided	0	0	0	
B1.9	Amount charged for exempted service provided or to be provided (other than export of services given at B1.8 above)	0	0	0	
B1.10	Amount charged as Pure Agent	0	0	0	
B1.11	Amount claimed as abatement	0	0	0	
B1.12	Any other amount claimed as deduction 0	0	0	0	
B1.13	Total Amount Claimed as Deduction B1.13 = (B1.8 + B1.9 + B1.10 + B1.11 + B1.12)	0	0	0	
B1.14	NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)	0	0	0	
B1.16	Service Tax Rate-wise break up of NET TAXABLE VALUE (B1.14): Advalorem Rate				
		Taxable Rate		Taxable Value	
Sl.No.	Tax Rate %	Swachh Bharat Cess	EDU Cess %	SHEDU Cess	Total
1	0	0	0	0	0
					Total
					0

C4 Challan Nos. and Amount				
Sl.No.	Challan Number (CIN)	Amount		
PART - D Service tax paid in cash and through CENVAT CREDIT				
Service Tax, Education Cess, Secondary and Higher Education Cess, Swachh Bharat Cess, Krishi Kalyan Cess and other amounts paid				
Sl.No.	Quarter	Apr-Jun	Jul-Sep	Total
D1	In Cash	0	0	0
D2	By CENVAT Credit (not applicable where the Service Tax is liable to be paid by the recipient of service)	0	0	0
D3	By adjustment of amount paid as Service Tax in advance under Rule 6(1A) of the ST Rules	0	0	0
D4	By adjustment of excess amount paid earlier as Service Tax and adjusted, by taking credit of such excess Service Tax paid, in this period under Rule 6(3) of the ST Rules	0	0	0
D5	By adjustment of excess amount paid earlier as Service Tax and adjusted in this period under Rule 6(4A) of the ST Rules	0	0	0
D6	By adjustment of excess amount paid earlier as Service Tax in respect of service of Renting of Immovable Property, on account of non-availment of deduction of Property Tax paid and adjusted in this period under Rule 6(4C) of the ST Rules	0	0	0
D7	By Book Adjustment in the case of specified Govt Departments	0	0	0
D8	Total Tax paid D8 = (D1 + D2 + D3 + D4 + D5 + D6 + D7)	0	0	0
PART - DA SWACHH BHARAT CESS (SBC) Paid in Cash and through Adjustments				
Sl.No.	Quarter	Apr-Jun	Jul-Sep	Total
		0	0	
PART - DB KRISHI KALYAN CESS (KKC) Paid in Cash and through CENVAT CREDIT				
Sl.No.	Quarter	Apr-Jun	Jul-Sep	Total
		0	0	
PART - E Education CESS Paid in Cash and through CENVAT CREDIT				
Sl.No.	Quarter	Apr-Jun	Jul-Sep	Total
E1	In Cash	0	0	0
E2	By CENVAT Credit (not applicable where the Service Tax is liable to be paid by the recipient of service)	0	0	0
E3	By adjustment of amount paid as Service Tax in advance under Rule 6(1A) of the ST Rules	0	0	0
E4	By adjustment of excess amount paid earlier as Service Tax and adjusted, by taking credit of such excess Service Tax paid, in this period under Rule 6(3) of the ST Rules	0	0	0
E5	By adjustment of excess amount paid earlier as Service Tax and adjusted in this period under Rule 6(4A) of the ST Rules	0	0	0
E6	By adjustment of excess amount paid earlier as Service Tax in respect of service of Renting of Immovable Property, on account of non-availment of deduction of Property Tax paid and adjusted in this period under Rule 6(4C) of the ST Rules	0	0	0
E7	By Book Adjustment in the case of specified Govt Departments	0	0	0
E8	Total Education Cess paid E8 = (E1 + E2 + E3 + E4 + E5 + E6 + E7)	0	0	0
PART - F Secondary and Higher Education CESS Paid in Cash and through CENVAT CREDIT				
Sl.No.	Quarter	Apr-Jun	Jul-Sep	Total
F1	In Cash	0	0	0
F2	By CENVAT Credit (not applicable where the Service Tax is liable to be paid by the recipient of service)	0	0	0
F3	By adjustment of amount paid as Service Tax in advance under Rule 6(1A) of the ST Rules	0	0	0
F4	By adjustment of excess amount paid earlier as Service Tax and adjusted, by taking credit of such excess Service Tax paid, in this period under Rule 6(3) of the ST Rules	0	0	0
F5	By adjustment of excess amount paid earlier as Service Tax and adjusted in this period under Rule 6(4A) of the ST Rules	0	0	0
F6	By adjustment of excess amount paid earlier as Service Tax in respect of service of Renting of Immovable Property, on account of non-availment of deduction of Property Tax paid and adjusted in this period under Rule 6(4C) of the ST Rules	0	0	0
F7	By Book Adjustment in the case of specified Govt Departments	0	0	0
F8	Total Secondary and Higher Education Cess paid E8 = (E1 + E2 + E3 + E4 + E5 + E6 + E7)	0	0	0

19. Therefore, the 2nd issue that needs to be decided is whether the services provided by the assessee during the period 2015-16 are eligible for exemption under Notification No. 25/2012-ST as claimed by them or otherwise.

19.1 I find that the Assessee has submitted the following work orders and RA Bills. The details of the Work Orders and RA Bills are as under –

TABLE - B

WORKS ORDERS

Sl. No.	Name of the Recipient of Service	Work Order No. & Date	Nature of work allotted
	Institute of Infrastructure Technology Research and Management	IITRAM/PUR/WHETHERSHED/2015/1444 dtd. 18.06.2015	Procurement of Weather Shed
2	-do-	IITRAM/PUR/FUR/2016/9 dtd. 01.01.2016	Supply of Furniture
3	O/o The Executive	AB/TC/678/2015 dtd.	Constructions of residential

	Engineer Capital Project Division 4	31.03.2015	houses at GSDMA Emergency Response Centre
4	Sardar Sarovar Nigam Limited	SSNL/AJM (V)/ETender/Civil Work/Block 1/V/503 dtd. 29.12.2015	Renovation of Civil works for 4 th , 6 th and 7 th Floors of Block 1 of New Sachivalay Complex, Gandhinagar
5	Executive Engineer Ahmedabad R&B Division	AB/Tender/2432/of 2015 dtd. 10.06.2015	Providing furniture at Newly Constructed Court Building at Dholka, Dist. Ahmedabad
6	Executive Engineer (R&B) Navrangpura, Ahmedabad	AB/TC/2005 of 2015 dtd. 18.09.2015	Construction of New D-1 Category Multistorey Tower at Vastrapur Government Colony, Ahmedabad
7	O/o The Executive Engineer, Ahmedabad Store (M&M) Division, Vastrapur, Ahmedabad	SK/1503/2015 dtd. 04.07.2015	Construction of New C Category Multistorey Tower at Vastrapur Government Colony, Ahmedabad
8	R&B Division (State), Palanpur	SK/3023 dated 22.05.2015	Providing furniture at newly constructed Court at Vadgam, Dist. Banaskantha
9	Sardar Sarovar Nigam Limited	SSNL/AJM (V)/ETender/Furniture Right Side/SOU/412 dtd. 21.10.2015	Furniture work - Statue of Unity Office, Block - 12, 3 rd Floor (Right Side)
10	Project Implementation Unit	PIU/Acs/GH/Sabarkantha/2867/2015 dd. 01.08.2015	Providing and Fixing Furniture for the work of 150 bedded Hospital Building at Khedbrahma, Dist. Sabarkantha
11	Executive Engineer Kheda R&B Division - Nadiad	E3-Store-949 of 2015 dtd. 02.03.2015	Work of Providing Furniture for Industrial Court Building at Nadia

TABLE - C

R.A. Bills (2015-16)

Sl. No.	Name of the deductor as per Form 26AS	Total Income as per Form 26AS as per Section 194(C)	RA Bill No. & Date	Work Order No. & date	Work allotted
		2015-16			
1	Ahmedabad Store Division	4,74,411	RA Bill No. 1st & Final	Dtd. 14.08.2015	Construction of Mahatma Gandhi Labour Institute (P&F Furnishing Work)
		31,817	2nd & Final RA Bill	SK/1503/2015 dtd. 04.07.2015	Construction of New C Category Multistorey Tower at Vastrapur Government Colony, Ahmedabad
		16,62,066	1st RA Bill		
2	Exec. Engg (R&B) Navrangpura	8,68,456	1st & Final RA Bill	AB/TC/2005 of 2015 dtd. 18.09.2015	Construction of New D-1 Category Multistorey Tower at Vastrapur Government Colony, Ahmedabad
3	Ex.En, Road & Building Division State	7,26,224	RA Bill No. 2nd & Final	SK/3023 dated 22.05.2015	Providing furniture at newly constructed Court at Vadgam, Dist. Banaskantha
		17,81,600	1st & Final RA Bill	SK/3023 dated 22.05.2015	Providing furniture at newly constructed Court at Vadgam, Dist. Banaskantha

4	Executive Engineer Ahmedabad City R&B Division	20,36,827	1st RA Bill	AB/TC/1-1/8315/2015 dtd. 27.10.2015	Repair & Renovation of Gujarat State Seed Certification Agency Office at Satellite, Ahmedabad
		12,157			
		2,59,568	1st RA Bill	AB/TC/1-1/1643 dtd. 03.03.2015	Major works of Fixing Wooden Dias, Witness Box & Other Misc. work at 9th Floor of District Court, Ahmedabad
5	Executive Engg Capital Project Division No. 2	1,43,551			
		4,20,340	RA Bill No. 2nd & Final	CPC/SR/2014- 15/2/9/1873 dtd. 14.05.2014	Interior Modular Partition and Furniture Work in Block No. 1/7, Sardar patel Bhavan and Roka Sakha of Vidhan Sabha, new Sachivalay, Gandhinagar
6	Institute of Infrastructure Technology Research & Management	19,040		IITRAM/PUR/ WHETHERSHED/2015/ 1444 dtd. 18.06.2015	Procurement of Weather Shed
		47,998			
		9,27,650	13	IITRAM/PUR/FUR/2016 /9 dtd. 01.01.2016	Supply of Furniture
		2,01,513	7	IITRAM/PUR/ WHETHERSHED/2015/ 1444 dtd. 18.06.2015	Procurement of Weather Shed
		36,23,062	3		
7	O/o The Exe Engineer Capital Project Division 4	71,673	2nd & Final RA Bill (Withheld Bill)	AB/TC/678/2015 dtd. 31.03.2015	Constructions of residential houses at GSDMA Emergency Response Centre
		14,42,510	RA Bill No. 2nd & Final		
		43,25,902	1st RA Bill		
8	Executive Engineer Ahmedabad R&B Division	29,75,954	RA Bill No. 2nd & Final	AB/Tender/2432/of 2015 dtd. 10.06.2015	Providing furniture at Newly Constructed Court Building at Dholka, Dist. Ahmedabad
		26,46,973	RA Bill No. 1		
9	Project Implementation Unit	26,76,902	1st RA Bill	PIU/Acs/GH/Sabarkanth a/2867/2015 dd. 01.08.2015	Providing and Fixing Furniture for the work of 150 bedded Hospital Building at Khedbrahma, Dist. Sabarkantha
10	Sanjaykumar Manilal Patel	4,52,744	5/SMP/2015- 16	Contract dtd. 24.01.2015	Providing & Fixing Modular furniture partition in the office of Electrical Inspector on 6th Floor Block No. 18 @ Udyog Bhavan, Gandhinagar O/o The Executive Engineer, Capital Project Division No. 2
		14,14,141	4/SMP/2015- 16		
		10,10,101	3/SMP/2015- 16		
		17,38,384	2/SMP/2015- 16		
		19,19,192	1/SMP/2015- 16		

11	Sardar Sarovar Nigam Limited Admin	21,99,616	37	SSNL/AJM (V)/ETender/Civil Work/Block 1/V/503 dtd. 29.12.2015	Renovation of Civil works for 4 th , 6 th and 7 th Floors of Block 1, of New Sachivalay Complex, Gandhinagar
		25,63,865	16	SSNL/AJM (V)/ETender/Furniture Right Side/SOU/412 dtd. 21.10.2015	Furniture work – Statue of Unity Office, Block – 12, 3 rd Floor (Right Side)
12	Cube Construction Engineering Ltd.	9,73,883			
13	Executive Engineer Kheda R&B Division - Nadiad	5,54,748	RA Bill No. 2nd & Final	E3-Store-949 of 2015 dtd. 02.03.2015	Work of Providing Furniture for Industrial Court Building at Nadia
14	Malani Construction Compnay	2,42,40,998			
	Total Income as per Form 26AS	6,44,43,866			

20. I find that the Assessee has stated that they are engaged in rendering Civil Works to government and the services provided by them are exempted services under Entry No. 12 of Notification 25/2012-ST dated 20.06.2012. Further on the basis of work orders and RA bills submitted by them it is observed that they have provided the services of (1) Construction of Civil Structure and (2) Furniture work. A summary of services rendered by them ascertained on the basis of RA Bills submitted by them is detailed in Table C above and the relevant exemption notification and the relevant entries in which these services fall are as under –

Table - D

Sl. No.	Sl. No. and Name of the Recipient as per Table C above.	Nature of work	Relevant exemption notification Number	Entry Number of the Notfn.
1	(1) Ahmedabad Store Division, (2) Exec. Engg (R&B) Navrangpura, (7) O/o The Exe Engineer Capital Project Division 4	Construction of Civil Structure	25/2012-ST dtd. 20.06.2012 and 9/2016-ST dtd. 01.03.2016	12(A)(a)
2	(3) Ex.En, Road & Building Division State, (5) Executive Engg Capital Project Division No. 2, (6) Institute of Infrastructure Technology Research & Management, (8) Executive Engineer Ahmedabad R&B Division, (9) Project Implementation Unit, (10)	Furniture work		

	Sanjaykumar Manilal Patel and (13) Executive Engineer Kheda R&B Division - Nadiad			
3	(4) Executive Engineer Ahmedabad City R&B Division, (11) Sardar Sarovar Nigam Limited Admin	Construction of Civil Structure and Furniture work		

20.1 To appreciate the issue in the correct perspectives, relevant extracts/entries of Notification No. 25/2012-ST and 9/2016-ST under which the services rendered by the Assessee falls are reproduced as follows:

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

“[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.)”

20.2 Accordingly, as far as service of “Construction of Civil Structure” is concerned, I find that the same are exempted vide Entry No. 12(A)(a) & 12(A)(b)

of Notification No. 25/2-12-ST (inserted vide Notification No. 9/2016- ST dated, 1.3.2016 w.e.f.1.3.2016) subject to the condition that the contract for such work should have been entered prior to 1st March 2015. However, I find that all the Work Orders submitted by the Assessee for the services of Construction of Civil Structure rendered by them are subsequent to the date 01.03.2015, and therefore they are found to be not eligible for exemption under Notification No. 25/2-12-ST as claimed by them.

20.3 As far as the providing of services of Furniture work is concerned, from the work orders submitted by them, I find that there is no exemption provided to such work in the Notification No. 25/2012.

20.4 However, from the nature of work as appearing in the Work Orders provided by the Assessee w.r.t. Furniture Work, given in Table B & C above, it can be discerned that the same can be classified as Works Contract Services as per the definition of "Works Contract" given in Section 65(B)(54) of the Service Tax Act, 1994. The relevant text of the definition of "Works Contract" is as below –

(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

20.5 Thus, as can be ascertained from the aforementioned discussions none of the services rendered by Assessee are found to be eligible for exemption under Notification No. 25/2012-ST as has been claimed by the Assessee.

21. Further, as mentioned in Table C above and the submission of the Assessee in their replies to SCN, and as per the Service Tax challans submitted by them, I find that the Assessee has made payment of applicable tax w.r.t. their income from M/s. Cube Construction Engineering Ltd. (Sl. No. 12 of Table C) and M/s. Malani Construction Company (Sl. No. 14 of Table C) for the following income reflected in the 26AS. The details are as under –

TABLE - E

Sl. No.	Name of the deductor as per Form 26AS	Total Income as per Form 26AS as per Section 194(C)	Service Provided	Taxable Value @40%	Tax Paid	Remarks
1	Cube Construction Engineering Ltd.	9,73,883	Works Contract Service	3,89,553/-	28,243/-	Out of total tax payable of Rs. 56,485/- (being service rendered to a Corporate body and 50% of tax payable by the recipient)
12	Malani Construction Company	2,42,40,998		96,96,399/-	14,05,978/-	

21.1 The payment of the above tax by Assessee is reflected in the AIO portal and the challans can also be viewed on the portal.

21.2 Therefore, in view of the tax paid on the above income of Rs. 2,52,14,881/- (Rs. 9,73,883/- plus Rs. 2,42,40,998/-), I hold that the said income of Rs. 2,52,14,881/- is required to be deducted from the total income of Rs. **6,44,43,866/-** of the Assessee as per the 26AS for the year 2015-16/-. Accordingly, after allowing the deduction of Rs. 2,52,14,881/-, the remaining taxable amount for the F.Y. 2015-16 is Rs. **3,92,28,985/- (Rs. 6,44,43,866/- minus Rs. 2,52,14,881/-)**. The summary of the amount of Rs. **3,92,28,985/-** is as given below -

TABLE - F

Sl. No.	Name of the deductor as per Form 26AS	Total Income as per Form 26AS as per Section 194(C)	RA Bill No. & Date	Work Order No. & date	Work allotted
		2015-16			
1	Ahmedabad Store Division	4,74,411	RA Bill No. 1st & Final	Dtd. 14.08.2015	Construction of Mahatma Gandhi Labour Institute (P&F Furnishing Work)
		31,817	2nd & Final RA Bill	SK/1503/2015 dtd. 04.07.2015	Construction of New C Category Multistorey Tower at Vastrapur Government Colony, Ahmedabad
		16,62,066	1st RA Bill		

2	Exec. Engg (R&B) Navrangpura	8,68,456	1st & Final RA Bill	AB/TC/2005 of 2015 dtd. 18.09.2015	Construction of New D-1 Category Multistorey Tower at Vastrapur Government Colony, Ahmedabad
3	Ex.En, Road & Building Division State	7,26,224	RA Bill No. 2nd & Final	SK/3023 dated 22.05.2015	Providing furniture at newly constructed Court at Vadgam, Dist. Banaskantha
		17,81,600	1st & Final RA Bill	SK/3023 dated 22.05.2015	Providing furniture at newly constructed Court at Vadgam, Dist. Banaskantha
4	Executive Engineer Ahmedabad City R&B Division	20,36,827	1st RA Bill	AB/TC/1-1/8315/2015 dtd. 27.10.2015	Repair & Renovation of Gujarat State Seed Certification Agency Office at Satellite, Ahmedabad
		12,157			
		2,59,568	1st RA Bill	AB/TC/1-1/1643 dtd. 03.03.2015	Major works of Fixing Wooden Dias, Witness Box & Other Misc. work at 9th Floor of District Court, Ahmedabad
5	Executive Engg Capital Project Division No. 2	1,43,551			
		4,20,340	RA Bill No. 2nd & Final	CPC/SR/2014-15/2/9/1873 dtd. 14.05.2014	Interior Modular Partition and Furniture Work in Block No. 1/7, Sardar patel Bhavan and Roka Sakha of Vidhan Sabha, new Sachivalay, Gandhinagar
6	Institute of Infrastructure Technology Research & Management	19,040		IITRAM/PUR/WHETHERSHED/2015/1444 dtd. 18.06.2015	Procurement of Weather Shed
		47,998			
		9,27,650	13	IITRAM/PUR/FUR/2016/9 dtd. 01.01.2016	Supply of Furniture
		2,01,513	7	IITRAM/PUR/WHETHERSHED/2015/1444 dtd. 18.06.2015	Procurement of Weather Shed
		36,23,062	3		
7	O/o The Exe Engineer Capital Project Division 4	71,673	2nd & Final RA Bill (Withheld Bill)	AB/TC/678/2015 dtd. 31.03.2015	Constructions of residential houses at GSDMA Emergency Response Centre
		14,42,510	RA Bill No. 2nd & Final		
		43,25,902	1st RA Bill		
8	Executive Engineer Ahmedabad R&B Division	29,75,954	RA Bill No. 2nd & Final	AB/Tender/2432/of 2015 dtd. 10.06.2015	Providing furniture at Newly Constructed Court Building at Dholka, Dist. Ahmedabad
		26,46,973	RA Bill No. 1		

9	Project Implementation Unit	26,76,902	1st RA Bill	PIU/Acs/GH/Sabarkantha/2867/2015 dd. 01.08.2015	Providing and Fixing Furniture for the work of 150 bedded Hospital Building at Khedbrahma, Dist. Sabarkantha
10	Sanjaykumar Manilal Patel	4,52,744	5/SMP/2015-16	Contract dtd. 24.01.2015	Providing & Fixing Modular furniture partition in the office of Electrical Inspector on 6th Floor Block No. 18 @ Udhyog Bhavan, Gandhinagar O/o The Executive Engineer, Capital Project Division No. 2
		14,14,141	4/SMP/2015-16		
		10,10,101	3/SMP/2015-16		
		17,38,384	2/SMP/2015-16		
		19,19,192	1/SMP/2015-16		
11	Sardar Sarovar Nigam Limited Admin	21,99,616	37	SSNL/AJM (V)/ETender/Civil Work/Block 1/V/503 dtd. 29.12.2015	Renovation of Civil works for 4 th , 6 th and 7 th Floors of Block 1 of New Sachivalay Complex, Gandhinagar
		25,63,865	16	SSNL/AJM (V)/ETender/Furniture Right Side/SOU/412 dtd. 21.10.2015	Furniture work - Statue of Unity Office, Block - 12, 3 rd Floor (Right Side)
12	Executive Engineer Kheda R&B Division - Nadiad	5,54,748	RA Bill No. 2nd & Final	E3-Store-949 of 2015 dtd. 02.03.2015	Work of Providing Furniture for Industrial Court Building at Nadia
	Total	3,92,28,985/-			

21.3 From scrutiny of the documents viz. Work Orders and RA Bills, submitted by the Assessee, and as discussed in para 20 to 20.5 above, it is evident that the services provided to their clients are evidently classifiable under Works Contract Service. Accordingly, the value of service portion in execution of works contract has to be determined as per Service Tax (Determination of Value) Rules, 2006 (Valuation Rules). Further, I find that as per the provisions of Service Tax (Determination of Value) Rules, 2006 (Valuation Rules), in case of works contracts entered into for execution of "Original Works", service tax shall be payable on Forty Percent of the total amount charged for the works contract. In other case of works contract (i.e. other than Original Work, including repair, maintenance, finishing services), the service tax shall be payable on Seventy Percent of the total amount charged for the works contract.

Thus, as per the Service Tax (Determination of Value) Rules, 2006 (Valuation Rules), if the Works Contract is for original works, then the taxable value is 40% of the total value, and if the Works Contract is for any work other than original works, then the taxable value is 70% of the total value. In this

regard, as per Table F above, I find that the services rendered to the following recipients are for "Original Works" -

TABLE - G

Sl. No.	Name of the deductor as per Form 26AS	Total Income as per Form 26AS as per Section 194(C)	RA Bill No. & Date	Work Order No. & date	Work allotted
		2015-16			
1	Ahmedabad Store Division	4,74,411	RA Bill No. 1st & Final	Dtd. 14.08.2015	Construction of Mahatma Gandhi Labour Institute (P&F Furnishing Work)
		31,817	2nd & Final RA Bill	SK/1503/2015 dtd. 04.07.2015	Construction of New C Category Multistorey Tower at Vastrapur Government Colony, Ahmedabad
		16,62,066	1st RA Bill		
2	Exec. Engg (R&B) Navrangpura	8,68,456	1st & Final RA Bill	AB/TC/2005 of 2015 dtd. 18.09.2015	Construction of New D-1 Category Multistorey Tower at Vastrapur Government Colony, Ahmedabad
3	O/o The Exe Engineer Capital Project Division 4	71,673	2nd & Final RA Bill (Withheld Bill)	AB/TC/678/2015 dtd. 31.03.2015	Constructions of residential houses at GSDMA Emergency Response Centre
		14,42,510	RA Bill No. 2nd & Final		
		43,25,902	1st RA Bill		
	Total	88,76,835			

21.5 Accordingly, the taxable income of Rs. 88,76,835/- is for the "Original Works" and the remaining taxable income of Rs. 3,03,52,150/- (Rs. 3,92,28,985/- minus Rs. 88,76,835/-) is for the work other than "Original Works". Therefore the Service Tax payable by the Assessee on the total income of Rs. 3,92,28,985/- is Rs. 35,95,599/-, as worked out as under -

TABLE - H

Sl. No.	Service Rendered	Total Value as per 26AS (Rs.)	Abatement under valuation Rules (Rate)	Taxable Value after abatement (Rs.)	Service Taxable Payable @ 14.5% (Rs.)
1	Works Contract (for Original Works)	88,76,835	60%	35,50,734/-	5,14,856/-
2	Works Contract (for other than Original Works)	3,03,52,150	30%	2,12,46,505/-	30,80,743/-
TOTAL				2,47,97,239/-	35,95,599/-

Further, in view of the findings and discussions above, I hold that out of the total demand of Rs. Rs. 2,32,20,911/-, the Service Tax payable by the Assessee is Rs. 35,95,599/- and the remaining amount of Rs. 1,96,25,312/- is liable to be dropped, the same being found unsustainable and not tenable.

22. I also find that the Assessee has not complied with the provisions of the Finance Act, 1994 and the Service Tax Rules, 1994 in as much as they have neither declared the provision of taxable service, nor assessed the value of taxable service provided by them and have also not paid the applicable service tax. The basis of the Show Cause Notice is the data shared by the CBDT and the same is not on the basis of any data provided by the Assessee. Therefore, I hold that the Assessee is guilty of suppression of facts, wilful mis-statement and had contravened the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 with an intent to evade the payment of Service Tax. Accordingly, I also hold that Service Tax has been correctly demanded vide the SCN dated 23.04.2021 under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time.

25. I also hold that the assessee has failed to pay service tax amounting to Rs. **35,95,599/-**, which was required to be paid under Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules 1994 for taxable services provided during F.Y. 2015-16 by them and the same is required to be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

26. Based on above facts and discussion, I find that the assessee has contravened the provisions of (i) Section 68 and 66B of the Finance Act, 1994 read with Rules 2 and 6 of the Service Tax Rules 1994, in as much as they have not paid service tax to the tune of Rs. **35,95,599/-** though they were liable to pay the same on provision of taxable services and (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 for the FY 2015-16.

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. **35,95,599/-**.



28. From the facts and discussion aforementioned, I find that in the instant case the assessee had failed to pay legitimate service tax due to the government, despite the fact that they were engaged in providing taxable services and had wrongly availed the benefit of exemption from service tax. Thus, the assessee had suppressed the material facts from the Department by not showing their actual taxable income in the ST-3 Returns and also by not paying the Service Tax due to the government by them. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax payers' behaviour. The responsibility on the tax payer to voluntarily make information disclosures is much greater in the system of self-assessment. The omission or commission on the part of the assessee has clearly demonstrated their intention to evade payment of due service tax, as they were very much aware of the unambiguous provisions of Finance Act, 1994 and Rules made there under. They have failed to disclose to the department at any point of time, the fact regarding claiming of exemption without being eligible under Notification No. 25/2012-ST as discussed in forgoing paras during F.Y. 2015-16. These facts would not have come to light if the department had not initiated inquiry on the basis of data shared by the Income Tax Department. Moreover, the government has from the very beginning placed full trust on the Assessee and accordingly measures like self assessment etc. based on mutual trust and confidence have been put in place. Further, the 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 to be filed online without any supporting documents. All this 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 contraventions on the part of the Assessee tantamounts to wilful mis-statement and suppression of facts, with intent to evade the payment of the duty/tax. It is also evident that such fact of contravention and non payment of the service tax by not declaring taxable value of the service provided, as discussed earlier, on the part of the Assessee came to the notice of the department only when the inquiry was initiated by the department. In the case of *Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241*, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In *2009 (23) STT*

275, in case of *Lalit Enterprises vs. CST Chennai*, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under proviso to Section 73(1) of the Finance Act, 1994. By invoking the extended period of time of 5 years, service tax totally amounting to Rs. **35,95,599/-** (including cess) is required to be recovered along with applicable interest under Section 75 of the Finance Act, 1994 from the assessee. For the same reasons, all ingredients for imposing penalty on the assessee under Section 78 exists, therefore, the assessee is also liable for penal action under the provisions of Section 78 of the Finance Act, 1994.

29. As far as the proposal for imposition of penalty under Section 77(1)(a) of the Finance Act, 1994, w.r.t. the charge of contravention of provisions of Section 69 of not obtaining Service Tax registration is concerned, as discussed herein above, I find that contrary to what is alleged in the SCN the assessee had indeed obtained Service Tax registration and therefore the charge of contravention of provisions of Section 69 is found to be not correct. Therefore I abstain myself from imposing penalty under Section 77(1)(a) of the Finance Act, 1994.

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

ORDER

(i) I hereby confirm the demand of service tax of Rs. **35,95,599/- (Rs. Thirty Five Lakhs Ninety Five Thousand and Five Hundred Ninety Nine Only)** for FY 2015-16 not paid by the assessee and order to recover the same from the assessee under proviso to Sub-section (1) of Section 73 of Finance Act, 1994. I further drop the demand of Service Tax of Rs. **1,96,25,312/-** accordingly.

(ii) I order to charge Interest at the appropriate rate on the demand of Service tax of Rs. **35,95,599/-** and to recover the same from the assessee under Section 75 of the Finance Act, 1994;

(iii) I impose penalty of Rs. **35,95,599/-** on the assessee under the provision of Section 78 of the Finance Act, 1994.

31. However, in view of clause (ii) of the second proviso to Section 78 (1), if the amount of Service Tax confirmed and interest thereon is paid within period of thirty days from the date of receipt of this Order, the penalty shall be

twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the period of thirty days,



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

By Regd. Post AD./Hand Delivery
F.No. STC/15-216/OA/2021-22

Date: ___/03/2023

To,
M/s. Hiteshkumar Dhirajlal Kukadiya,
Shop No. 7, Vasant Vihar Shopping Center,
Kathwada Road, Naroda,
Ahmedabad - 382330

Copy for information to:

1. The Principal Chief Commissioner of CGST & Central Excise, Ahmedabad Zone.
2. The Assistant Commissioner, Division-I, CGST & C.Ex., Ahmedabad North.
3. The Superintendent, Range-V, Division-I, CGST & C.Ex., Ahmedabad North.
4. The Superintendent (Systems), Hq., CGST & C.Ex., Ahmedabad North.
5. Guard File.