


<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/15-26/OA/2021**

DIN- 20230364WT000001060B

आदेश की तारीख	/	Date of Order : 28.03.2023
जारी करने की तारीख	/	Date of Issue : 28.03.2023
द्वारा पारित/Passed by -		
	उपेन्द्र सिंह यादव	/ UPENDRA SINGH YADAV
	आयुक्त	/ COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-51/2022-23

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. न्यायालय शुल्क अधिनियम 1970, की अनुसूची, 1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00 रूपया 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 SCN F. No. STC/15-26/OA/2021 dated 23.04.2021 issued to M/s SATVA INFRACON PRIVATE LIMITED, 52 FIRST FLOOR, SHREEYAS SHOPPING CENTRE, SATDIUM HOUSE, NAVRANGPURA, AHMEDABAD, Gujarat- 380009.

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 51/2022-23

M/s SATVA INFRACON PRIVATE LIMITED, 52 FIRST FLOOR, SHREEYAS SHOPPING CENTRE, SATDIUM HOUSE, NAVRANGPURA, AHMEDABAD, Gujarat- 380009 were issued SCN F. No. STC/15-26/OA/2021 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/s SATVA INFRACON PRIVATE LIMITED, ARE AS FOLLOWS:

1. M/s SATVA INFRACON PRIVATE LIMITED, 52 FIRST FLOOR, SHREEYAS SHOPPING CENTRE, SATDIUM HOUSE, NAVRANGPURA, AHMEDABAD, Gujarat- 380009 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. AATCS0280NSD002 and was engaged in providing Taxable Services.

2. On the basis of analysis of data of the Assessee shared by CBDT data for the Financial Year 2015-16 and 2016-17, it appeared that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 and 2016-17 as compared to the Service related taxable value they had themselves declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

Sr. No.	F.Y.	Taxable Value as per ST-3 returns (In Rs.)	Gross Receipts From Services (Value from ITR/26AS) (In Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax short paid (in Rs.)
1	2015-16	0/-	119868362/-	119868362/-	17380912/-
2	2016-17	0/-	67991211/-	67991211/-	10198682/-
TOTAL					27579594/-

3. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said Assessee had not paid service tax as worked out as above in Table for Financial Year 2015-16 and 2016-17.

4. No data was forwarded by CBDT, for the period 2017-18 (upto June-2017) and the assessee had also failed to provide any information regarding rendering of taxable service for this period. Therefore, at the time of issue of

SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

4.1 With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies 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. As per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In the instant case, it appeared that the said Assessee had not assessed the tax dues properly, on the services received by them, as discussed above, and has also failed to file correct ST-3 Returns thereby violating the provisions of Section 70(1) of the Act read with Rule 7 of the Service Tax Rules, 1994.

6. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the Assessee appeared to have failed to pay their Service Tax liabilities in the prescribed time limit, they were liable to pay the said amount along with interest. Thus, the said Service Tax was required to be recovered from the noticee along with interest under Section 75 of the Finance Act, 1994.

7. In view of above, it appeared that the Assessee had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as had they failed to pay/ short paid/ deposit Service Tax to the extent of **Rs. 2,75,79,594/-**, by declaring less value in their

ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they had failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

8. It had been noticed that at no point of time the Assessee had disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that had come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2015-16 and 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs. 2,75,79,594/-. 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(1) of the Finance Act, 1994 by invoking extended period of time, 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 offence of the nature specified under Section 78 of the Finance Act, 1994, it appeared that the Assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

9. The said assessee was given opportunity to appear for pre show cause notice consultation. The pre show cause notice consultation was fixed on 23.04.2021 but the said assessee did not appear for the same.

10. Therefore, the Assessee (M/s SATVA INFRACON PRIVATE LIMITED) were issued show cause notice dated 23.04.2021 asking them as to why:

- (i) The demand for Service tax to the extent of Rs. **2,75,79,594/-** short paid /not paid by them in F.Y. 2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

- (iv) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for their failure to assess their correct Service Tax liability and their failure to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

DEFENCE REPLY:

11. The assessee has not filed any defence reply with reference to subject show cause notice dated 23.04.2021.

PERSONAL HEARING:

12. Personal Hearings were granted to the assessee on 14.12.2021, 12.01.2022, 22.04.2022, 18.05.2022, 15.06.2022, 21.07.2022, 01.09.2022, 11.10.2022, 14.11.2022, 18.01.2023, 07.02.2023. Since the letters for personal hearing were returning undelivered, intimation for personal hearing was also sent on their registered email id "cadspatel@gmail.com" on 06.02.2022, 09.01.2023 and 23.01.2023. However, the assessee has not responded to any of communication sent for personal hearing. Shri Nitinbhai, owner of the Assessee firm was also contacted telephonically on his mobile No. **9824591329** on 20.12.2022. During the telecon Shri Nitinbhai assured to respond within 2-3 days, but no response was received from them. Subsequently, Shri Nitinbhai was again contacted telephonically on his mobile number 29.12.2023, 06.01.2023, 23.02.2023, 24.02.2023 and 10.03.2023, but he did not receive/respond to any of the telephonic calls. Finally, they were granted opportunity for personal hearing 07.03.2023 vide letter dated 27.02.2023 signed/issued by the adjudicating authority himself in the interest of justice and it was conveyed to them that if the personal hearing was not attended, the matter would be taken up ex parte for taking an appropriate decision. The JAC was asked to deliver the said letter dated 27.02.2023 to the Assessee in person. The JAC reported that no such firm was found operational from the address - 52 FIRST FLOOR, SHREEYAS SHOPPING CENTRE, SATDIUM HOUSE, NAVRANGPURA, AHMEDABAD, Gujarat- 380009. It was also reported by the JAC that the Assessee is holding GST registration No. 24AATCS0280N1ZU at another address i.e. 1207, Titanium City Center, Prahlad Nagar Garden, Satellite, Ahmedabad, Gujarat - 380015. However, no such firm was found operational at the said new address also.

13. As can be seen, the assessee has been granted more than ample opportunities for defending their case in person, but they have never responded and chosen to refrain from availing the many opportunities offered for defending their case in person. Thus left with no option, I am accordingly

forced to proceed in the matter on the basis of available records and to decide the case ex-parte.

DISCUSSION AND FINDINGS:

14. I have carefully gone through the facts of the case and records available in the case file, which includes the SCN.

15. I find that the assessee has failed to appear for Personal Hearing, inspite of being asked to do so repeatedly for defending their case. Under the circumstances, left with no recourse, I take up the matter for adjudication proceedings ex-parte on the basis of records/documents available, since ample opportunities have already been given to the assessee to attend and defend their case in person and matter cannot be kept hanging indefinitely.

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

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

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

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

(Emphasis Supplied)"

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

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

of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]

(Emphasis supplied)"

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

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

(Emphasis Supplied)"

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

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

(Emphasis Supplied)"

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

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

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

(Emphasis Supplied)"

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

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

16. I observe that the SCN dated 23.04.2021 has been issued to the assessee by the competent authority demanding service tax totally amounting

to Rs. 2,75,79,594/-. Ongoing through the said SCN, I find that basically the essence of the case is that data of "Sales /Gross Receipts from Services (ITR)" / "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" (as per TDS Statement-Form 26AS) were shared by the CBDT with CBIC for FY 2015-16 and 2016-17. The difference in taxable value was worked out after comparing the income declared by the Assessee in Form ITR/26AS vis-à-vis taxable value disclosed in ST-3 Returns. As per the said SCN dated 23.04.2021, the difference of Rs. 18,78,59,573/- in value, was observed for FY 2015-16 and 2016-17, therefore, it was alleged vide SCN dated 23.04.2021, that the assessee had short paid/not paid the service tax of Rs. 2,75,79,594/- on such differential value, for providing the taxable service. Therefore, the subject SCN was issued to the assessee. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 2,75,79,594/- on the differential taxable value of Rs. 18,78,59,573/- for the Financial Year 2015-16 and 2016-17 as demanded under the said SCN dated 23.04.2021, under proviso to section 73(1) of Finance Act, 1994 (the Act) or not.

17. I observe that after introduction of new system of taxation of services in negative list regime w.e.f. 01.07.2012, any activity carried out by a person for another person for a consideration is taxable service except those services specified in the negative list or exempt list by virtue of mega exemption notification or covered under exclusion clauses provided under the meaning of "service" as per Section 65B(44) of Finance Act, 1944.

The term "**Service**" has been defined under Section 65B (44) of the Finance Act, 1994 ('Act') as under:

"service" means any activity carried out by a person for another for consideration, and includes a declared service"

The term "**Taxable Service**" has been defined under Section 65B (51) of the Act as under:

"taxable service" means any service on which service tax is leviable under section 66B

Section 66B provides for levy of service tax, which reads as under:

SECTION [66B. *Charge of service tax on and after Finance Act, 2012. — There shall be levied a tax (hereinafter referred to as the service tax) at the rate of [fourteen per cent.] on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in*

the taxable territory by one person to another and collected in such manner as may be prescribed.

18. I find that prior to 01.07.2012 i.e. before introduction of a new system of taxation of services, the tax was levied on services of specified description only, as provided under Section 66 (in force at the material time) of the Act. In other words, the service tax was levied on services of specific description provided under the statute. The new taxation system of services had widened the scope of levy of tax on services without specific description of service. Accordingly, any activity carried out by a person for another person in lieu of the consideration is "service" and is liable to service tax unless it is covered under negative list of services or exempt services under mega exemption notification or covered under exclusion clauses of "service".

19. I find that the SCN mentions that the value of service has been derived from the value of services declared by the Assessee in Income Tax Return/Form 26AS, and the same was shared by the CBDT with CBIC. The said information provided by the income tax is nothing but is either the revenue from sale of services, as declared by the assessee in their Income Tax Return (ITR) or the amount paid/credited to the assessee for receiving the services from service provider, which are declared by the recipients of services (Form 26AS). It is pertinent to mention here that the Income Tax Act, 1961 requires the income tax assessee to provide the information regarding revenue from sale of service while filing the ITR by the income tax assessee. Similarly, the Income Tax Act, 1961 requires the person to deduct the TDS under various provision of IT Act, while making payment to the provider of service and it also requires the person to provide information of such payments made & TDS deducted in the TDS returns to be filed by the recipients of such services. Form 26AS is such consolidated statement, which provides details of amount of TDS deducted from various source of income of a taxpayer/income tax assessee, including the TDS deducted from payment made by the recipient of services. CBDT has shared such data related to provision of services by the tax payer. As discussed hereinabove, I find that the amount received by the assessee is subject to service tax under Section 66B of the Act, unless the services rendered for which the said amount has been received, is shown to be covered under negative list of services or exempt services under mega exemption notification or covered under exclusion clauses of "service".

20. I find that the SCN alleges that the assessee is registered with the department with Service Tax Registration No. AEMPR8316LST001, but they have not filed service tax returns and have not paid service tax due to the

government. However, on verifying the GSTN portal, it is found that the assessee has filed the ST-3 Returns. Therefore, the differential taxable value of service worked out in the SCN is apparently not correct as the taxable value of service disclosed in ST-3 Returns filed by the assessee were not considered while computing the service tax liability of the assessee. The taxable value of service declared in ST-3 Returns filed by the assessee for FY 2015-16 and 2016-17, are as under:

TABLE-A

As per ST-3/ FY 2015-16 Description of services	April - Sept		Oct-March		Total
	Business Auxiliary service	Works Contract service	Business Auxiliary service	Works Contract service	
Gross amt of service (A)	0	22051748	0	77318114	99369862
Less: Exempt/Abatement/ deduction	0	17363635	0	56786815	
Net taxable value	0	4688113	0	20531299	
As per SCN, taxable value of service (B)	----	----	----	----	119868362
Difference (B-A)	----	----	----	----	20498500
Service tax Payable on differential value (B-A) @ 14.5%	----	----	----	----	2972283

TABLE-B

As per ST-3/FY 2016-17 Description of services	April - Sept		Oct-March		Total
	Business Auxiliary service	Works Contract service	Business Auxiliary service	Works Contract service	
Gross amt of service (A)	0	30824817	0	30020965	60845782
Less: Exempt/Abatement/ deduction	0	8043457	0	18012578	
Net taxable value		22781360		12008387	
As per SCN, taxable value of service (B)	----	----	----	----	67991211
Difference (B-A)	----	----	----	----	7145429
Service tax Payable on differential value (B-A) @ 15%	----	----	----	----	1071814

20.1 As can be seen from the subject SCN, the difference of taxable value has been worked out by comparing the value of services appearing in ITR/26AS vis-à-vis Value of services declared in ST-3 Returns, for demanding the service tax from the assessee. It is also seen that the entire value of service reflecting in ITR/26AS has been considered to be taxable value for demanding service tax for FY 2015-16 & 2016-17, considering the value of service declared in ST-3 Returns to be "ZERO". I find that though the assessee has filed ST-3 Returns and the taxable value of services rendered by them has been declared in ST-3 Returns filed by them, the value of service declared in ST-3 Returns has been shown to be "ZERO" in the subject SCN, which is factually not correct. I also find that the department has not adduced any other evidence

B2.16 Specific Rate (applicable as per Rule 6 of ST Rules)									
Taxable Rate				Taxable Value					
Sl.No.	Specific	Swachh Bharat Cess	EDU Cess %	SHEДУ Cess		Jul	Aug	Sep	Total
Total					0	0	0	0	0

Taxable Service for which Tax is being paid: Works contract service

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

A10.1	A Service Provider under Section 68(1)	Yes
A10.2	A Service Receiver under Section 68(2)	No
A10.3	A Service Provider under partial reverse charge under provision to Section 68(2)	No
A10.4	A Service Receiver under partial reverse charge under provision to Section 68(2)	No
A10.5	If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service	0%
A10.6	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")	Yes
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A11.2 Notification No. and Sl. No. in the Notification under which such exemption is availed

Sl. No.	Notification No.	Notification Sl. No.
1	025-2017-S I	1

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.	Month	Apr	May	Jun	Jul	Aug	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	4469340	0	4349599	1135408	12097401	22051748
B1.2	Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	0	0	0
B1.3	Amount taxable on receipt basis under proviso to Rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	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	0	0	0	0
B1.5	Money equivalent of other considerations charged, if any in a form other than money	0	0	0	0	0	0	0
B1.6	Amount on which Service Tax is payable under partial reverse charge	0	0	0	0	0	0	0
B1.7	Gross Taxable Amount B1.7 = (B1.1 - B1.2 - B1.3 + B1.4 + B1.5 + B1.6)	0	4469340	0	4349599	1135408	12097401	22051748
B1.8	Amount charged against export of service provided or to be provided	0	0	0	0	0	0	0
B1.9	Amount charged for exempted service provided or to be provided (other than export of service given at B1.8 above)	0	0	0	4203926	1135408	12024301	17363635
B1.10	Amount charged as Pure Agent	0	0	0	0	0	0	0
B1.11	Amount claimed as abatement	0	0	0	0	0	0	0
B1.12	Any other amount claimed as deduction 0	0	0	0	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	4203926	1135408	12024301	17363635
B1.14	NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)	0	4469340	0	145673	0	73100	4688113

B1.15 Service Tax Rate-wise break up of NET TAXABLE VALUE (B1.14): Advalorem Rate

Sl.No.	Taxable Rate				Taxable Value				
	Tax Rate %	Swachh Bharat Cess	EDU Cess %	SHEДУ Cess	Jul	Aug	Sep	Total	
1	12	0	2	1	0	0	0	4469340	
2	14	0	0	0	145673	0	73100	218773	
Total					0	0	73100	4688113	

B1.16 Specific Rate (applicable as per Rule 6 of ST Rules)

Sl.No.	Taxable Rate				Taxable Value				
	Tax Rate %	Swachh Bharat Cess	EDU Cess %	SHEДУ Cess	Jul	Aug	Sep	Total	
Total					0	0	0	0	



B1.17	Service Tax payable	0	539321	0	20394	0	10234	566949
B1.18	Less R and D Cess payable	0	0	0	0	0	0	0
B1.19	Net Service Tax payable B1.19 = (B1.17 - B1.18)	0	539321	0	20394	0	10234	566949
B1.20	Education Cess payable	0	10720	0	0	0	0	10720
B1.21	Secondary and Higher Education Cess payable	0	5363	0	0	0	0	5363
B1.22	Swachh Bharat Cess payable based on entries in B1.15	0	0	0	0	0	0	0
B1.23	Swachh Bharat Cess payable based on entries in B1.16	0	0	0	0	0	0	0
B1.24	Total Swachh Bharat Cess payable B1.24 = (B1.22 + B1.23)	0	0	0	0	0	0	0

PART B2 - For Service Receiver

Sl.No.	Month	Apr	May	Jun	Jul	Aug	Sep	Total
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B2.15 Service Tax Rate-wise break up of NET TAXABLE VALUE (B2.14): Advalorem Rate

FY 2015-16 H2 (October – March)

 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	AAATCS0280NSD002
	Return Number	AAATCS0280NSD002_SD0204A001_ST3_102015
A3.	Name of the Assessee	MTIH DAVE
	Trade Name	SATVA INFRACON PRIVATE LIMITED
	Commissionerate	
	Division	DIVISION-VII - S G HIGHWAY EAST
	Range	RANGE I
	Address of Registered Unit	SHREEYAS SHOPPING CENTRE,52 FIRST FLOOR,AHMEDABAD,380009
	Due date filing for this return	29/04/2015
	Actual date of filing	26/09/2015
A4.	Financial Year	2015-2016
A5.	Return for the period	October-March
A6.		
A6.1.	Has the Assessee opted to operate as "Large Taxpayer" Unit [Y/N] (As defined under Rule 2(e) (ii) 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	SD0204A001
A8.	Constitution of assessee	Registered Private Limited Company

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

Description of Taxable Services	Sub Clause
Business auxiliary service	(22B)
Construction services other than residential complex, including commercial/industrial buildings or civil structures	(22C)
Works contract service	(222A)

Taxable Service for which Tax is being paid: Business auxiliary service

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

A10.1	A Service Provider under Section 68(1)	Yes
A10.2	A Service Receiver under Section 68(2)	No
A10.3	A Service Provider under partial reverse charge under provision to Section 68(2)	No
A10.4	A Service Receiver under partial reverse charge under provision to Section 68(2)	No
A10.5	If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service	0%
A10.6	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.	Month	Oct	Nov	Dec	Jan	Feb	Mar	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	0	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	0	0	0	0
B1.3	Amount taxable on receipt basis under provision to Rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	0	0	0
B1.4	Amount taxable for services provided for which bills/invoice/challans or any other documents have not been issued	0	0	0	0	0	0	0
B1.5	Money equivalent of other considerations charged, if any, in a form other than money	0	0	0	0	0	0	0
B1.6	Amount on which Service Tax is payable under partial reverse charge	0	0	0	0	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	0	0	0	0
B1.8	Amount charged against export of service provided or to be provided	0	0	0	0	0	0	0
B1.9	Amount charged for exempted service provided or to be provided (other than export of service given at B1.8 above)	0	0	0	0	0	0	0
B1.10	Amount charged as Pure Agent	0	0	0	0	0	0	0
B1.11	Amount claimed as abatement	0	0	0	0	0	0	0
B1.12	Any other amount claimed as deduction 0	0	0	0	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	0	0	0	0
B1.14	NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)	0	0	0	0	0	0	0
B1.15	Service Tax Rate-wise break up of NET TAXABLE VALUE (B1.14): Advalorem Rate							
	Taxable Rate	Taxable Value						

Taxable Service for which Tax is being paid: Works contract service

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

A10.1	A Service Provider under Section 68(1)	Yes
A10.2	A Service Receiver under Section 68(2)	No
A10.3	A Service Provider under partial reverse charge under provision to Section 68(2)	No
A10.4	A Service Receiver under partial reverse charge under provision to Section 68(2)	No
A10.5	If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service	0%
A10.6	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')	Yes
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A11.2 Notification No. and Sl. No. in the Notification under which such exemption is availed

Sl. No	Notification No.	Notification Sl. No
1	025/2012-S.T.	1

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.	Month	Oct	Nov	Dec	Jan	Feb	Mar	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)	9502000	12276558	0	13805850	15374102	26065524	77318114	
B1.2	Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	0	0	0	
B1.3	Amount taxable on receipt basis under proviso to Rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	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	0	0	0	0	
B1.5	Money, securities or other considerations charged, if any in a form other than money	0	0	0	0	0	0	0	
B1.6	Amount on which Service Tax is payable under partial reverse charge	0	0	0	0	0	0	0	
B1.7	Gross Taxable Amount B1.7 = (B1.1 + B1.2 + B1.3 + B1.4 + B1.5 + B1.6)	9502000	12276558	0	13505850	15374102	26065524	77318114	
B1.8	Amount charged against export of service provided or to be provided	0	0	0	0	0	0	0	
B1.9	Amount charged for exempted service provided or to be provided (other than export of service covered in B1.8 above)	8725861	9968020	0	11872252	8355853	19052229	58786615	
B1.10	Amount charged as Pure Agent	0	0	0	0	0	0	0	
B1.11	Amount claimed as abatement	0	0	0	0	0	0	0	
B1.12	Any other amount claimed as deduction 0	0	0	0	0	0	0	0	
B1.13	Total Amount Claimed as Deduction B1.13 = (B1.8 + B1.9 + B1.10 + B1.11 + B1.12)	8725861	9968020	0	11872252	8355853	19052229	58786615	
B1.14	NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)	5076139	2301938	0	19265598	7018249	8209295	20531299	
B1.15	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	Kirishi Kalyan Cess %	EDU Cess %	SHEDU Cess	Jan	Feb	Mar	Total
1	14	0	0	0	0	3076219	0	0	3076219
Total						0	0	0	0
Total						3076219	0	0	3076219
B1.16	Specific Rate (applicable as per Rule 6 of ST Rules)								
		Taxable Rate				Taxable Value			
Sl.No.	Tax Rate %	Swachh Bharat Cess	Kirishi Kalyan Cess %	EDU Cess %	SHEDU Cess	Jan	Feb	Mar	Total
Total						0	0	0	0
B1.17	Service Tax payable	430671	322271	0	270004	982555	668891		2974382
B1.18	Less R and D Cess payable	0	0	0	0	0	0	0	0
B1.19	Net Service Tax payable B1.19 = (B1.17 - B1.18)	430671	322271	0	270004	982555	668891		2974382
B1.20	Education Cess payable	0	0	0	0	0	0	0	0

B1.21	Secondary and Higher Education Cess payable	0	0	0	0	0	0	0	0
B1.22	Swachh Bharat Cess payable based on entries in B1.15	0	11510	0	6643	35091	31031		87275
B1.23	Swachh Bharat Cess payable based on entries in B1.16	0	0	0	0	0	0	0	0
B1.24	Total Swachh Bharat Cess payable B1.24 = (B1.22 + B1.23)	0	11510	0	6643	35091	31031		87275
B1.25	Kirishi Kalyan Cess payable based on entries in serial number B1.15	0	0	0	0	0	0	0	0
B1.26	Kirishi Kalyan Cess payable based on entries in serial number B1.16	0	0	0	0	0	0	0	0
B1.27	Total Kirishi Kalyan Cess payable B1.27 = (B1.25 + B1.26)	0	0	0	0	0	0	0	0

PART B2 - For Service Receiver

FY 2016-17 H1 (April-September)

Ministry of Finance - Department of Revenue Central Board of Indirect Taxes and Customs
Form ST - 3
(Return under Section 79 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994) - Filled

Observation Report

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

A1.	Original Return	Yes
	Revised Return	No
A2.	STG Number	AATCS0280NSD002
	Return Number	AATCS0280NSD002_SD0204A001_ST3_042016
A3.	Name of the Assessee	NITIN DAVE
	Trade Name	SATVA INFRACON PRIVATE LIMITED
	Commissionerate	
	Division	DIVISION-VII - S G HIGHWAY EAST
	Range	RANGE I
	Address of Registered Unit	SHREEYAS SHOPPING CENTRE,52 FIRST FLOOR,AHMEDABAD,380009
	Due date filing for this return	25/10/2016
	Actual date of filing	17/10/2016
A4.	Financial Year	2016-2017
A5.	Return for the period	April-September
A5.		
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	SD0204A001
A8.	Constitution of assessee	Registered Private Limited Company

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

Description of Taxable Services	Sub Clause
Business auxiliary service	(22B)
Construction services other than residential complex, including commercial/industrial buildings or civil structures	(22C)
Works contract service	(22ZZA)

Taxable Service for which Tax is being paid: Business auxiliary service

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

A10.1	A Service Provider under Section 68(1)	Yes
A10.2	A Service Receiver under Section 68(2)	No
A10.3	A Service Provider under partial reverse charge under provision to Section 68(2)	No
A10.4	A Service Receiver under partial reverse charge under provision to Section 68(2)	No
A10.5	If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service	0%
A10.6	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.	Month	Apr	May	Jun	Jul	Aug	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	0	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	0	0	0	0
B1.3	Amount taxable on receipt basis under proviso to Rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	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	0	0	0	0
B1.5	Money equivalent of other considerations charged, if any, in a form other than money	0	0	0	0	0	0	0
B1.6	Amount on which Service Tax is payable under partial reverse charge	0	0	0	0	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	0	0	0	0
B1.8	Amount charged against export of service provided or to be provided	0	0	0	0	0	0	0
B1.9	Amount charged for exempted service provided or to be provided (other than export of service given at B1.8 above)	0	0	0	0	0	0	0
B1.10	Amount charged as Pure Agent	0	0	0	0	0	0	0
B1.11	Amount claimed as abatement	0	0	0	0	0	0	0
B1.12	Any other amount claimed as deduction 0	0	0	0	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	0	0	0	0

Total	0	0	0	0	0	0	0
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Taxable Service for which Tax is being paid: Works contract service

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

A10.1	A Service Provider under Section 68(1)	Yes
A10.2	A Service Receiver under Section 68(2)	No
A10.3	A Service Provider under partial reverse charge under provision to Section 68(2)	No
A10.4	A Service Receiver under partial reverse charge under provision to Section 68(2)	No
A10.5	If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service	0%
A10.6	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')	Yes
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A11.2 Notification No. and Sl. No. in the Notification under which such exemption is availed

Sl. No	Notification No.	Notification Sl. No
1	025/2012-ST	1

A12 - Abatement

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.	Month	Apr	May	Jun	Jul	Aug	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)	10719177	9438330	1526689	4357201	2754774	2026646	30824817		
B1.2	Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	0	0	0		
B1.3	Amount taxable on receipt basis under third proviso to Rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	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	0	0	0	0		
B1.5	Money equivalent of other considerations charged, if any, in a form other than money	0	0	0	0	0	0	0		
B1.6	Amount on which Service Tax is payable under partial reverse charge	0	0	0	0	0	0	0		
B1.7	Gross Taxable Amount B1.7 = (B1.1 + B1.2 + B1.3 + B1.4 + B1.5 + B1.6)	10719177	9438330	1526689	4357201	2754774	2026646	30824817		
B1.8	Amount charged against export of service provided or to be provided	0	0	0	0	0	0	0		
B1.9	Amount charged for exempted service provided or to be provided (other than export of service given at B1.8 above)	8043457	0	0	0	0	0	8043457		
B1.10	Amount charged as Pure Agent	0	0	0	0	0	0	0		
B1.11	Amount claimed as abatement	0	0	0	0	0	0	0		
B1.12	Any other amount claimed as deduction	0	0	0	0	0	0	0		
B1.13	Total Amount Claimed as Deduction B1.13 = (B1.8 + B1.9 + B1.10 + B1.11 + B1.12)	8043457	0	0	0	0	0	8043457		
B1.14	NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)	2675720	9438330	1526689	4357201	2754774	2026646	22781360		
B1.15	Service Tax Rate-wise break up of NET TAXABLE VALUE (B1.14): Advalorem Rate									
Sl.No.	Taxable Rate				Taxable Value					
	Tax Rate %	Swachh Bharat Cess	Krishi Kalyan Cess %	EDU Cess %	SHEДУ Cess	Jul	Aug	Sep	Total	
1	14	0.5	0	0	0	2675720	0	0	0	12114050
Total						2675720	0	0	0	12114050
B1.16	Specific Rate (applicable as per Rule 6 of ST Rules)									
Sl.No.	Taxable Rate				Taxable Value					
	Tax Rate %	Swachh Bharat Cess	Krishi Kalyan Cess %	EDU Cess %	SHEДУ Cess	Jul	Aug	Sep	Total	
Total						0	0	0	0	0
B1.17	Service Tax payable	374601	1324356	214016	610008	385668	283730	3189389		
B1.18	Less R and D Cess payable	0	0	0	0	0	0	0		
B1.19	Net Service Tax payable B1.19 = (B1.17 - B1.18)	374601	1324356	214016	610008	385668	283730	3189389		
B1.20	Education Cess payable	0	0	0	0	0	0	0		

B1.21	Secondary and Higher Education Cess payable	0	0	0	0	0	0	0
B1.22	Swachh Bharat Cess payable based on entries in B1.15	13379	47192	7643	21786	13774	10133	112907
B1.23	Swachh Bharat Cess payable based on entries in B1.16	0	0	0	0	0	0	0
B1.24	Total Swachh Bharat Cess payable B1.24 = (B1.22 + B1.23)	13379	47192	7643	21786	13774	10133	112907
B1.25	Krishi Kalyan Cess payable based on entries in serial number B1.15	0	0	7643	21786	13774	10133	53336
B1.26	Krishi Kalyan Cess payable based on entries in serial number B1.16	0	0	0	0	0	0	0
B1.27	Total Krishi Kalyan Cess payable B1.27 = (B1.25 + B1.26)	0	0	7643	21786	13774	10133	53336

FY 2016-17 H2 (October – March)

 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

S/No.	Code	Error	Remarks
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PART - A - General Information

A1.	Original Return	Yes
	Revised Return	No
A2.	STC Number	AATCS0280NSD002
	Return Number	AATCS0280NSD002_WT0701A001_ST3_102016
A3.	Name of the Assessee	SATVA INFRACON PVT LTD
	Trade Name	SATVA INFRACON PRIVATE LIMITED
	Commissionerate	
	Division	
	Range	
	Address of Registered Unit	---
	Due date filing for this return	30/04/2017
	Actual date of filing	27/02/2018
	No. of days beyond due date	303
A4.	Financial Year	2016-2017
A5.	Return for the period	October-March
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	WT0701A001
A8.	Constitution of assessee	Registered Private Limited Company

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

Description of Taxable Services	Sub Clause
Business auxiliary service	(12B)
Construction services other than residential complex, including commercial/industrial buildings or civil structures	(12C)
Works contract service	(1222A)

Taxable Service for which Tax is being paid: Business auxiliary service

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

A10.1	A Service Provider under Section 68(1)	Yes
A10.2	A Service Receiver under Section 68(2)	No
A10.3	A Service Provider under partial reverse charge under provision to Section 68(2)	No
A10.4	A Service Receiver under partial reverse charge under provision to Section 68(2)	No
A10.5	If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service	0%
A10.6	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

S/No.	Month	Oct	Nov	Dec	Jan	Feb	Mar	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	0	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	0	0	0	0
B1.3	Amount taxable on receipt basis under third proviso to Rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	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	0	0	0	0
B1.5	Money equivalent of other considerations charged, if any, in a form other than money	0	0	0	0	0	0	0
B1.6	Amount on which Service Tax is payable under partial reverse charge	0	0	0	0	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	0	0	0	0
B1.8	Amount charged against export of service provided or to be provided	0	0	0	0	0	0	0
B1.9	Amount charged for exempted service provided or to be provided (other than export of service given at B1.8 above)	0	0	0	0	0	0	0
B1.10	Amount charged as Pure Agent	0	0	0	0	0	0	0
B1.11	Amount claimed as abatement	0	0	0	0	0	0	0
B1.12	Any other amount claimed as deduction D	0	0	0	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	0	0	0	0
B1.14	NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)	0	0	0	0	0	0	0
B1.15	Service Tax Rate-wise break up of NET TAXABLE VALUE (B1.14): Advalorem Rate							

B2.15	Service Tax Rate-wise break up of NET TAXABLE VALUE (B2.14): Advalorem Rate
B2.16	Specific Rate (applicable as per Rule 6 of ST Rules)

Taxable Service for which Tax is being paid: Works contract service

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

A10.1	A Service Provider under Section 68(1)	Yes
A10.2	A Service Receiver under Section 68(2)	No
A10.3	A Service Provider under partial reverse charge under provision to Section 68(2)	No
A10.4	A Service Receiver under partial reverse charge under provision to Section 68(2)	No
A10.5	If covered by A10.3 above, then the percentage of Service Tax Payable as Provider of Service	0%
A10.6	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 - Abatement

A12.1	Has any abatement from the value of services been claimed ('Y/N')	Yes
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A12.2 Notification No. and Sl. No. in the Notification under which such abatement is availed

Sl. No.	Notification No.	Notification Sl. No.
1	007/2019-S.T.	10(X)(X*)

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.	Month	Oct	Nov	Dec	Jan	Feb	Mar	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)	14420375	0	0	0	5956571	9644019	30020965
B1.2	Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	0	0	0
B1.3	Amounts taxable on receipt basis under third proviso to clause (b) of section 68(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued	0	0	0	0	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	0	0	0	0
B1.5	Money equivalent of other considerations charged, if any, in a form other than money	0	0	0	0	0	0	0
B1.6	Amount on which Service Tax is payable under partial reverse charge	0	0	0	0	0	0	0
B1.7	Gross Taxable Amount B1.7 = (B1.1 + B1.2 + B1.3 + B1.4 + B1.5 + B1.6)	14420375	0	0	0	5956571	9644019	30020965
B1.8	Amount charged against export of service provided or to be provided	0	0	0	0	0	0	0
B1.9	Amount charged for an exempted service provided or to be provided (other than export of service mentioned in B1.8 above)	0	0	0	0	0	0	0
B1.10	Amount charged as Pure Agent	0	0	0	0	0	0	0
B1.11	Amount claimed as abatement	6652225	0	0	0	3573942	5786411	18012578
B1.12	Any other amount claimed as deduction 0	0	0	0	0	0	0	0
B1.13	Total Amount Claimed as Deduction B1.13 = (B1.11 + B1.9 + B1.10 + B1.12)	6652225	0	0	0	3573942	5786411	18012578
B1.14	NET TAXABLE VALUE B1.14 = (B1.7 - B1.13)	5768150	0	0	0	2382629	3857608	12008387
B1.15	Service Tax Rate-wise break up of NET TAXABLE VALUE (B1.14): Advalorem Rate							
B1.16	Specific Rate (applicable as per Rule 6 of ST Rules)							
B1.17	Service Tax payable	807541	0	0	0	333569	540065	1681174
B1.18	Less R and D Cess payable	0	0	0	0	0	0	0
B1.19	Net Service Tax payable B1.19 = (B1.17 - B1.18)	807541	0	0	0	333569	540065	1681174
B1.20	Education Cess payable	0	0	0	0	0	0	0
B1.21	Secondary and Higher Education Cess payable	0	0	0	0	0	0	0

PART B2 - For Service Receiver

Sl.No.	Month	Oct	Nov	Dec	Jan	Feb	Mar	Total
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B2.15	Service Tax Rate-wise break up of NET TAXABLE VALUE (B2.14): Advalorem Rate
B2.16	Specific Rate (applicable as per Rule 6 of ST Rules)

PART - C - Service Tax Paid In Advance

Amount of Service Tax paid in advance under sub-rule (1A) of Rule 6 of ST Rules

Sl.No.	Month	Oct	Nov	Dec	Jan	Feb	Mar	Total
C1	Amount of Service Tax deposited in advance	0	0	0	0	0	0	0
C1.1	Swachh Bharat Cess deposited in advance	0	0	0	0	0	0	0
C1.2	Krishi Kalyan Cess deposited in advance	0	0	0	0	0	0	0
C2	Amount of Education Cess deposited in advance	0	0	0	0	0	0	0
C3	Amount of Secondary and Higher Education Cess deposited in advance	0	0	0	0	0	0	0
	Total	0	0	0	0	0	0	0

21. The assessee was given numerous opportunities, infact as many as 12 opportunities for defending their case in person, but they have chosen to remain absent. The PH letters intimating the dates of PH were also sent on their email id "cadspatel@gmail.com" on 06.02.2022, 09.01.2023 and 23.01.2023. The Assessee was also contacted telephonically and was requested to file their reply and to attend the personal hearing. However, the assessee has not filed any defence reply with respect to the subject SCN dated 23.04.2021 knowingly for either scuttling, delaying or avoiding the proceedings initiated against them by the department. They have not turned up to show

with tangible/documentary evidences that the services rendered by them do not attract service tax under Section 66B of the Act. All the acts of inaction on the part of the assessee lead me to an inescapable conclusion that the assessee has nothing on them to prove inapplicability of service tax on the services rendered by them. Under such circumstances, I am constrained to hold that the differential value of Rs. 2,76,43,929/- (Rs. 2,04,98,500/- for FY 2015-16 Plus Rs. 71,45,429/- for FY 2016-17), worked in TABLE-A & B above, as the taxable value for rendering the services by the assessee and hold that the Assessee is thus liable to service tax amounting to Rs. 40,44,097/- (Rs. 29,72,283/- for FY 2015-16 and Rs. 10,71,814/- for FY 2016-17) as worked in TABLE-A & B above, under Section 66B of the Act, instead of Service tax of Rs. 2,75,79,594/- as has been sought to be demanded under the subject SCN dated 23.04.2021. Therefore, I hold that the assessee has short paid the service tax to the extent of Rs. 40,44,097/- for 2015-16 and 2016-17 and the rest of the demand of service tax amounting to Rs. 2,35,35,497/- needs to be dropped as the same being not sustainable and legally not tenable. Thus, the service tax of Rs. 40,44,097/- is required to be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

22. I find that the assessee is registered with the department with Service Tax Registration No. AEMPR8316LST001, but they have not filed correct service tax returns and have short paid service tax due to the government as calculated in TABLE-A & B above, as required under Section 68 of the Act read with Rule 6 of Service Tax Rules, 1994. Therefore, it is apparent that the assessee had deliberately suppressed the facts of provision of the Taxable Service by not declaring the correct value of services rendered, in ST-3 Returns filed by them during the period FY 2015-16 and 2016-17, as required under Section 70 of the Act, read with Rule 7 of Service Tax Rules, 1994.

23. Based on above facts and discussion, I find that the assessee has contravened the provisions of (i) Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules 1994 in as much as they have short paid service tax to the extent of Rs. 40,44,097/- by not declaring the correct value of service in their ST-3 Returns vis-à-vis their ITR/Form 26AS in such manner and within such period as prescribed with respect to the taxable services provided by them (ii) the provision of Section 70 of Finance Act, 1994 in as much as they had failed to assess their correct service tax liabilities under Rules 2(1)(d) of Service Tax Rules, 1994.

24. Having considered these factual and documentary evidences available on record, I find that the assessee has failed to assess their service tax liability correctly on the services rendered by them. Accordingly, the assessee has short paid service tax of Rs. 40,44,097/- under section 66B read with Rule 2 of Service Tax Rules 1994 for rendering taxable services by them. Therefore, I hold that the assessee has failed to pay service tax amounting to Rs. 40,44,097/- ,which was required to be paid under Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules 1994 for taxable services provided during FY 2015-16 and 2016-17 by them. Therefore, I hold that the assessee is required to pay service tax of Rs. 40,44,097/- and thus, the same is required to be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

25. 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. 40,44,097/- .

26. From the facts and discussion aforementioned, I find that in the instant case the assessee had failed to assess their service tax liability correctly, accordingly there was a short payment of service tax amounting to Rs. 40,44,097/- for FY 2015-16 and 2016-17 on taxable services rendered by them. Thus, the assessee had failed to pay legitimate service tax due to the government. They had not disclosed the correct value of services rendered by them in ST-3 Returns filed by them as discussed hereinabove. Thus, the assessee had suppressed the material facts from the Department by not showing their actual taxable income in the ST-3 Returns and also by not paying the Service Tax due on them. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax payers' behaviour. The responsibility on the tax payer to voluntarily make information disclosures is much greater in the system of self-assessment. The omission or commission on the part of the assessee has clearly demonstrated their intention to evade payment of service tax, as they were very much aware of the unambiguous provisions of Finance Act, 1994 and Rules made there under. They have failed to disclose the correct value of services rendered by them and have failed to pay appropriate service tax due on services rendered by them during FY 2015-16 & 2016-17. These facts would not have come to

light if the department had not initiated inquiry on the basis of data shared by the Income Tax Department. Moreover, the government has from the very beginning placed full trust on the assessee, accordingly measures like self assessment etc. based on mutual trust and confidence have been put in place. Further, the assesseees are not required to maintain any statutory or separate records under the Excise / service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for the purpose of excise & Service tax laws. Moreover, returns are also filed online without any supporting documents. All these operates on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provision is contravened or there is a breach of trust placed on them. Such contravention on the part of the assessee tantamount to wilful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is also evident that such fact of contravention and short payment of service tax by not declaring correct 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. 40,44,097/- is required to be recovered along with applicable interest under Section 75 of the Finance Act, 1994 from the assessee.

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

themselves liable for penalty in terms of the provision of Section 78 of the Finance Act, 1994.

28. As regards, the proposal for imposition of penalty under Section 77(2) of the Finance Act, 1994, I find that the assessee has failed to assess their service tax liability correctly and has failed to file correct service tax returns as required under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994, as discussed at length hereinabove, thus, they have rendered themselves liable to penal action as well under Section 77(2) of the Finance Act, 1994.

29. 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. However, I do not find any charges levelled for demand for FY 2017-18 (upto June 2017) in charging part of the SCN. Further, the assessee has not provided any details/information/ documents for the F.Y.2017-18 (upto June, 2017) and the department also has not adduced any information/evidence and the reason for the non disclosure has also not been made known to the department. Accordingly I refrain myself from entering in to the said period to determine liability as otherwise of assessee for service tax.

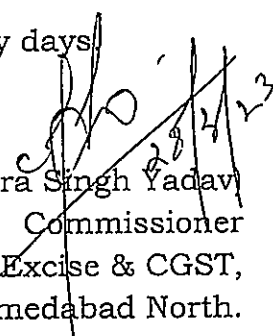
30. In view of the above discussion and findings, I pass the following order:

ORDER

- (i) I hereby confirm the demand of service tax of Rs. 40,44,097/- (Rupees Forty Lakh Forty Four Thousand and ninety seven only), not paid by the assessee and order to recover the same from the assessee under proviso to Sub-section (1) of Section 73 of Finance Act,1994. I further drop the rest of the demand of Service Tax of Rs. 2,35,35,497/- accordingly
- (ii) I order to charge Interest at the appropriate rate on the demand of Service tax of Rs. 40,44,097/- and to recover the same from the assessee under Section 75 of the Finance Act,1994;
- (iii) I impose penalty of Rs. 40,44,097/- on the assessee under the provision of Section 78 of the Finance Act, 1994.

(iv) I impose penalty of Rs. 10,000/- on the assessee under the provision of Section 77(2) of the Finance Act, 1994, for failure to assess their service tax liability.

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 said period of thirty days.


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

F.No. STC/15-26/OA/2021

Dated- ___/03/2023

By Regd. Post AD./Hand Delivery

To

M/s. SATVA INFRACON PRIVATE LIMITED
52, FIRST FLOOR, SHREEYAS SHOPPING CENTRE,
SATDIUM HOUSE, NAVRANGPURA,
AHMEDABAD, Gujarat- 380009

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-I, Division-VII, CGST & C.Ex., Ahmedabad North.
- ✓ 4. The Superintendent (Systems), Hq., CGST & C.Ex., Ahmedabad North.
5. Guard File.