


आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाउस(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 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. **STC/15-224/OA/2021-22**

DIN- 20230364WT0000284147

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-44/2022-23

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।

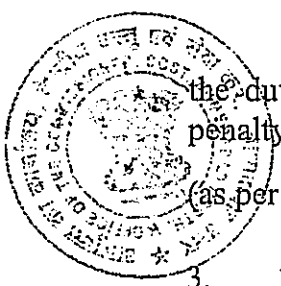
Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax 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/15-224/OA/2021-22 dated 23.04.2021 issued to M/s. Vishwa (Dwarka Okha) Road Links Private Limited, GF 11-12-13, Mahalaya Complex, Near Malhar Flat, Bhamariya Chhappara, Ghatlodia, Ahmedabad - 380061

ORDER-IN-ORIGINAL NO. AHM-EXCUS - 44/2022-23

M/s. Vishwa (Dwarka Okha) Road Links Private Limited, GF 11-12-13, Mahalaya Complex, Near Malhar Flat, Bhamariya Chhappara, Ghatlodia, Ahmedabad - 380061 were issued Show Cause Notice No. STC/15-224/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/15-224/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. Vishwa (Dwarka Okha) Road Links Private Limited, GF 11-12-13, Mahalaya Complex, Near Malhar Flat, Bhamariya Chhappara, Ghatlodia, Ahmedabad - 380061 (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 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC). On the basis of the data shared by the CBDT, it appeared that though the Assessee were engaged in providing taxable services they had not obtained Service Tax Registration.

2. With effect from 01.07.2012, the negative list regime came into existence under which all services were taxable and only those services that were mentioned in the negative list were exempted. The nature of activities carried out by the Assessee as service provider appeared to be covered under the definition of service and appeared to be not covered under the Negative List as given in the Section 66D of the Finance Act, 1994, as amended from time to time. The services also appeared to be not exempted under mega exemption notification No. 25/2012-S.T. dated 20.06.2012, as amended from time to time, and hence the aforesaid services provided by the Assessee appeared to be liable to Service Tax.

3. The Service Tax liability of the Assessee was ascertained on the basis of income mentioned in the ITR returns and Form 26AS. The figures/data provided by the Income Tax department was considered as the total taxable value in order to ascertain the Service Tax liability under Section 67 of the Finance Act, 1994. By considering the said amount as taxable income, the Service Tax liability of the Assessee was calculated as below :

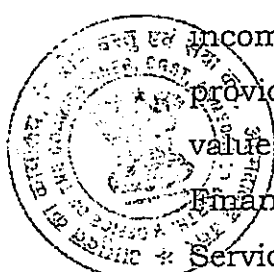


Table - A

Sl. No.	F.Y.	Total Value for TDS (including 194C, 194Ia, 194Ib, 194J, 194 (Rs)	Service Tax Rate	Service Tax Payable (Rs.)
1	2015-16	Rs. 24,04,06,016/-	14.50%	Rs. 3,48,58,872/-
2	2016-17	0	15%	0

4. No data was available with the department for the period 2017-18 (April 2017 to June 2017), therefore at the time of issuance of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (April 2017 to June 2017)

5. 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.

6. 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 2017-18 (upto June 2017) had not been disclosed by the Income Tax Department, therefore, the assessable value for the period 2017-18 (upto June 2017) was not ascertainable at the time of issuance of the Show Cause Notice. Consequently, if any other amount was disclosed by any other sources / agencies, against the Assessee, action would be initiated against the said Assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period 2017-18 (upto June 2017) would be recoverable from the Assessee accordingly.

7. From the above facts and material evidences available on records, it appeared that the Assessee had contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 –

- i. Section 69(1) of the Finance Act, 1994 read with Notification No. 33/2012-Service Tax dated 20.06.2012 in as much as they had failed to obtain Service Tax registration;
- ii. Section 67 of the Finance Act, 1994 in as much as they had failed to determine the correct value of taxable service provided by them as discussed above;
- iii. They also had failed to register with the department and to declare, correctly assess and pay the Service Tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994;
- iv. Section 66B and Section 68 of the Finance Act, 1994 and Rule 2 & 6 of the Service Tax Rules, 1994 in as much as they had failed to pay Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provisions;
- v. Section 77 of the Finance Act, 1994, in as much as they had failed to take registration
- vi. All the above acts of contravention on the part of the Assessee appeared to have been committed by way of suppression of facts with an intent to evade payment of Service Tax, and therefore, the said Service Tax not paid was required to be demanded and recovered from them under Section 73(1) of the Finance Act, 1994 by invoking extended period of five years. All these acts of contravention of the provisions of Section 68 and 70 of the Finance Act, 1994 read with Rule 6 and 7 of the Service Tax, 1994 appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.
- vii. The Assessee was also liable to pay interest at the appropriate rates for the period from due date of payment of Service Tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.

8. The above Service Tax liabilities of the Assessee had been worked out on the basis of limited data/information received from the Income Tax department for the F.Y. 2015-16 and 2016-17.

It was observed that the Assessee had not obtained the Service Tax registration for the services provided by them for the period 2015-16 and 2017-18 (Upto June 2017). Therefore it appeared that the Assessee had not paid actual Service Tax by way of wilful suppression of facts and in contravention of provisions of the Finance Act, 1994 and the Rules made there under relating to levy and collection of Service Tax, with intent to evade payment of Service Tax.



The Service Tax amounting to Rs. 3,48,58,872/- was therefore recoverable from them by invoking extended period of five years as per first proviso to sub-section (1) of Section 73 of the Finance Act, 1994. For this reason applicable interest under Section 75 of the Finance Act, 1994 was also to be demanded and was recoverable from the Assessee and they were also liable to penalty under Section 78 of the Finance Act, 1994.

10. The said Assessee also appeared to be liable to penalty under the provisions of Section 77(1)(a), 77(1)(c) and 77(2) of the Finance Act, 1994 for their failure to take registration in accordance with the provisions of Section 69, and for failure to furnish information/documents called for from them.

11. Therefore, the Assessee (M/s. Vishwa (Dwarka Okha) Road Links Private Limited) were issued a Show Cause Notice dated 23.04.2021 asking them as to why;

- i. Service Tax of **Rs. 3,48,58,872/-** which was not paid for the financial year **2015-16 and 2016-17** as mentioned above, should not be demanded and recovered from them under the proviso to Sub-section (1) of Section 73 of the Finance Act, 1994;
- ii. Service Tax liability not paid during the financial year 2017-18 (upto June 2017), ascertained in future, should not be demanded and recovered from them under the proviso to Sub-section (1) of Section 73 of the Finance Act, 1994;
- iii. Interest at the appropriate rate should not be demanded and recovered from them for the period of delay of payment of Service Tax mentioned at (i) above under the provisions of Section 75 of the Finance Act, 1994;
- iv. Penalty under the provisions of Section 77(1)(a), 77(1)(c) and 77(2) of the Finance Act, 1994, as amended, should not be imposed on them.
- v. Penalty under Section 78 of the Finance Act, 1994, as amended, should not be imposed on them for suppressing the full value of taxable services and material facts from the department resulting into non-payment of Service Tax as explained herein above.

DEFENCE REPLY:

12. The Assessee vide their letter dated 16.01.2023 submitted their reply to the Show Cause Notice dated 23.04.2021, wherein they have inter alia stated as under –

- a) That they had entered into a concession agreement with the concerned Executive Engineer, R&B Division, Jamnagar on behalf of R&B department, Government of Gujarat (R&BD) on 05.01.2012 for construction, operation and maintenance of "Two Laning with Paved Shoulders of Stretches of State Highway under State Highway Development Programme (SHDP) to be executed on Design, Build, Finance and

Operate & Transfer (DBFOT) Annuity Basis (Dwarka-Mahipu-Okha Port, Sikka-Patiya-Sikka) (Project)”

- b) That they are incorporated as a Special Purpose Vehicle (SPV) company with a Limited Liability under the Companies Act, 1956. The company was formed exclusively for the execution of this particular road project only; that they have not executed any other works except the above road works.
- c) That as per Mega Exemption Notification No. 25/2012-Service Tax dated 20.06.2012, the road projects were exempted as per the Sr. No. 13(a)
- d) That therefore the road project executed by their company falls under the above exemption and therefore they are not liable for payment of Service Tax for this activity. Hence any/all amounts received by the company are exempted from Service Tax payment. Also no Service Tax registration was taken by them as this service was exempted from Service Tax.
- e) That the company had its operational office at Ahmedabad during the execution of the project. Subsequently the project was taken away from them by SE, State Highway Development Project, R&B, Gandhinagar, Gujarat in the month of March 202 and hence all activities of the company were stopped and office premise was vacated.
- f) That any for further communication their Hyderabad Office address is 1-11-256/C/24, Plot No. 24, Gaganvihar Colony, Begumpet, Hyderabad – 500016.

12.1 The Assessee alongwith their said letter dated 16.01.2023 and further mail dated 20.01.2023 and 31.03.2023 submitted the following documents –

1. Copy of Letter dated 13.03.2020 of the Superintendent Engineer, SHDP (R&B), Gandhinagar
2. Copy of Concession Agreement with Executive Engineer (R&B), Jamnagar, Gujarat
3. Copy of Form 26AS for the F.Y. 2015-16.
4. Copy of Letter No. SAI/SHDP/IE/1943/2016 dtd. 19.03.2016 of M/s. SAI Consulting Engineers Pvt. Ltd., Independent Engineer of Government of Gujarat

PERSONAL HEARING:

Personal hearings were granted to the Assessee on 04.05.2022, 23.05.2022, 20.06.2022, 26.07.2022, 07.09.2022, 14.10.2022, 16.11.2022 and 19.01.2023. The Assessee did not appear for personal hearing on any of the above mentioned dates which were fixed for personal hearings.

13.1 In view of the non-appearance of the Assessee for the personal hearing and considering that they have already been given 8 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.

13.2 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 to the noticee for defending the case.

13.3 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. recent decision of this Our attention was also drawn to a 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."

DISCUSSION AND FINDINGS:

14. I have carefully gone through the facts of the case and the records available in the case file, the Show Cause Notice dated 23.04.2021, the defence reply dated 16.01.2023, and the documents submitted vide letters dated 16.01.2023, 20.01.2023 and 31.01.2023 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.

15. 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 and 2016-17. On the basis of the data shared by the CBDT for the F.Y. 2015-16 and 2016-17, it appeared that the Assessee had rendered taxable services and had received income on such



services. Therefore, the department had to issue a formal demand for recovery of unpaid Service Tax from the Assessee. Accordingly the SCN dated 23.04.2021 was issued to the Assessee demanding service tax of **Rs. 3,48,58,872/-** on the total value of taxable service, provided by the Assessee amounting to **Rs. 24,04,06,016/-** for F.Y. 2015-16 and 2016-17.

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

17. Accordingly, I find that the 1st issue which is required to be determined is as to whether the Service Tax of **Rs. Rs. 3,48,58,872/-** has been correctly computed and thereby properly demanded from the Assessee for the Financial Year 2015-16 and 2016-17 vide the Show Cause Notice dated 23.04.2021

17.1 In this regard, I find that the Assessee has not contested the computation of the value of taxable services in the SCN and there is no dispute as far as the receipt of the consideration for provision of service by the assessee is concerned. The only contention of the Assessee is that they were incorporated as a Special Purpose Vehicle (SPV) COMPANY WITH A LIMITED LIABILITY UNDER THE Companies Act, 1956; that their company was formed exclusively for the execution of this particular road project only; that as per Mega Exemption Notification No. 25/2012-Service Tax dated 20.06.2012, the road projects were exempted as per the Sr. No. 13(a); that therefore the road project executed by them falls under the above exemption and the same is therefore not liable for payment of Service Tax; that any/all amounts received by the company are exempted from Service Tax payment; that no Service Tax registration was taken by them as this service was exempted from Service Tax. Therefore, I find that there is no dispute as far as the provision of services as well as receipt of income on provision of such services by the assessee for the period from 2015-16 and 2016-17 is concerned. The details are as given below:

TABLE - E

Sl. No.	Year	Total Taxable Value (Rs.)
1	2015-16	24,04,06,016/-
2	2016-17	0
	TOTAL	24,04,06,016/-

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

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

19. Therefore, the 2nd issue that needs to be decided is, as to whether the services provided by the assessee during the period are eligible for exemption under Notification No. 25/2012-ST as claimed by them or otherwise. I find that SCN does not mention about the income for the F.Y. 2016-17, and therefore the issue of eligibility of income required to be verified is for the period 2015-16 only.

19.1 Accordingly, on perusal of the Form 26AS for the F.Y. 2015-16, I find that there is an income of Rs. 24,04,06,016/- which is received from the "Executive Engineer, Road & Building" reflecting under the head 194C. I also find that the SCN had also been issued for the same amount of taxable value i.e. Rs. 24,04,06,016/-. Copy of the relevant page of the Form 26AS is reproduced below for reference -





TRACES

Centralized Processing Cell

TDS Reconciliation Analysis and Correction Enabling System



Form 26AS

Annual Tax Statement under Section 203AA of the Income Tax Act, 1961

See Section 203AA and second provision to Section 206C (5) of the Income Tax Act, 1961 and Rule 31AII of Income Tax Rules, 1962

AADECV7692K	Active	2015-16	2016-17
VISHWA (DWARAKA-OKHA) ROAD LINKS PRIVATE LIMITED			
1-11-25/VC/24, VISHWA, GAGAN VIHAR COLONY, BEGUNPET, HYDERABAD, ANDHRA PRADESH, 500016			

- Above data / Status of PAN is as per PAN details. For any changes in data as mentioned above, you may submit request for corrections Refer www.tin-nsdl.com / www.tinltd.com for more details. In case of discrepancy in status of PAN please contact your Assessing Officer
- Communication details for TRACES can be updated in 'Profile' section. However, these changes will not be updated in PAN database as mentioned above

PART A - Details of Tax Deducted at Source

Sr. No.	Section	Transaction Date	Status of Booking*	Date of Booking	Remarks**	1997-98 (00)		TDS Deposited
						Amount Paid / Credited	Tax Deducted **	
ANIS BANK LIMITED						1997-98 (00)	1997-98 (00)	1997-98 (00)
1	194A	25-Feb-2016	F	20-May-2016	-	53310.00	5331.00	5331.00
2	194A	31-Dec-2015	F	15-Jan-2016	-	328426.00	32437.00	32437.00
3	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
4	194A	31-Dec-2015	F	15-Jan-2016	G	-324380.00	-32437.00	-32437.00
5	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
6	194A	31-Dec-2015	F	15-Jan-2016	G	-324380.00	-32437.00	-32437.00
7	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
8	194A	31-Dec-2015	F	15-Jan-2016	G	-324380.00	-32437.00	-32437.00
9	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
10	194A	31-Dec-2015	F	15-Jan-2016	G	-324380.00	-32437.00	-32437.00
11	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
12	194A	31-Dec-2015	F	15-Jan-2016	G	-324380.00	-32437.00	-32437.00
13	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
14	194A	31-Dec-2015	F	15-Jan-2016	G	-324380.00	-32437.00	-32437.00
15	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
16	194A	31-Dec-2015	F	15-Jan-2016	B	-324380.00	-32437.00	-32437.00
17	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
18	194A	31-Dec-2015	F	15-Jan-2016	B	-324380.00	-32437.00	-32437.00
19	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
20	194A	31-Dec-2015	F	15-Jan-2016	B	-324380.00	-32437.00	-32437.00
21	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
22	194A	31-Dec-2015	F	15-Jan-2016	B	-324380.00	-32437.00	-32437.00
23	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
24	194A	31-Dec-2015	F	15-Jan-2016	B	-324380.00	-32437.00	-32437.00
25	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
26	194A	31-Dec-2015	F	15-Jan-2016	B	-324380.00	-32437.00	-32437.00
27	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
28	194A	31-Dec-2015	F	15-Jan-2016	B	-324380.00	-32437.00	-32437.00
29	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
30	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
31	194A	31-Dec-2015	F	15-Jan-2016	B	-324380.00	-32437.00	-32437.00
32	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
33	194A	31-Dec-2015	F	15-Jan-2016	B	-324380.00	-32437.00	-32437.00
34	194A	31-Dec-2015	F	15-Jan-2016	-	324380.00	32437.00	32437.00
35	194A	31-Dec-2015	F	15-Jan-2016	B	-324380.00	-32437.00	-32437.00
36	194A	31-Dec-2015	F	15-Jan-2016	-	328426.00	32437.00	32437.00
37	194A	30-Sep-2015	F	24-Oct-2015	-	831202.00	83120.00	83120.00
38	194A	30-Sep-2015	F	24-Oct-2015	-	831202.00	83120.00	83120.00

Assessment Year: 2015-16

Assessee PAN: AADCV7692K Assessee Name: VISHVA (DWARAKA-OKHA) ROAD LINKS PRIVATE LIMITED

Sl. No.	Section	Transaction Date	Status of Booking	Date of Booking	Remarks	Amount Paid / Credited	Tax Deducted **	TDS Deposited
171	194A	26-May-2015	I	15-Jul-2015		40627.00	4063.00	4063.00
172	194A	26-May-2015	I	15-Jul-2015		-10627.00	-4063.00	-4063.00
EXECUTIVE ENGINEER ROAD & BUILDINGS						240486016.00	4808120.00	4808120.00
REMARKS**						Amount Paid / Credited	Tax Deducted **	TDS Deposited
1	194C	01-Mar-2016	I	02-Jun-2016		103609543.00	2072191.00	2072191.00
2	194C	31-Mar-2016	I	02-Jun-2016		37350453.00	747009.00	747009.00
3	194C	31-Mar-2016	I	02-Jun-2016		99416020.00	1988320.00	1988320.00

PART A1 - Details of Tax Deducted at Source for 194C/194D

Sr. No.	Section	Transaction Date	Date of Booking	Remarks**	Amount Paid/Credited	Tax Deducted **	TDS Deposited
No Transactions Present							

PART A2 - Details of Tax Deducted at Source on Sale of Immoveable Property u/s 194H/TDS on Rent of Property u/s 194IB/TDS on payment to resident contractors and professionals u/s 194M or Seller/Landlord of Property/Payer of resident contractors and professionals

Sr. No.	TDS Certificate Number	Date of Deposit	Status of Booking*	Date of Booking	Demand Payment	TDS Deposited***
No Transactions Present						

PART B - Details of Tax Collected at Source

Sr. No.	Section	Transaction Date	Status of Booking*	Date of Booking	Remarks**	Amount Paid/ Debited	Tax Collected **	TCS Deposited
No Transactions Present								

PART C - Details of Tax Paid (other than TDS or TCS)

Sr. No.	Section	Transaction Date	Status of Booking*	Date of Booking	Remarks**	Amount Paid/ Debited	Tax Paid
No Transactions Present							

PART D - Details of Paid Refund

Sr. No.	Section	Transaction Date	Status of Booking*	Date of Booking	Remarks**	Amount Paid/ Debited	Tax Refund
No Transactions Present							

PART E - Details of A/R Transaction

Sr. No.	Name of Assessee	Name of A/R	Transaction Date	Status of Booking*	Date of Booking	Remarks**	Amount Paid/ Debited	Tax Refund
No Transactions Present								

Notes For A/R:
 1. Due date for filing Annual Information return by specified entities (Filers) is 31st August, immediately following the FY in which transaction is registered / recorded. This section will be updated after filing A/R.
 2. Transaction amount is total amount reported by A/R filer. It does not reflect respective share of each individual in joint party transaction.

PART F - Details of Tax Deducted at Source on Sale of Immoveable Property u/s 194IA/TDS on Rent of Property u/s 194IB/TDS on payment to resident contractors and professionals u/s 194M (For Buyer/Landlord of Property/Payer of resident contractors and professionals)

Sr. No.	TDS Certificate Number	Date of Deposit	Status of Booking*	Date of Booking	Demand Payment	TDS Deposited***	Total Amount Deposited other than TDS
No Transactions Present							

LAD amount u/s 194E in ITR

PART G - TDS Default* (Processing of Statements)

Sr. No.	2015-16 TAN*	Short Payment	Short Deduction	Interest on TDS Payments Default	Interest on TDS Deduction Default	Late Filing Fee u/s 234E	Interest u/s 230(2)	Total Default
1	HYDV10233F	0.00	0.00	0.00	0.00	27500.00	0.00	37500.00

Notes:

19.2 I observe that the Assessee in their submissions has submitted the copy of concession agreement with the concerned Executive Engineer, R&B Division, Jamnagar on behalf of R&B department, Government of Gujarat (R&BD) on 05.01.2012 for construction, operation and maintenance of "Two Lining with Paved Shoulders of Stretches of State Highway under State Highway Development Programme (SHDP) to be executed on Design, Build, Finance and Operate & Transfer (DBFOT) Annuity Basis (Dwarka-Mahipu-Okha Port, Sikka-Patiya-Sikka) (Project)". Scanned copy of the concession agreement is reproduced below for reference -



Annex-1

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VOLUME I
CONCESSION AGREEMENT
PACKAGE 1
DWARKA-MITHAPUR-OKHA
PORT SIKKA PATIA-SIKKA



Development of State Highways in Gujarat under the State Highway Development Project (SHDP) on Design, Build, Finance, Operate and Transfer (DBFOT) - Annuity Basis as per the Online Tender Notice 1 & 2 of 2010-11 Issued by the Roads & Buildings Department, Gujarat, dated 4th & 18th September 2010 for Dwarka - Mithapur - Okha Port and Sikka Patia - Sikka package (Package 1)

This Concession Agreement signed between Executive Engineer, R&B, Jamnagar and Vishwa (Dwaraka-Okha) Road Links Private Limited as on 5th January, 2012 for the above-mentioned package comprises, the contents as listed below.

		Volume - I
1	Concession Agreement	Volume - I
2	Annexure to the Concession Agreement	
	I. Percentage (%) to be used in calculating Discounted value of future Net Cash Flows	Volume - I
	II. Construction and Maintenance Cost for Certain Facilities	Volume - I
3	Schedules to the Concession Agreement	
	a) Schedule A: Site of the Two Lane with Paved Shoulder - Project Highway	Volume - II B Part - I
	b) Schedule B: Development of the Project Highway (excluding Appendix B-2)	Volume - II B Part - I
	c) Schedule C: Project Facilities for [Two-Lane with paved shoulder]	Volume - II B Part - I
	d) Schedule D: Manual for Specifications & Standards	Volume - II B Part - I
	e) Schedule E: Applicable Permits	Volume - II A
	f) Schedule F: Performance Security	Volume - II A
	g) Schedule G: Project Completion Schedule	Volume - II B Part - I
	h) Schedule H: Drawings	Volume - II B Part - I
	i) Schedule I: Tests	Volume - II B Part - I
	j) Schedule J: Completion Certificate	Volume - II A
	k) Schedule K: Maintenance Requirements	Volume - II B Part - I
	l) Schedule L: Safety Requirements	Volume - II B Part - I
	m) Schedule M: Terms of Reference for Independent Engineer	Volume - II A
	n) Schedule N: Annuity Payment Schedule	Volume - II A
	o) Schedule O: Panel of Chartered Accountants	Volume - II A
	p) Schedule P: Vesting Certificate	Volume - II A
	q) Schedule Q: Substitution Agreement	Volume - II A
	r) Schedule R: Selection Of Independent Engineer	Volume - II A
4	Appendix B-2 of Schedule B: Development of the Project Highway	Volume - II B Part - II
5	Addendums, Corrigendum to the RFP and RTQ	
	I. Addendum I as uploaded on n-procure	Volume - III
	II. Addendum II as uploaded on n-procure	Volume - III
	III. Addendum III as uploaded on n-procure	Volume - III
	IV. Addendum IV as uploaded on n-procure	Volume - III

EXECUTIVE ENGINEER,
 JAMNAGAR (R. & B.) DIVISION
 JAMNAGAR.



Jagjeev

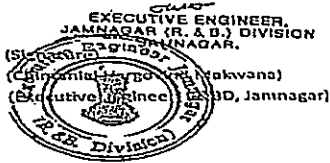
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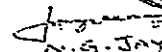
Development of State Highways in Gujarat under the State Highway Development Project (SHDP) on Design, Build, Finance, Operate and Transfer (DBFOT) - Annuity Basis as per the Online Tender Notice 1 & 2 of 2010-11 issued by the Roads & Buildings Department, Gujarat, dated 4th & 14th September 2010 for Dwarka - Mithapur - Okha Part and Sikka Part - Sikka package (Package 1)

V.	Addendum V as uploaded on n-procure	Volume - III
VI.	Response to Queries as uploaded on n-procure	Volume - III

Signed, Sealed and Delivered
For and on behalf of
Roads & Buildings Department, Government of Gujarat by

Signed, Sealed and Delivered
For and on behalf of
M/s. Vishva (Construction) Pvt. Ltd.
M/s. Private Limited by



(Signature) 
(Name) N. S. JAYARAM
(Designation) Sr. Vice President

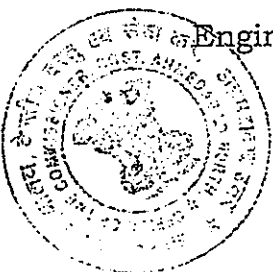


19.3 They have also stated that as per Mega Exemption Notification No. 25/2012-Service Tax dated 20.06.2012, the road projects were exempted as per the Sr. No. 13(a). The relevant entry number 13(a) of Notification No. 25/2012-ST dated 20.06.2012 is reproduced below -

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

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

19.4 Further, the Assessee has also produced copy of a Letter No. SAI/SHDP/IE/1943/2016 dtd. 19.03.2016 of M/s. SAI Consulting Engineers Pvt. Ltd., Independent Engineer of Government of Gujarat, recommending release of the amount of Rs. 24,04,06,0616/- to the Assessee towards the execution of the project. Scanned copy of the said letter of M/s. SAI Consulting Engineers Pvt. Ltd. is reproduced below for reference -



21 to M/s. V

Independent Engineer for State Highways under SHDP - R&BD (GoG)
Project Office : Plot No. 360 • Sector-BU • Gandhinagar - 382 000 • INDIA
Telefax : 91-79-23240594 | Email : jprakeshkumar@sysstra.com

SAI
SYSTRA GROUP

Ref. No. SAI/SHDP/IE/1943/2016

19 March 2016

To,
Executive Engineer,
(R&B) Division Jamnagar
PWD Compound, K V Road,
JAMNAGAR - 361001

Kind Attn :- Mr. B. J. Sambada

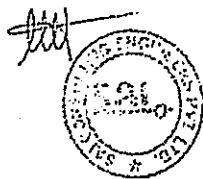
Sub: Services of Independent Engineer for Two Lining with Paved Shoulders of Stretches of State Highways under SHDP to be executed on Design, Build, Finance, Operate & Transfer (DBFOT) Annuity Basis-Package-1:(1)Dwarka-Mithapur-Okha Port & (2) Sikka Patia-Sikka :- Recommendation of release of payment of Annuity #1, Annuity#2 and Annuity#3

References:

1. Concessionaire letter ref VISHWA/VRLPL/Dwarka/40-14 dated 08 October 2014.
2. SE Letter No. SHDP/P-1/662/2014 dated 10th October 2014
3. IE's letter SAI/4119/2014 dated 21 October 2014
4. Concessionaire letter ref VISHWA/VRLPL/Dwarka/116-117-15 dated 11 December 2014
5. Concessionaire letter ref VISHWA/VRLPL/Dwarka/106-20 dated 03 Feb 2016
6. Concessionaire letter ref VISHWA/VRLPL/Dwarka/131-16 dated 21 February 2016
7. Concessionaire letter ref VISHWA/VRLPL/Dwarka/132-16 dated 25 February 2016
8. IE's letter ref SAI/0596/2016 dated 26 February 2016
9. Concessionaire letter ref VISHWA/VRLPL/Dwarka/134-16 dated 03 March 2016
10. IE's letter ref SAI/SHDP/IE/1928/2016 dated 05 March 2016
11. R&BD ,GoG Letter ref SHDP/10/2016/Annuity/Pkg 1/2/Pvt. Dated 18 March 2016
12. SE Letter no- SHDP/P-1/69/2016/2016 dated-18 March 2016
13. Concessionaire letter ref VISHWA/VRLPL/Dwarka/136-16 dated 18 March 2016

Dear Sir,

Concessionaire vide letter refrence-1 , has submitted the undertaking to the R&BD , GoG , and undertaken that , he will not claim any annuities till the completion of ROB & Approaches . Further, the submission of the concessionaire had been perused by the R&BD , GoG and instruction has been issued to Independent Engineer (vide refnce-2) , to conduct the Schedule -I test and initiate the process of issuing the PCOD . Accordingly, the IE has issued the PCOD after completion of Schedule-I Test, vide letter refrence-3.



SAI Consulting Engineers Pvt. Ltd.

An ISO 9001 Company

Regd. Office : Block-A • SAI House • Satyam Corporate Square • B/h. Rajpath Club • Bodakdev • Ahmedabad - 380059 • INDIA
Phone : +91-79-5514 2600 | Email : ms@salindia.com | Web : www.salindia.com | CIN : U74140GJ1983PTC005900

Independent Engineer for State Highways under SHDP - R&BD (GoG)
Project Office : Plot No. 360 • Sector-8B • Gandhinagar • 382 008 • INDIA
Telefax : +91-79-23240594 | Email : jrakeshkumar@sysstra.com



In continuation to above, as per the provisions of the CA the Annuity payment schedule are as under

1. Annuity No. 1 Rs 10.42 Crores due on 24 October 2014
2. Annuity No. 2 Rs 10.42 Crores due on 24 April 2015
3. Annuity No. 3 Rs 10.42 Crores due on 24 October 2015

Vide referenced letter 4 & 6, the Concessionaire submitted three Annuity invoices each amounting Rs 10.42 Crores, however at the time of issuance of the PCOD, the ROB at Km 250/300 was not completed and the Concessionaire had given an undertaking not to claim of annuities till the completion of ROB with approaches.

Vide letter referenced -6 the Concessionaire expressed their inability to carryout remaining works of the ROB and approaches due to finical crunch.

Vide Letter refrence-7, the Concessionaire has submitted the details reports viz status of balance work of ROB and ROB Approach (Physical& Finacial)

Vide reference letter -5 , Concessionaire has submitted the program of conducting the RI test , accordingly the RI test has conducted on 10th to 11th Feb 2016 that was jointly witnessed by the SE, SHDP ,R&BD along with IE representative. The Concessionaire has submitted the RI test vide reference-3

Further, vide referenced letter 8, IE has opined to release at least two due annuity payments each of INR 10.42 crores to give support to the project and to do so the necessity of overriding the undertaking given by the concessionaire to the R&BD GoG during the course of issuing the PCOD, and accord approval so as to process the Annuity Invoices 1 and 2.

In reference to submission made by the concessionaire, the subsequent series of meeting with the R&BD , GoG -Officials , in preview of the provision of the CA, as desired by the R&BD, GoG , the IE, vide reference letter-10 submitted the rationale for release of annuity -1 &Annuity -2 to the concessionaire.

IE is in receipt of instruction from R&BD GoG and SE-SHDP, vide refrence-11 & 12 to recommend the three due annuity payments, taking into account the requisite deductions as per list attached in reference letter-11 & 12. During the calculation of requisite damages, the implication of cl. 12.4.1 & 12.4.2 of C.A. has been considered.

Accordingly we have processed three annuities due to the Concessionaire, after receiving the undertaking submitted by the concessionaire (vide Reference-13) and submitting herewith the recommendation for the release of the same,

We also believe that the EOT request of the Concessionaire is also in consideration.

[Handwritten signature]

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Independent Engineer for State Highways under SHDP - R&BD (GoG)
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Details of Annuities

[A] Annuity #1

Annuity Amount

Rs10.42 Crore

Deductions:-

Sr. No.	Item	Amount in Rs.
1	Independent Engineer remuneration Cost and Expenses - sub clause 2.2 of Schedule R & Sub clause 23.3 of Article 23	7,951,195.00
2	Damages under Article 17.8.1, (For Delay compliance for Maintenance of Project Road)	839,903.00
3	Probably Cost of Reduction in Scope of Work w.r.t Sch-B & Article 16 of CA & Amount withheld	45,887,850.00
4	Amount of Damages for Delay Completion(As per Cl. 12.4.1 & 12.4.2 of CA)	9,552,600.00
5	As per Article 16.3.2 of CA and Aggregate ceiling of 0.25% of TPC	2,618,000.00
Total		66,849,547.00

Sub Total [A] of 1st Annuity (After Deduction)

3, 73, 50,453/-

[B] Annuity #2

Annuity Amount

Rs 10.42 Crore

Deductions:-

Sr. No.	Item	Amount in Rs.
1	Independent Engineer remuneration Cost and Expenses - sub clause 2.2 of Schedule R & Sub clause 23.3 of Article 23	4,245,042.00
2	Damages under Article 17.8.1, (For Delay compliance for Maintenance of Project Road)	508,938.00
Total		4,753,980.00

Sub Total [B] of 2nd Annuity (After Deduction)

9, 94, 46,020/-

[C] Annuity #3

Annuity Amount

Rs 10.42 Crore

Deductions:

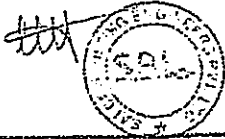
Sr. No.	Item	Amount in Rs.
1	Independent Engineer remuneration Cost and Expenses - sub clause 2.2 of Schedule R & Sub clause 23.3 of Article 23	590,457
Sub Total B		590,457

Sub Total [C] of 3rd Annuity (After Deduction)

10, 36, 09,543/-

Sum Total of Annuity 01, 02 & 03 [A+B+C] =

Rs.24, 04, 06,016/-



SAI Consulting Engineers Pvt. Ltd.

An ISO 9001 Company
 Regd. Office : E-Meda-A • SAI House • Satyam Corporate Square • B/h. Rajpath Club • Dindakery • Almettabad • 380059 • INDIA
 Phone : +91-79-6614 2605 | E-mail : mail@salindia.com | Web : www.salindia.com | CIN : U74140G1983PTC005900

Independent Engineer for State Highways under SHDP - RMND (GUG)
Project Office : Plot No. 310 - Sector-8B - Gandhinagar - 382 008 - INDIA
Telefax : -91-79-23240594 | Email : irakashkumar@sysitra.com


SAI
SYSTRA GROUP

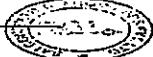
Hence sum total of Rs 24, 04, 06,016/- Crores (Rupees Twenty Four Crore Four Lacs Six Thousand Sixteen Only) Crores against three due annuity payments are recommended for release to the Concessionaire.

This is for your information and necessary action.

Thanking you, we remain
Sincerely yours

FOR SAI CONSULTING ENGINEERS PVT. LTD.


U.P. Hada
(Team Leader)



- Encl-
1. First Annuity Certificate with Annexures.
2. Second Annuity Certificate with Annexures.
3. Third Annuity Certificate with Annexures.
4. Undertaking of Concessionaire.

Copy to:

1. Mr. K.M.Patel - CE- (R&D) Block-14 New Sachivalaya Gandhinagar-For Information Please
2. Mr. A. C. Patel,-CE (SHDP), Gandhinagar, Gujarat -For information & necessary action Please
3. M/s Vishwa (Dwarka-Okha) Road Linka Pvt. Ltd., Dwarka
4. Vice President (P), SAI Consulting Engineer Pvt. Ltd., Ahmedabad -For information please
5. RE Office, Dwarka - For information please

19.5 On analysis of the submissions of the Assessee, I find that the Assessee was awarded a contract for "Two Laning with Paved Shoulders of Stretches of State Highway under State Highway Development Programme (SHDP) to be executed on Design, Build, Finance and Operate & Transfer (DBFOT) Annuity Basis (Dwarka-Mahipu-Okha Port, Sikka-Patiya-Sikka) (Project)" by the Government of Gujarat. The scope of work of the said contract clearly indicates that the services rendered by the Assessee is exempted as per entry at Sl. No. 13(a) of the Notification No. 25/2012-ST dated 20.06.2012, the text of which is already reproduced hereinabove.

19.6 Now, with regard to ascertaining the issue as to whether the income received by the Assessee is pertaining to the services rendered by them w.r.t. the subject contract awarded to them by the Government of Gujarat, I find that the letter of M/s. SAI Consulting Engineers Pvt. Ltd., submitted by the Assessee, recommends release of outstanding amount of Rs. 24,04,06,016/- to the Assessee for the same contract i.e. "Two Laning with Paved Shoulders of Stretches of State Highway under State Highway Development Programme (SHDP) to be executed on Design, Build, Finance and Operate & Transfer (DBFOT) Annuity Basis (Dwarka-Mahipu-Okha Port, Sikka-Patiya-Sikka) (Project)"

20 Therefore, as discussed in the foregoing paras, I find that the Assessee has submitted all the documentary evidence viz. Form 26AS, , concession agreement/contract for the services rendered by them, letter of M/s. SAI Consulting Engineers Pvt. Ltd. for releasing the amount of Rs. 24,04,06,016/-, which is also the amount of the taxable value of service as per

the SCN, to substantiate and to prove that the services rendered by them are indeed exempt in terms of Entry No. 13(a) of Notification No. 25/2012-ST dated 20.06.2012. The demand has also been made vide the subject SCN on the grounds that the Assessee had not obtained Service Tax registration, and not paid service tax on the income earned by them for rendering taxable service. Apart from these charges, no other documentary evidence was adduced by the department to substantiate the allegations. However the Assessee has sufficiently proved that the income received by them were for the provision of exempted services i.e. "Construction of Road for use by general public", as discussed in the preceding paras. Accordingly, I hold that the Assessee is not liable to pay the Service Tax on the demand raised against them vide the SCN No. STC/15-198/OA/2021-22 dated 23.04.2021.

21. In view of the facts and circumstances pertaining to the case, I find that the demand is incorrect thus not tenable. Accordingly I also do not consider it necessary to enter into discussions on the need for imposing penalty. Therefore, from the factual matrix as discussed in the foregoing paras, I pass the following order: -

ORDER

I hereby drop the proceedings initiated against M/s. Vishwa (Dwarka Okha) Road Links Private Limited, GF 11-12-13, Mahalaya Complex, Near Malhar Flat, Bhamariya Chhappara, Ghatlodia, Ahmedabad - 380061, vide Show Cause Notice STC/15-224/OA/2021-22 dated 23.04.2021.



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

By Regd. Post AD./Hand Delivery

F.No. STC/15-224/OA/2021-22

Date: ___/03/2023

To,
M/s. Vishwa (Dwarka Okha) Road Links Private Limited,
GF 11-12-13, Mahalaya Complex, Near Malhar Flat,
Bhamariya Chhappara, Ghatlodia,
Ahmedabad - 380061

Copy for information to:

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