


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>GST</p> <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निवन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-12/OA/2020

आदेश की तारीख/Date of Order : - 22.06.2021

जारी करने की तारीख/Date of Issue :- 23.06.2021

DIN-20210664WT0000555A24

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 09/JC/MT/2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से दो महिनों के अन्दर आयुक्त (अपील), केन्द्रीयजी.एस.टी., केन्द्रीयजी.एस.टी.भवन, अंबावाड़ी, अहमदाबाद - 380015 को प्रारूप संख्या एसटी-4 (ST-4) में दाखिल कर सकता है। इस अपील पर रू. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form ST-4 to the Commissioner(Appeals), GST Bhawan, Ambawadi, Ahmedabad-380015 within two months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त(अपील) के समक्ष नियमानुसार पूर्व जमा की धनराशि का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeals) on giving proof of payment of pre-deposit as per rules .

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एसटी-4 (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील), नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिस पर रू. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

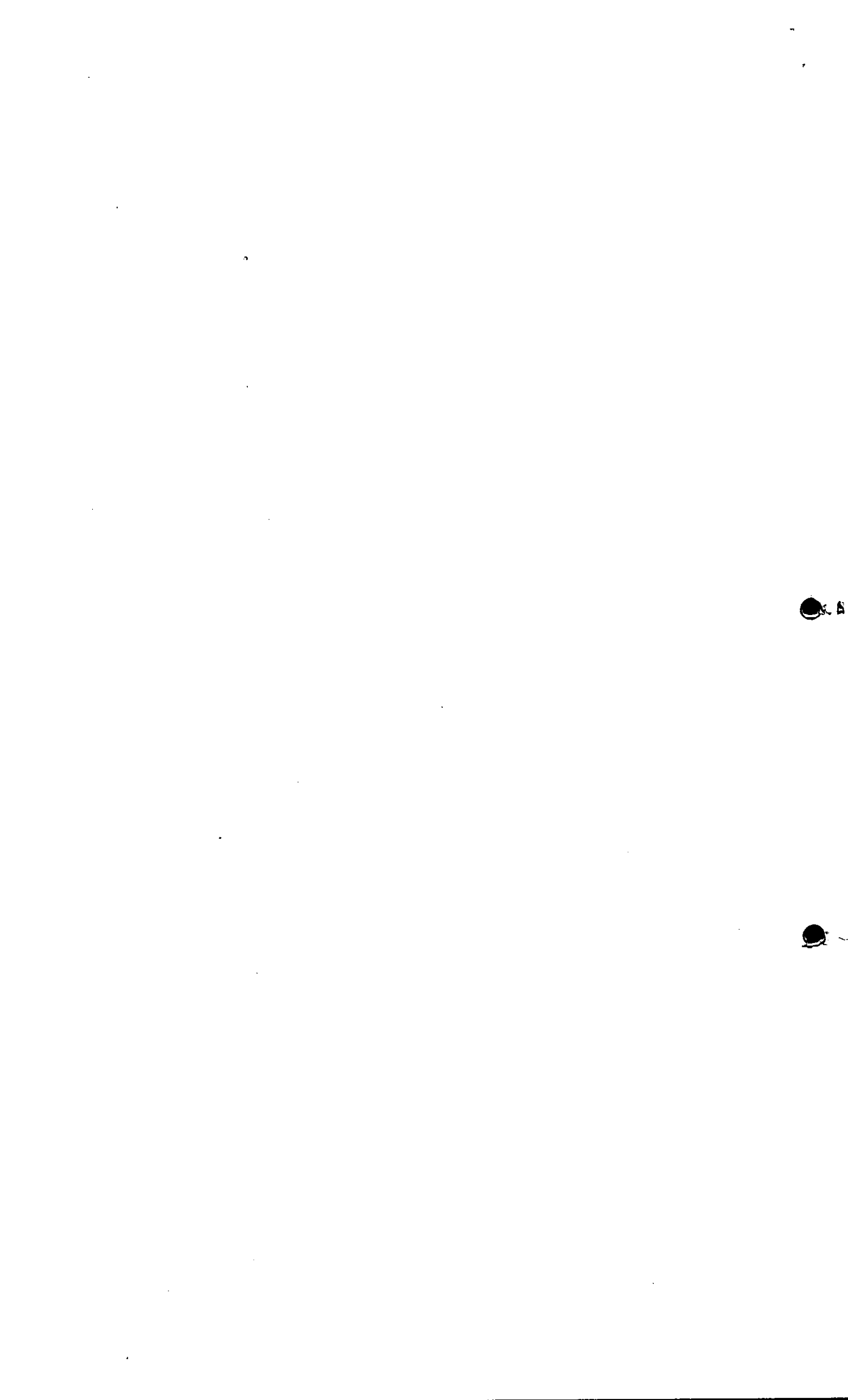
The appeal should be filed in form ST-4 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ The Show Cause Notice No. STC/15-12/OA/2020 dated 11.06.2020 issued to M/s. Gujarat Industrial Security Force Society, Block No.F, 5th Floor, Multi Storage Building, Manjushri Mills Campus, Girdharnagar, Asarwa, Ahmedabad-380016 .





Brief Facts –

M/s. Gujarat Industrial Security Force Society, Block No.F, 5th Floor, Multi Storage Building, Manjushri Mills Campus, Girdharnagar, Asarwa, Ahmedabad-380016(*hereinafter referred to as the 'assessee'*) is engaged in providing Security and Detective Agency service. They are holding Service Tax Registration No. AAAAG0372LST001 under Section 69 of Chapter V of the Finance Act, 1994 (32 of 1994) (*hereinafter referred to as the "Act"*) and has undertaken to comply with the conditions prescribed in Service Tax Rules, 1994 and other applicable provisions thereof. The assessee was availing the benefit of cenvat credit of duty paid on input services as provided under Cenvat Credit Rules, 2004.

2. Earlier, assessee was registered under the jurisdiction of the Commissioner of Service Tax, Ahmedabad. Consequent to the issuance of Notification No 12/2017 to 14/2017-Central Excise (NT), all dated 9.6.2017, appointing the Officers of various ranks as Central Excise Officers and re-allocating the jurisdiction of the Central Excise Officers and issuance of Trade Notice No 001/2017 dated 16.6.2017 by the Chief Commissioner, Central Excise & Service Tax, Ahmedabad Zone, the assessee is now registered under the jurisdiction of Commissioner, Central Goods and Services Tax, Ahmedabad North.

3. Audit of the financial records of the assessee was carried out for the period from April 2012 to June 2017, at the conclusion of which Final Audit Report No 915/2018-19 dated 31.01.2019 was issued by the Assistant Commissioner, Circle V, Audit Commissionerate, Ahmedabad. An addendum to the above FAR was issued on 16.3.2020. Certain issues remained unsettled and are discussed as under:

4. Verification of the records by Audit revealed that the assessee was providing security services to various Hostels governed by Social Welfare Department of the Government of Gujarat and was availing exemption under Sl. No 9 of Notification No. 25/2012 – Service Tax dated 20.06.2012, as amended by Notification No. 09/2016-ST dated 1.3.2016. Sl No. 9 of Notification No. 25/2012-ST is as given below:

9. *Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-*

- (a) *auxiliary educational services; or*
- (b) *renting of immovable property;*

The term '*auxiliary educational services*' was defined in Paragraph 2(f) of Notification No, 25/2012-ST dated 20.6.2012 as under :

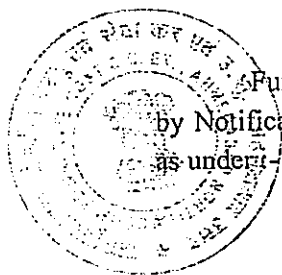
- (f) *"auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;*

The above sl no. 9 of Notification No. 25/2012-ST was substituted vide Notification No. 6/2014-S.T., dated 11-7-2014, to read as under:

"9. *Services provided, -*

- (a) *by an educational institution to its students, faculty and staff;*
- (b) *to an educational institution, by way of,-*
 - (i) *transportation of students, faculty and staff;*
 - (ii) *catering, including any mid-day meals scheme sponsored by the Government;*
 - (iii) *security or cleaning or house-keeping services performed in such educational institution;*
 - (iv) *services relating to admission to, or conduct of examination by, such institution;"*

Further, in paragraph 2 of Notification No. 25/2012 – Service Tax dated 20.06.2012, as amended by Notification No. 6/2014-S.T., dated 11-7-2014, *educational institution* was defined under clause (oa) as under:



'(oa) "educational institution" means an institution providing services specified in clause (l) of section 66D of the Finance Act, 1994 (32 of 1994)."

Education exempted from service tax, was listed under Clause (l) of section 66D of the Finance Act, 1994 and readas under:

- (l) *Services by way of*
- (i) *Pre school education and education upto higher secondary school or equivalent*
 - (ii) *education as a part of curriculum for obtaining qualification recognized by any law for the time being in force;*
 - (iii) *education as a part of an approved vocational education course.*

The above clause (l) provided under Section 66D of the Finance Act, 1994 was omitted from the Negative List w.e.f. 14th May 2016 vide the Finance Bill, 2016. The service tax exemption was however, continued by incorporating such specified educational services in the general exemption Notification No. 25/2012-ST as amended by Notification No. 09/2016-ST, dated 1st March, 2016. Further, the definition of *"approved vocational educational course"* provided under clause (11) of section 65B, was also omitted from the Finance Act, 1994 and was incorporated in the general exemption Notification No. 25/2012-ST as amended by Notification No 09/2016- ST, dated 1st March, 2016. Thus, vide Notification No. 9/2016-S.T., dated 1-3-2016, clauses (oa) and (ba) was incorporated in Notification No.25/2012, which reads as under:-

(oa) "educational institution" means an institution providing services by way of :

- (i) *pre-school education and education up to higher secondary school or equivalent;*
- (ii) *education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;*
- (iii) *education as a part of an approved vocational education course"*

(ba) "approved vocational education course" means, -

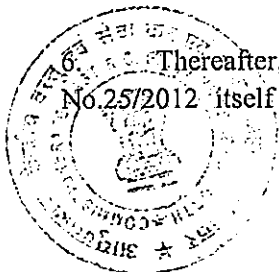
- (i) *a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961); or*
- (ii) *a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship;'*

Finally, vide Service Tax Notification No. 10/2017-Service Tax, dated 8th March, 2017, the following proviso was inserted in clause 9(b) of the Exemption notification ST-25/2012.

"Provided that nothing contained in clause (b) of this entry shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent;"

5. A sequential reading of the above clauses and definitions makes it clear that till 11/7/2014, only *auxiliary education services* provided to educational institutions, who are providing *education exempted from service tax* as outlined in clause (l) of Section 66D, was exempted from payment of service tax. As Hostels do not provide *education exempted from service tax, auxiliary educational services* defined under paragraph 2(f) of Notification No. 25/2012-ST dated 20.6.2012, provided to such Hostels, would not qualify for exemption under the Notification *ibid*. Hence, the security services provided to Hostels, by the assessee, would not be covered under the exemption provided under Sl. No 9 of Notification No. 25/2012 – Service Tax dated 20.06.2012.

Thereafter, vide Notification No. 6/2014-S.T., dated 11-7-2014, Sl No.9 of the Notification No.25/2012 itself was replaced. From 11/7/2014, it is seen that services provided to *educational*



institutions by way of security services are exempted under Sl No. 9(b)(iii) of Notification No. 25/2012 – Service Tax dated 20.06.2012, as amended by Notification No. 6/2014-S.T., dated 11-7-2014. From Clause (l) of section 66D of the Finance Act, 1994 and clause (oa) of Notification No. 9/2016-S.T., dated 1-3-2016, it is seen that to be considered as an *educational institution*, an institute should be offering (i) Pre-school education and education up to higher secondary school or equivalent; (ii) Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force; and (iii) Education as a part of an approved vocational education course. Hence, a conjoint reading of Sl No. 9(b)(iii) of Notification No. 25/2012 – Service Tax dated 20.06.2012, as amended and the definition of *educational institution* incorporated under clause (oa) in Notification No.25/2012-ST dated 20.6.2012 as amended by Notification No. 9/2016-S.T., dated 1-3-2016, makes is clear that only security services provided to *educational institutes* offering the above types of education are exempted. It is seen that the definition of *educational institution* as it stood under Clause (l) of Section 66D of the Finance Act, 1994 and subsequently as incorporated under clause (oa) vide Notification No. 9/2016-S.T., dated 01-3-2016, does not cover Hostels. It appeared that hostels run by the Social Welfare Department of the Government of Gujarat are just places of residence and education is not imparted in any manner in such Hostels. Since Hostels are merely places to stay, and also do not offer any of the types of education listed above, it appeared that such Hostels would not be covered under the definition of *education institution* and by extension, security services provided by the assessee to such Hostels run by the social welfare department of the Government of Gujarat would not be eligible for exemption under the Mega Exemption Notification No. 25/2012 – Service Tax dated 20.06.2012, as amended.

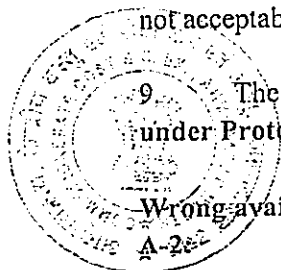
7. The details of security services provided to Hostels run by the Government of Gujarat and the unpaid service tax on the taxable value of such services, was worked out as under:

Year	Service Provided to Hostels	Value of Service after Duty-cum-benefit	Rate of Service Tax in Percentage(%)	Service Tax
2012-13	3758887	3345396	12.36	4,13,491/-
2013-14	8781795	7815766	12.36	9,66,029/-
2014-15	10495174	9340667	12.36	11,54,507/-
2015-16	14411380	12586358	14.5	18,25,022/-
2016-17	18492860	16080747	15	24,12,112/-
2017-18 (upto June 17)	3868773	3364150	15	5,04,623/-
Total				72,75,783/-

8. The assessee was issued a Query Memo vide F. No.VI/1(b)-38/IA/Cir-V/Gr-30/17-18/ST/GISFS dtd.09.07.2018 requesting them to clarify their stand and also pay the duty along with interest and penalty. The assessee agreed to the objection raised by audit and paid Service Tax of Rs.67,71,160/- vide DRC-03 debit entry No.DC2407180411836 dtd.27.07.2018 for the period of 2012-13 to 2016-17 & Rs.5,04,623/- vide DRC debit entry No. DC2401190001735 dated 01.01.2019 for the period of 2017-18 (up to June, 2017) voluntarily under Section 73(5) of the Finance Act 1994 .However, vide letter dated 16.8.2018 the assessee contended that their Organization has a direct agreement with educational Institutes; that they provide services directly to such educational institutes and also receive payments from such educational institutes; that they have invoiced a particular department / officer only for administrative convenience of the educational institutes. Further, it is contended that Notification No.09/2016-ST dated 01.03.2016, is effective from 01.04.2016. Before the Notification came in force, there is no clarification regarding specific definition of educational Institutes. Therefore, any organization that provides direct services and related ancillary services for the purpose of education are included in educational institutes. Hostels are included in ancillary services. Therefore, Notification 09/2016 is not applicable for the previous period, *i.e.*, April 2012 to March 2016. Hence, they did not agree with the objection raised by the department, but without prejudice to their stand that the demand is erroneous and not acceptable to them; they are making payments "*Under Protest*".

The assessee again reiterated vide letters dated 03.01.2019 that they have paid the above amounts under Protest.

Wrong availment of exemption on services provided to SEZ units without producing Form A-1 and



10. On verification of records, it was noticed by Audit that the assessee had availed exemption from Service tax on services provided to SEZ units, during the period 2012-13 to 2014-15. But the assessee failed to produce Form A-1 and Form A-2 stipulated under Notification No 40/2012-ST dated 20.06.12, rescinded/superseded by Notification No. 12./2013-ST dated 1.7.2013. Vide letter F. No. VI/1(b)-38/IA/Cir-V/Gr-30/18-19/ST/GISFS dated 4.11.2019, the assessee was asked to furnish details of services provided to SEZ units for which they had claimed exemption for the period 2012-13 to 2014-15.

11. The assessee, under letter Sr. No. Account/Service Bill/2101/2019 dated 28.11.2019 submitted Annexure-B wherein the details of services provided by them to SEZ units was listed. Based on the above submission, the department vide letter dated 18.12.2019 requested the assessee to pay the service tax liability involved in the said services alongwith interest and penalty. The assessee was also requested to submit ledgers containing details of services provided to SEZ units for the period 2012-13 to 2014-15. The assessee vide letter Ref. GISFS/S. tax audit/595/2020 dated 28.02.2020 submitted copies of ledgers containing details of services provided to SEZ units from 2012-13 to 2014-15. The assessee also paid service tax of Rs.6,43,979/-, under protest, vide cash ledger entry no. DC2402200416013 dated 25.02.2020 as shown in DRC-03, for the period 2012-13 to 2014-15, for providing services to SEZ Units. The details are given below:

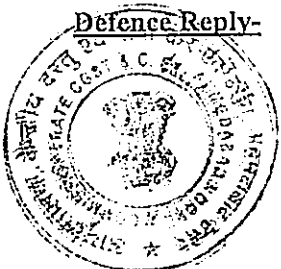
Sl. No.	Year	Values of services provided to SEZ	S. Tax Amt.
1	2012-13	5116620	270798
2	2013-14	6484034	200350
3	2014-15	5593405	172831
	Total	17194059	643979/-

12. Since the assessee had failed to fulfill the conditions laid down in Notification No. 40/2012-S.T., dated 20-6-2012 as rescinded/superseded by Notification No. 12/2013-ST dated 1.7.2013, and, wrongfully claimed exemption from service tax, education cess, and secondary and higher education cess, leviable on services under Section 66B of the Act. Hence, they were liable to discharge service tax on the taxable value of security services provided to SEZ units during the period 2012-13 to 2014-15.

13. Therefore, M/s. Gujarat Industrial Security Force Society, Block No. F, 5th Floor, Multi Storage Building, Manjushri Mills Campus, Girdharnagar, Asarwa, Ahmedabad-380016 were called upon to show cause to the adjudicating authority as to why:

- i. The claim for exemption under Sl. No 9 of Notification No. 25/2012 – Service Tax dated 20.06.2012, as amended, should not be denied;
- ii. service tax of Rs 72,75,783/- (Rupees Seventy Two lakhs Seventy Five thousand seven hundred Eighty Three) should not be demanded and recovered from them under the proviso to section 73(1) of the Finance Act, 1994 and the amount of Rs.72,75,783/- already paid by them under should not be appropriated against the proposed demand;
- iii. The claim for exemption under Notification No.40/2012-ST dated 20th June, 2012 as superseded by Notification No.12/2013-ST dated 1st July-2013 should not be denied;
- iv. Service tax amounting to Rs.6,43,979/- (Rupees Six lakhs forty three thousand nine hundred seventy nine only) should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 and the amount of Rs.6,43,979/- already paid by them vide Cash Ledger Entry No.DC2402200416013 dated 25.02.2020 as shown in DRC 03, should not be adjusted and appropriated against the proposed demand;
- v. protest letters dated 16.08.2018 for making the payment of Rs.72,75,783/- and letter dated 28.02.2020 for making the payment of Rs.6,43,979/-, respectively should not be vacated;
- vi. interest at the applicable rate should not be charged and recovered from them under the provisions of Section 75 of the Finance Act, 1994 on the demand at (ii) and (iv) above; and
- vii. penalty should not be imposed on them under the provisions of Section 78(1) of the Finance Act, 1994 on the demand at (ii) and (iv) above.

Defence Reply-



14. Reply to the Show Cause Notice was filed by the noticee vide letter dated 11.06.2020 wherein they have denied the demand arising out of the two unsettled issues. The relevant part of their reply for both issues is reproduced here-

" A) Service Tax Demand on providing security services to Government Hostels/Chatrralays (Educational Institutions)

Accordingly we dispute and entirely deny this first part of the demand under this show cause notice, seeking demand of service tax on "security services" provided by us to such Government hostels run by the social welfare Department of Government of Gujarat, for this entire period and would demonstrate hereunder as to how we have correctly availed this exemption, being clearly entitled to the same under law and under the provisions of the Finance Act 1994 r/w its allied acts rules and notifications.

1.It may be noted that we have been providing such "security services" to various hostels, and educational institutions of the social welfare Department of the Government of Gujarat, under specific agreements executed between us and them, from time to time, which institutions do the dual duty and job of providing education and residence both at the same time, to such special category students. A copy of one of the relevant agreement is annexed hereto and marked as Exhibit I for your ready reference.

2.It is most relevant to note that originally the exemption to security services provided by educational institutions, was highlighted and defined under mega exemption notification 25/2012-ST dated 20-6-2012.

Under clause 9 of the said notification, services provided to or by an educational institution, in respect of education was exempted from service tax by way of a) auxiliary education services or b) renting of immovable property .A copy of this notification 25/2012-ST is annexed h/w and marked Exhibit II.

In the definition clause of this notification "auxiliary education services" It is defined that any services provided to and for, and in relation which may be required to run the educational institution, either themselves or outsourced, would all be termed as auxiliary or ancillary to the education and examples are quoted therein of services like admission, conduct of examination, catering, transportation and likewise. :

Therefore it included firstly: services for the students and the faculty or any other services, which educational institutions ordinarily carry out themselves, but may obtain as outsourced services, from any other person including services related to admission to such institution, conduct of examination, catering for the students under a midday meal scheme sponsored by Government or transportation of students, faculty or staff of such institution.

Accordingly it is not that only education services for the students were exempted, but any other services carried out by such educational institutions by outsourced services for such institution, which were necessary and requisite in furtherance of imparting of education, equally including for the students' and the faculty or staff like services of catering, admission process, conduct of examination and all including, security services provided to such educational institution were also exempted.

3.It is most pertinent to note that thereafter several private schools and associations of higher secondary schools and various other federations and associations of schools and institutions imparting education, with various other facilities being provided to students like accommodation, residence, meals etc had approached the Central Board of Excise & Customs, seeking specific queries and clarifications.

4.Upon which the Central Board of Excise & Customs (CBEC) that specifically clarified to all the Commissionerates, under paragraphs 3 & 4 of their circular dated 19 September 2013, that auxiliary educational services provided to educational institutions like transport operators to ferry students to and from the school, hostels, housekeeping services, canteens and security services etc would all be covered as auxiliary education services, since they also relate to and directly pertain to conduct and basic working of the educational institution in every manner and being related thereto directly, would also be eligible to exemption under notification 25/2012-ST. Accordingly all doubts and queries, were put to rest by the Central Board of Excise and Customs, vide this circular that right from the introduction of the notification 25/2012-ST, all "ancillary/auxiliary services" undertaken by an educational institution, to run the same being also a part and purpose of imparting of education and therefore would continue to be

eligible to exemption, including specifically security services to and for hostels attached to such education institution.

5. This was of course based on the necessary corollary that an educational institution, cannot run by itself or for: simply providing education, but would also have to avail various auxiliary and ancillary services to run the institution, to cater to students and their staff and faculty, which would necessarily mean that any educational institution imparting education and also providing residence in hostels to their students, would also be a part and parcel of the institution itself, since without providing such residence many of such institutions, may not be able to solely render education, as in our case.

Therefore it was specifically clarified that, the exemption has to take within its ambit, all its auxiliary and ancillary services like hostels, canteens and services provided to and for the same, including housekeeping and security services provided to such hostels and canteens, including through outsourced agencies.

A copy of the Circular dtd 19-9-2013 is annexed h/w and marked Exhibit III.

6. Accordingly we are directly covered under this notification and its further clarification, since these state government run 'hostels, are accommodating students since they cannot come from various places and by making them stay at such hostels, they are also taught in the schools (Chattralays) run by this social welfare department run for such special category students.

This itself clearly clinches the issue and clearly entitles us to avail exemption for the "security services" provided by us to all these hostels (Chattralayas) run by the Government of Gujarat.

7. It is also very pertinent to note that thereafter vide specific notification 6/2014-ST dtd 11-7-2014, the mega exemption notification 25/2012-ST and Sr no 9 thereof, pertaining to services provided by educational institutions, including auxiliary services were further clarified and specifically under sub-clause (iii) thereof security or cleaning or housekeeping services performed in such educational institution were specifically exempted from levy of service tax.

Accordingly continuously the mega exemption notification no 25/2012-ST, in relation to services provided by educational institutions, and its auxiliary services, were being notified and clarified as equally exempted.

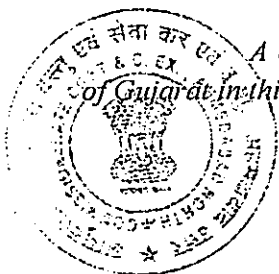
8. As stated herein above all these hostels run by the State Government of Gujarat, through the social welfare Department are special category hostels for residence of students of scheduled castes and tribes, who not only reside there, but are also undertaking education entirely from the very same institution (Chattralay).

Accordingly they are clearly educational institutions with the combined facility of hostels, since such special category students have to reside there for the purposes of their learning and education

It is for this reason that such continuous clarifications have been also issued by the Ministry of Finance and the Central Board of Excise and Customs that, all ancillary and auxiliary services to run an educational institution, would also be equally entitled to exemption from service tax, for all such ancillary and auxiliary services, including for hostels attached to such educational institutions and security and housekeeping services provided by any outside agency to them.

9. It may be specifically also noted that the Government of Gujarat has allocated a specific grant to the social welfare Department, since 7th April 2010 to various chattralayas (Hostels) which provide both residence and education on benevolent purposes for up-liftment of the socially and economically backward class, including for all such boys and girls separately, for all purposes of residence, meals and education at one place.

A copy of the notification issued by the social welfare Department of the Government of Gujarat in this regards is annexed here with and marked Exhibit IV.



10. In view of the above discussion therefore it is amply clear that in our case as in all other cases, as already notified and clarified from time to time educational institution, would include all its ancillary activities also including the hostels, canteens, transportation, meals and all such facilities being provided to students for the purposes of imparting education, being absolutely necessary and ancillary in furtherance of its such purpose.

Therefore the objection of the audit department and now the contention raised under the impugned show cause notice, is absolutely ill founded, illegal and clear misreading and misinterpretation of the above notifications issued from time to time, including the mega exemption notification 25/2012-ST, which clearly entitles exemption equally to all ancillary and auxiliary services, being provided to any educational institution be it private or Government run.

11. In our case clearly rather therefore, since these hostels are an indivisible part of the institution as run by the social welfare Department for charitable and benevolent purposes, the security services provided by us at the minimum rates offered under such contracts, would clearly be eligible to exemption without any doubt.

The entire purpose and intent to run these hostels by the State Government is to provide residence, meals and education to students at one place, for the economically and socially backward students.

Therefore providing of security services to safeguard and maintain such institutions, being an integral and well-defined part of such activities of these educational institutions, is clearly highlighted as an integral part of running of such educational institutions, with many other ancillary and auxiliary services similarly.

12. Accordingly the entire service tax demand of Rs. 72, 75, 783/- raised upon us under the provisions of section 73 (1) of the Finance act 1994, seeking to deny us the benefit of Sr no 9 of notification number 25/2012-ST, and the various circulars and further notifications issued from time to time in furtherance of the same, is admittedly bad in law, unwarranted and unjustified, since we are clearly entitled to this exemption from levy of service tax, on providing security guard services to the hostels, which are educational institutions itself, run by the social welfare Department of the Government of Gujarat.

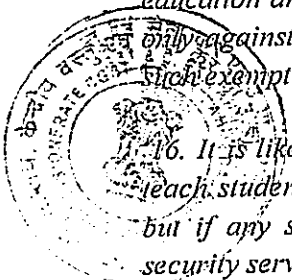
13. Accordingly since we are not liable to pay any service tax under the provisions of section 73 of the Finance act 1994, we are equally not liable to pay any interest under section 75 of the said act, much less liable to any penalty under section 78 of the said act.

14. It may therefore also be clearly noted that the basic interpretation and conjoint reading of all these notifications, as issued in respect of "educational institutions" from time to time clearly imply and highlight that, all ancillary and auxiliary services provided to and by an educational institution, would continue equally to be eligible to exemption from levy or service tax to or by a private institution or a Government: run institution, for the simple reason that it is the intention of the legislature, to provide exemption for all services related to education and running of such institution, for its students and faculty both.

Therefore all ancillary services like housekeeping, canteens and meals, transportation, cleaning and security services and others provided to any education institution, since the list is not made exhaustive, continue to be exempted from levy of service tax.

15. Accordingly the narrow and constricted meaningsought to be attached and attributed under the impugned show cause notice, based on such objections that, only institutions which provide education and not any other facilities to students would only be entitled to exemption, is clearly not only against the intention of the legislature, but a clear misinterpretation of the basic purpose of such exemption.

16. It is like to say that any school or college, which may not have residential facilities and merely teach students, if provided security services to guard their campus would be entitled to exemption, but if any such school or college, also provides hostel facilities, to accommodate students and security services are provided to guard the same, they would not be entitled, to such exemption.



This by itself is completely baseless, without application of mind and a clear misinterpretation of the basic exemption notifications and its purpose and preamble, including misinterpretation of the intention of the legislature.

17. *We crave to refer to and rely upon various decisions and judgments of various authorities including courts and tribunals, to elaborate and justify our contention further in this regards, at the time of personal hearing of the adjudication of this notice. Besides we crave leave also for clarifying in detail all over actual activities, in connection with such security services, provided by us to such government run institutions in consonance with the reading of the various notifications, circulars, etc as issued from time to time.*

(B) Service Tax Demand of Rs. 6,43,979/- for non submission of Forms A-1 & A-2 for services provided to SEZ Units.

Second demand raised under the present show cause notice from Paragraph 21 and onwards in the same, pertains to exemption availed by us from payment of service tax on services provided by us to various SEZ units for the period 2012-13, to 2014-15, essentially on the grounds that we failed to produce forms A-1 and form A-2, as stipulated under notification 40/2012-ST dated 20-6-2012, as further rescinded by notification 12/2013-ST dtd. 1-7-2013.

2. *It has been mainly contended under the notice that, we have failed to produce form A-2 as copies of authorizations issued by the jurisdictional Deputy/Assistant Commissioner of Central Excise having jurisdiction of such SEZ units, in cases of services provided by us to them.*

And therefore in absence of such documentary proof that, we have provided such services to SEZ units, on failure to produce such prescribed forms, it cannot be categorically stated that, we have provided specified services to SEZ units, on which exemption from service tax and its allied cesses, is available to us.

And therefore since we have failed to fulfil the conditions laid down in notification 40/2012- ST, as further amended from time to time and we have wrongly claimed such exemption from service tax, on such services provided by us under section 66B of the Finance act 1994.

Accordingly the notice makes us liable to discharge the entire service tax on the taxable value of services provided to SEZ units during the period 2012 to 2015 with interest and penalty.

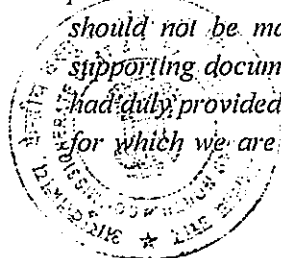
3. *In defence originally in the audit itself and during its investigation, which the SCN also itself notes about, in paragraph 22 of the impugned notice, that under our letter dated 20-11-2019, we had duly provided all the details of our entire services provided by us to these SEZ units.*

Upon their further request we had submitted our ledgers containing entire details of our services entirely provided, by us to these SEZ units for the entire period of 2012 to 2015.

The said ledger copies and details and our explanation and letters in this regards are also itself annexed to the show cause notice from RUD 07 to RUD 08, which contain complete year wise details of the entire services provided by us for these financial years, to various SEZ units located at various places in Gujarat.

4. *Therefore even if we could not provide the authorization copies in Form A-2, without any of our fault, since none of these SEZ units applied for the same, and/or in turn issued us the same, in spite of our specific demand to them.*

Therefore in the absence of any of our purposeful default or purposeful breach, of any procedure prescribed under these notifications, for any fault of the SEZ units in not adhering to this procedure, we should not be made liable to any service tax demand for these services, admittedly since all other supporting documents as already produced by us and reflected even in this SCN, clearly reveal that we had duly provided the services to these units alone, for which we are claiming exemption for this amount, for which we are duly entitled to this exemption under this notification, in view of ample documentary



evidence as already submitted by us.

5. Accordingly to seek to deny the benefit of such beneficial legislation of exemption under the notification, merely for procedural in-adherence by the service recipients i.e the SEZ units, who rather had to entirely undertake and carry out the necessary procedure envisaged under these notifications, merely for this technical defect we should not be made liable to any service tax demand, when the exemption is otherwise clearly eligible and entitled to us, for having provided all these services to these SEZ units only, for this entire period under these notifications beyond any doubt.

6. Accordingly even if the procedure of issuance of Form A-2 issued by these SEZ units to us, does not stand complied in letter and spirit we have proved that, we have given our services to such SEZ units alone, for which we are claiming this exemption under the notification. And hence once the principle stands complied and satisfied to avail such exemption, of proving beyond doubt of our supply of such services to SEZ units alone, by ample other documentary evidences, the question of denying us the exemption should not arise at all.

Hence the compliance and purpose for claiming this exemption also stands fully complied, in view of our documentary evidences and mere non-production of Form A-2, is riot fatal to our claim of such exemption.

Admittedly Special Economic Zones being not considered to be in taxable jurisdictions, are not liable to any taxes locally and hence on this principle also, our services supplied to them cannot be made taxable.

7. It is a settled legal proposition well propounded by now that, procedural infractions or technical defaults, particularly in this case, which are not attributable to us at all, exemption or beneficial legislative intent cannot be denied, merely for such procedural infraction, once the preamble and object of the Notifications stand duly complied.

8. On a perusal of the documents already submitted in detail by us and referred under RUD 07 & RUD 08 of the SCN, it is clearly revealed that we have provided all the details of the services provided to such SEZ units, for which we have claimed exemption for the period 2012 to 2015.

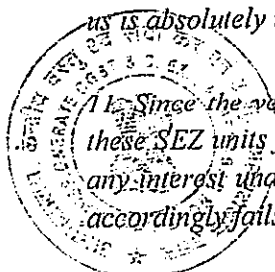
Under Annexure B of the same we have even categorized service revenue from these cases and the names of each of the SEZ units, which can be easily verified.

9. Further we have also under our ledgers as submitted, for the period commencing from 1 April 2012 to 30 June 2017, given specific year wise details for each SEZ unit, to whom we have provided these services, which categorically and beyond doubt establishes through these ledger accounts that, specific vouchers were raised for each of these SEZ units and the receipt against our sales are completely reflected thereunder, which further proves beyond any doubt that, we have clearly provided these services to SEZ units alone, for this particular period and therefore are clearly entitled to the exemption prescribed under notifications 40/2012-St dtd 20-6-2012 as further rescinded by Notification no 12/2013-ST dtd 1-7-2013, for services availed by them through us.

10. Accordingly on this second part of the demand also, the show cause notice fails and cannot seek to deny us the substantive benefit of the exemption under these notifications, for mere technical breaches of our service recipients i.e SEZ Units, particularly in view of our submission of categorical documents in this behalf to conclusively prove our SEZ supplies, the question of denying the applicable exemption to us is absolutely unfounded, illegal and in violation of the basic principles of taxing provisions.

11. Since the very demand of the proposed service tax on these category of services provided by us to these SEZ units fails, under section 73 (1) of the Finance act 1994, the question of equally seeking to levy any interest under section 75, or to propose any penalty under section 78 (1) is equally bad in law and accordingly fails.

12. We equally at this stage without admitting to any of the proposed demand under the SCN, also like to



highlight that the computation of the Service tax demand is also wrong and against the settled principles of taxation in not granting abatement of salaries of our security guards, their other contributions including for PF, EPF, Gratuity and such other statutory deductions.

13. At this stage we also crave leave to refer to Revenue Para no 2, of the Final Audit Report 915/2018-19 dtd 31-1-2019 attached at RUD 01 to the SCN, whereunder though we have paid the Service tax with interest and penalty total of Rs.2,62,639/- for services provided to non-SEZ Unit from 2012-13 to 2014-15, while agreeing to the audit objection, mistakenly we have paid an excess amount of service tax without deducting reimbursable expenses of our Guard Salary and their statutory labour deductions and actuals etc while computing this demand.

Admittedly all these reimbursable would not form part of the Service tax computation and or our actual receipts since these are paid to our guards and what remains is our actual receipt liable to service tax. Hence we request you to kindly recompute this demand and refund us the excess service tax paid by us as also its excess interest and penalty paid by us.

14. Further similarly under the same Audit Report at Revenue Para 04, we have been made to pay an excess amount of Cenvat credit reversal from 2012 to June 2017, under rule 6 (3) of the Cenvat Credit rules 2004, for allegedly not maintaining separate accounts of services to exempted persons and taxable persons and not paying 7% of value of exempted services, since we had to pay/reverse the Credit proportionately only and not for the entire services. Therefore this too requires to be recomputed and re-credit granted to us with refund of excess interest and penalty paid by us ..

15. Accordingly the demand and computation under the SCN demand even assuming though not admitting on merits is also otherwise entirely wrong without taking in to account the actual deductibles from our revenue which is ' shared accordingly. Admittedly all these reimbursable would not form part of the Service tax computation and or our actual receipts since these are paid to our guards and what remains is our actual receipt liable to service tax.

16. We crave leave to refer to and highlight the settled legal propositions in this regards at the time of PH of this adjudication.

17. We in view of the above discussions therefore state and submit that no demand, is sustainable in any manner under the impugned notice upon us, both on merits as well as for expiry of prescribed time limitation to now raise this demand.

18. Accordingly the Subject show cause notice fails in Law, being absolutely illegal, time barred and without authority of Law which therefore deserves to be quashed and vacated forthwith."

Personal Hearing-

15. Personal hearing in the case was conducted on 07.06.2021 which was attended by Shri Hasit Dave, Advocate through virtual hearing. He reiterated the points made vide his written submissions dated 11.07.2020 and requested to drop the proceedings.

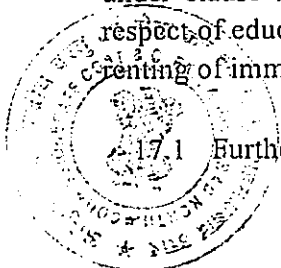
Discussion and findings-

16. I am going to discuss both the issues one by one and examine the assessee's response to reach a conclusion in the matter.

(A) Demand of Service Tax on providing security services to hostels-

17. First issue in hand is demand of Service Tax on providing security services to hostels. The assessee's contention is that the exemption to security services provided to educational institutions, was highlighted and defined under mega exemption notification 25/2012-ST dtd 20-6-2012. And under clause 9 of the said notification, services provided to or by an educational institution, in respect of education was exempted from service tax by way of a) auxiliary education services or b) renting of immovable property.

17.1 Further the noticee has submitted that in the definition clause of this notification "auxiliary



education services" it is defined that any services provided to and for, and in relation which may be required to run the educational institution, either themselves or outsourced, would all be termed as auxiliary or ancillary to the education and examples are quoted therein of services like admission, conduct of examination, catering, transportation and likewise. Therefore it included firstly: services for the students and the faculty or any other services which educational institutions ordinarily carry out themselves, but may obtain as outsourced services, from any other person including services related to admission to such institution, conduct of examination, catering for the students under a midday meal scheme sponsored by Government or transportation of students, faculty or staff of such institution.

Accordingly it is not that only education services for the students were exempted, but any other services carried out by such educational institutions by outsourced services for such institution, which were necessary and requisite in furtherance of imparting of education, equally including for the students' and the faculty or staff like services of catering, admission process, conduct of examination and all including, security services provided to such educational institution were also exempted.

17.2. Further the noticee has submitted that several private schools and associations of higher secondary schools and various other federations and associations of schools and institutions imparting education, with various other facilities being provided to students like accommodation, residence, meals etc had approached the Central Board of Excise & Customs, seeking specific queries and clarifications upon which the Central Board of Excise & Customs (CBEC) had specifically clarified to all the Commissionerates, under paragraphs 3 & 4 of their circular dated 19 September 2013, that auxiliary educational services provided to educational institutions like transport operators to ferry students to and from the school, hostels, housekeeping services, canteens and security services etc would all be covered as auxiliary education services, since they also relate to and directly pertain to conduct and basic working of the educational institution in every manner and being related thereto directly, would also be eligible to exemption under notification 25/2012-ST. Accordingly all doubts and queries, were put to rest by the Central Board of Excise and Customs, vide this circular that right from the introduction of the notification 25/2012-ST, all "ancillary/auxiliary services" undertaken by an educational institution, to run the same being also a part and purpose of imparting of education and therefore would continue to be eligible to exemption, including specifically security services to and for hostels attached to such education institution. An educational institution, cannot run by itself or for: simply providing education, but would also have to avail various auxiliary and ancillary services to run the institution, to cater to students and their staff and faculty, which would necessarily mean that any educational institution imparting education and also providing residence in hostels to their students, would also be a part and parcel of the institution itself, since without providing such residence many of such institutions, may not be able to solely render education, as in their case.

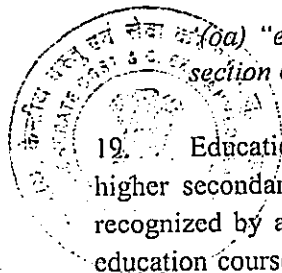
Therefore it was specifically clarified that, the exemption has to take within its ambit, all its auxiliary and ancillary services like hostels, canteens and services provided to and for the same, including housekeeping and security services provided to such hostels and canteens, including through outsourced agencies.

17.3. Further, the assessee has tried to establish that they have provided services to the educational institution and the government run hostels are treated as educational institutes for exemption purpose under the mega exemption notification.

18. I find that paragraph 2 of Notification No. 25/2012 – Service Tax dated 20.06.2012, was amended by Notification No. 6/2014-S.T., dated 11-7-2014, to incorporate clause (oa) defining *educational institution* as under :-

(oa) "educational institution" means an institution providing services specified in clause (l) of section 66D of the Finance Act, 1994 (32 of 1994)."

19. Educational institutions providing services, namely, Pre-school education and education upto higher secondary school or equivalent; education as a part of curriculum for obtaining qualification recognized by any law for the time being in force; and education as a part of an approval vocational education course, were exempted under Clause (l) of Section 66D of the Finance Act, 1994. Hostels are



not educational institutions providing the above types of education and therefore security services provided to such Hostels would not covered under the exemption provided under SI No. 9 of Notification No. 25/2012 – Service Tax dated 20.06.2012. Clause (l) of Section 66D of the Finance Act, 1994 continued to be in force till 14th May 2016. Subsequently, vide Notification No. 9/2016-S.T., dated 1-3-2016, clause (oa) was incorporated in Notification No.25/2012 –ST defining an *educational institution*. Notification No. 9/2016-S.T., dated 1-3-2016 merely incorporated the contents of clause (l) of Section 66D of the Act into clause (oa) of the Notification No. 25/2012. As a result of the substitution of SI No. 9 made vide Notification No. 6/2014-S.T., dated 11-7-2014, only specific services provided to an educational institution by way of transportation of students, faculty and staff; catering, including any mid-day meals scheme sponsored by the Government; security or cleaning or house-keeping services performed in such *educational institution* and services relating to admission to, or conduct of examination by, such institution were exempted under SI No.9(b) of the Notification *ibid*. An *educational institution* was defined as an institution providing services specified in clause (l) of section 66D of the Finance Act, 1994 (32 of 1994), and the definition of an *educational institution* was incorporated in the Mega Exemption Notification No. 25/2012-ST dated 20.6.2012, vide Notification No. 09/2016-ST dated 01.03.2016, as already elaborated above. The definition of *educational institution* still does not cover Hostels.

20. *Auxiliary educational services*, as defined in 2(f) of Notification No. 25/2012-ST dated 20.6.2012 provided to or by an *educational institution* in respect of education exempted from service tax, were exempt upto 11.7.2014, which included services relating to imparting any skill, knowledge, education or development of course content or any other services which *educational institutions* ordinarily carry out themselves but may obtain as outsourced services from any other person. Security services provided by the assessee to Hostels cannot be termed as *ancillary services* and neither does it refer to services which educational institutions can ordinarily carry out themselves. Security services are normally provided by non-academically trained persons and would not be considered as services which educational institutions would ordinarily carry out themselves. Hence the claim of the assessee made under their letter dated 16.8.2018, that any organization that provides direct services and related ancillary services for the purpose of education are included in educational institutes and that Hostels are included in ancillary services, is not tenable. Besides, sl no. 9 of Notification No. 25/2012-ST dated 20.6.2012 was also substituted vide Notification No. 6/2014-S.T., dated 11-7-2014 and hence the definition of *auxiliary educational services* provided in paragraph 2(f) of the Notification No.25/2012-ST was no longer relevant w.e.f. 11/7/2014.

21. From the above, it can be summarized that since Hostels are merely places to stay, and are not covered under the definition of *educational institution*, the security services provided by the assessee to such Hostels run by the Social Welfare Department of the Government of Gujarat would not be eligible for exemption under SI No.9(b) of Mega Exemption Notification No. 25/2012 – Service Tax dated 20.06.2012, as amended. Therefore, the unpaid service tax of Rs.72,75,783/- on the taxable value of security services provided to Hostels, is liable to be demanded and recovered from the assessee under the proviso to Section 73(1) of the Finance Act, 1994.

22. Whereas 'service' is defined in Section 65B (44) of the Act as *any activity carried out by a person for another for consideration, and includes a declared service.* 'Taxable Service' defined under Section 65B(51) of the Act as *any service on which service tax is leviable under Section 66B.* Section 67(i) of the Act provides that "*in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him*".

23. A conjoint reading of all the above provisions makes it clear that any security services provided by one person to another, for consideration, would amount to provision of service, which would be taxable. Accordingly, it appears that the security services provided by the assessee are taxable services as defined under Section 65B(51) of the Act and are therefore, leviable to tax under Section 66B of the Act. By providing the above services, for a consideration, the assessee has provided a service as defined under clause (44) to Section 65B of the Act.

24. From the foregoing facts and discussions, It is clear that the assessee has contravened the provisions of



- Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 as they have failed to pay service tax at the rate specified in Section 66B in such manner and within such period as may be prescribed;
- Section 70 of the Act read with Rule 7 of the Service Tax Rules, 1994 as they have failed to assess their correct service tax liability and failed to file proper returns as prescribed.
- Notfn No 25/2012-ST dated 20.6.2012, as amended as they have wrongly claimed the exemption, under Sr No 9(b)(iii) of the Notfn *ibid*.

25. The assessee's reliance upon Board clarification is not tenable as they have tried to misinterpret the meaning of above said clarifactory letter of the Board dated 13.09.2013. On going through para 4, it is clear that "*in addition to the services mentioned in the definition of "auxiliary educational services", other examples would be hostels, housekeeping, security services, canteen etc.*" As we have already discussed that noticees services to the hostels cannot be categorized as 'auxiliary educational services' and as per para 4 above, these services can not be classified as other auxiliary educational services as they have not provided the services to educational institutes rather they have given security services to hostels only. The hostel services provided to educational institutes are exempted from service tax by the virtue of para 4 discussed above. Here is the case of security services provided to hostels only. So, The above clarifactory letter of board is not applicable on them.

26. I find that the assessee has wrongfully claimed the benefit of exemption under Sr No 9 to Notfn No 25/2012-ST dated 20.6.2012, as amended, as such security services have been provided to Hostels, which are not *educational institution* as defined under Clause (I) of Section 66D of the Finance Act, 1994 and under clause (oa), incorporated in Notification No.25/2012 vide Notification No. 9/2016-S.T., dated 1-3-2016.

27. I find that that the assessee has willfully and deliberately suppressed the material facts from the department that they have provided security services to non-educational institutions and not to *educational institutions* as defined under Notification No 25/2012-ST dated 20.6.2012, as amended. It appears that such facts have been suppressed with intent to evade payment of service tax by wrongfully availing benefit of exemption under the Notification *ibid*. This undue and wrongful benefit of an Exemption Notification claimed by the assessee would have remained undetected had audit not been undertaken by the department.

28. I find that the assessee has willfully suppressed the material facts, in the ST3 returns filed by them during 2012-13 to 2017-18 (upto June 2017), with intent to evade payment of service tax by claiming incorrect benefit under Sl No.9 of Mega Exemption Notfn No 25/2012-ST dated 20.6.2012. In view thereof, service tax paid by the assessee *under protest*, amounting to Rs.72,75,783/- on the taxable value of security services provided by them for the period from 2012-13 to 2017-18 (upto June 2017) is liable to be demanded and appropriated from the assessee under the proviso to sub-section (1) of Section 73 of the Finance Act, 1994 alongwith interest under Section 75 of the Act, *ibid*. It also appears that by the act of willfully suppressing the fact of wrongful availment of benefit under Mega Exemption Notification No. 25/2012-ST and by contravention of the various provisions of the Act and rules made thereunder, with intent to evade payment of duty, the assessee has rendered themselves liable for penal action under Section 78(1) of the Act.

(B) Wrong availment of exemption on services provided to SEZ units without producing Form A-1 and A-2:

29. Second demand raised under the present show cause notice pertains to exemption availed by the noticee from payment of service tax on services provided to various SEZ units for the period 2012-13; to 2014-15 without form A-1 and form A-2, as stipulated under notification 40/2012-ST dated 20-6-2012, as further rescinded by notification 12/2013-ST dtd 1-7-2013.

30. The relevant text contained in Notification No 40/2012-ST dated 20.06.2012, as rescinded / superseded by Notification No. 12./2013-ST dated 1.7.2013, is reproduced below:

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32

of 1994) (hereinafter referred to as the said Act) read with sub-section (3) of section 95 of Finance (No. 2), Act, 2004 (23 of 2004) and sub-section (3) of section 140 of the Finance Act, 2007 (22 of 2007) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 40/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 482(E), dated the 20th June, 2012, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ Unit) or Developer of SEZ (hereinafter referred to as the Developer) and used for the authorised operation from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon.

2. The exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations :

Provided that where the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax *ab initio*, subject to the conditions and procedure as stated below.

3. This exemption shall be given effect to in the following manner :

(I) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.

(II) The *ab initio* exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely :-

- (a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I);
- (b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;
- (c) the SEZ Unit or the Developer shall provide a copy of said authorization to the provider of specified services. On the basis of the said authorization, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax"

31. The above Notification exempts services, received by a unit located in a Special Economic Zone or Developer of SEZ and used for the authorized operations, from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon, subject to the conditions stated there under. The person/service provider liable to pay service tax has the option not to pay the service tax *ab initio* on the specified services provided to an SEZ Unit subject to production of an authorization issued by the jurisdictional Deputy/Assistant Commissioner of Central Excise, to the SEZ Unit or the Developer, in Form A-2. The service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax on the basis of the said authorization.

32. I find that in the present instance, the assessee has failed to produce copies of authorizations issued by the jurisdictional Deputy/Assistant Commissioner of Central Excise, to SEZ Units, in Form A-2, in case of services provided by the assessee to such SEZ Units. The assessee has further failed to provide a list of specified services approved by the Approval Committee on which the SEZ Unit wishes to

claim exemption from service tax. Hence, no documentary proof is available to substantiate the claim of the assessee that they have provided specified services to SEZ Units on which *ab-initio* exemption from service tax has been claimed by them. In absence of Forms A-2 issued by the jurisdictional Deputy/Assistant Commissioner of Central Excise as also failure on the part of the assessee to submit copies of declaration in Form A-1, verified by the Specified Officer of the SEZ, or a list of specified services, it cannot be categorically stated that the assessee has provided specified services to SEZ Units on which service tax, education cess, and secondary and higher education cess leviable thereon is exempted.

33. In their reply the assessee has tried to shift burden of proof upon the service receivers i.e. the SEZ units and tried to prove that it is only procedural lapse from their part and they are liable for statutory benefits under the said notification. This contention of noticee is not tenable as procedures are laid down only to execute the statutory provisions. In this case Form-A1 and A2 are the basic documents for claiming exemption and they are approved by Approval Committee of SEZ and Deputy/Assistant Commissioner of Central Excise respectively. Exemption is available only on authorized services approved by approval Committee and authorised by Deputy/Assistant Commissioner.

34. From the above, it is clear that the assessee has failed to fulfill the conditions laid down in Notification No. 40/2012-S.T., dated 20-6-2012 as rescinded/superseded by Notification No. 12/2013-ST dated 1.7.2013, and has therefore, wrongfully claimed exemption from service tax, education cess, and secondary and higher education cess, leviable on services under Section 66 of the Act. Hence, it is clear that the assessee is liable to discharge service tax on the taxable value of security services provided to SEZ units during the period 2012-13 to 2014-15.

35. I find that 'service' is defined in Section 65B (44) of the Act as *any activity carried out by a person for another for consideration, and includes a declared service*. 'Taxable Service' is defined under Section 65B(51) of the Act as *any service on which service tax is leviable under section 66B*. Section 67(i) of the Act provides that "*in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him*".

36. A conjoint reading of all the above provisions makes it clear that any activity of Security services, when carried out by a person for another, for consideration, would amount to provision of service, which would be taxable. From the records, it is evident that the assessee has provided security services to SEZ Units against which they have received a consideration. Therefore such services provided by the assessee are covered under the term 'service' as defined under Section 65B(44) of the Finance Act, 1994 and is a taxable service as defined under Section 65B(51).

37. Further, the assessee has failed to provide the necessary documentary evidences such as Forms A-1 and A-2 to demonstrate that such security services provided by the assessee are specified services to be used in the authorized operations of the SEZ Units and that such specified services are also approved by the Specified Officer of the SEZ. Accordingly the security services provided by the assessee are liable for payment of service tax under Section 66B of the Act.

38. I find that the assessee has suppressed the fact that they did not possess the Forms A1 and A2 as required under Notification No 40/2012-ST dated 20.06.2012 as superseded by Notification No. 12/2013-ST dated 1.7.2013, and has therefore failed to fulfill the conditions laid down in the Notification *ibid*. The fact that they had supplied services to SEZ Units without Form- A2 was detected only during audit. So the assessee has deliberately and willfully mis-stated facts and has suppressed such facts from the department with intent to evade payment of service tax. Further the assessee has not disclosed the full amount of consideration received by them on provision of Security Services to SEZ Units in the ST-3 returns filed by them for the period 2012-13 to 2014-15 and has therefore, suppressed the material facts from the department. Accordingly, service tax not paid amounting to Rs.6,43,979/- for the period from 2012-13 to 2014-15 is liable to be demanded and recovered from them under the proviso to sub-section (1) of Section 73 of the Finance Act, 1994. As the assessee has paid the service tax of Rs.6,43,979/-, under protest therefore the same needs to be appropriated against the demand by vacating the protest lodged by the them. Further for the delay in payment of service tax of Rs.6,43,979/-, which was paid under protest, interest is liable to be charged and recovered from the assessee under the provisions of Section 75 of the Finance Act, 1994. By the act of not disclosing the full amount of consideration received on account of provision of security services and by contravention of the various provisions of the



Act and rules made thereunder, the assessee has rendered themselves liable for penal action under Section 78(1) of the Act.

Order

39. In view of above discussion and my findings therein I pass the following order-

- i. I deny the claim for exemption under Sl. No 9 of Notification No. 25/2012 – Service Tax dated 20.06.2012, as amended to M/s Gujarat Industrial Security Force Society, Block No.F, 5th Floor, Multi Storage Building, Manjushri Mills Campus, Girdharnagar, Asarwa, Ahmedabad-380016 ;
- ii. I confirm the demand of Service tax of Rs. 72,75,783/- (Rupees Seventy Two lakhs Seventy Five thousand seven hundred Eighty Three) from them under the proviso to section 73(1) of the Finance Act, 1994 .The amount of Rs.72,75,783/- already paid by them is appropriated against this demand;
- iii. The claim for exemption under Notification No.40/2012-ST dated 20th June, 2012 as superseded by Notification No.12/2013-ST dated 1st July-2013 is denied to them;
- iv. I confirm the demand of Service tax amounting to Rs.6,43,979/- (Rupees Six lakhs forty three thousand nine hundred seventy nine only) from them under proviso to Section 73(1) of the Finance Act, 1994 .The amount of Rs.6,43,979/- already paid by them is adjusted and appropriated against this demand;
- v. I order to vacate the protest vide their protest letters dated 16.08.2018 for making the payment of Rs.72,75,783/- and letter dated 28.02.2020 for making the payment of Rs.6,43,979/-, respectively;
- vi. I order interest to be charged and recovered at the applicable rate from them under the provisions of Section 75 of the Finance Act, 1994 on the demand at (ii) and (iv) above; and
- vii. I impose the penalty of Rs. 72,75,783/- and Rs.6,43,979/- on them under the provisions of Section 78(1) of the Finance Act, 1994 on the demands at (ii) and (iv) above.

40. It is further clarified that in terms of Section 78 (1) of the Finance Act, 1994 if M/s Gujarat Industrial Security Force Society, Block No.F, 5th Floor, Multi Storage Building, Manjushri Mills Campus, Girdharnagar, Asarwa, Ahmedabad pays the amount of interest payable thereon at (vi) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the penalty imposed at Sr.No.(vii) above, subject to the condition that such reduced penalty is also paid within the period so specified as the Service Tax demand is already paid and appropriated.

(Maruti Tripathi)

Joint Commissioner,

CGST & CEx., Ahmedabad-North.

F No. STC/15-12/OA/2020
By Speed Post AD

Date:23.06.2021.

To

M/s Gujarat Industrial Security Force Society,
Block No. F, 5th Floor, Multi Storage Building,
Manjushri Mills Campus,
Girdharnagar, Asarwa, Ahmedabad-380016.

Copy to :

- 1) The Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.
- 2) The Deputy/Assistant Commissioner, Div-II CGST & Central Excise, Ahmedabad North.
- 3) The Superintendent, Range-I Division II, CGST & Central Excise, Ahmedabad North
- 4) Guard File.

