


<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/15-62/OA/2021

DIN-20220564WT000066756C

आदेश की तारीख / Date of Order : 18.05.2022
जारी करने की तारीख / Date of Issue : 20.05.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV
आयुक्त / COMMISSIONER

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 03 /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 Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

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

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

Amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)



3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए।(अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

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

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

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

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

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

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

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

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

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

-कारण बताओ सूचना:



Proceedings initiated vide Show Cause Notice No. STC/15-62/OA/2021 dated 04/05/2021 issued to M/s. Bahuchar Corporation, Madhav Wadi-II, B/H. Satkar Ghatlodiya, Ahmedabad- 380 061.

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

M/s. Bahuchar Corporation, Madhav Wadi-II, B/H. Satkar Bunglows, K.K. Nagar Road, Ghatlodia, Ahmedabad, Gujarat- 380061, were issued SCN F. No. STC/15-62/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. BAHUCHAR CORPORATION ARE AS FOLLOWS:

M/s. Bahuchar Corporation, Madhav Wadi-II, B/H. Satkar Bunglows, K.K. Nagar Road, Ghatlodia, Ahmedabad, Gujarat- 380061 (hereinafter referred to as the 'Assessee' for the sake of brevity) were engaged in providing taxable services, and were holding Service Tax Registration No. AASFM4719LSD001.

- Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" was undertaken by the Central of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes & Customs (CBIC).
- As per the records available with the divisional office of Division-VII and on going through the Third party Data shared by CBDT with CBIC of the said assessee for the F.Y. 2015-16 and 2016-17, the total sales of service (Value from ITR) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return filed by the assessee for the F.Y. 2015-16 and 2016-17. Therefore, it appeared that the said assessee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for the F.Y. 2015-16 and 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16 and 2016-17. The difference in value as observed for FY 2015-16 and 2016-17 were found to be as under:

TABLE

F.Y.	Taxable Value as per ST3 returns (In Rs.)	Gross Receipts from services (Value from ITR/26AS)(in Rs.)	Difference between value of services form ITR/26AS and Gross Value in Service Tax Provided (in Rs.)	Resultant Service Tax short paid (In Rs.)
2015-16	0	17,54,95,659/-	17,54,95,659/-	2,54,46,871/-
2016-17	0	16,54,59,441/-	16,54,59,441/-	2,48,18,916/-
TOTAL				5,02,65,787/-

4. As per Section 68 of the Finance Act, 1994 'every person' liable to pay Service Tax, shall pay Service Tax at the rate specified in Section 66/66B 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, it appeared that the assessee had not paid service tax for Financial Year 2015-16 and 2016-17.

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-3 returns). It appeared that the assessee had not assessed the tax dues properly on the services provided/received, and had failed to file correct ST-3 Returns under provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

6. 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. It appeared that the assessee had failed to pay their Service Tax liabilities in the prescribed time limit therefore they had made themselves liable for payment of the said amount along with interest. The said Service Tax was required to be demanded and recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

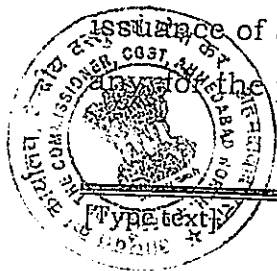
7. It appeared that the Assessee had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they had failed to pay/ short paid/ deposit Service Tax to the extent of Rs.5,02,65,787/-, by declaring less value in their ST-3 Returns vis-a-vis 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 full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value which had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 & 2016-17. From the evidences gathered/available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as could be seen in the table above and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs.5,02,65,787/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the assessee which was in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government. It appeared that the above act of omission on the part of the Assessee which resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 were done with intent to evade payment of Service tax to the extent mentioned hereinabove. The same appeared to be recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. 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 and it appeared that the Assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

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



Unquantified demand at the time of issuance of SCN.

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

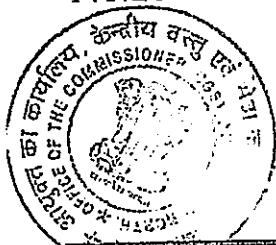
'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'

10. Accordingly, Show Cause Notice No.STC/15-62/OA/2021 dated 23.04.2021 was issued by the Commissioner, Central GST & Central Excise, Ahmedabad North to M/s. Bahuchar Corporation, Madhav Wadi-II, B/H. Satkar Bunglows, K.K. Nagar Road, Ghatlodia, Ahmedabad, Gujarat- 380061 asking them as to why:

- (i) The demand for Service tax to the extent of Rs. 5,02,65,787/- 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 the failure to assess their correct Service Tax liability and failed 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 tendered their written submission on 16.12.2021, wherein they interalia have stated that, they are government sub-contractor and are providing works contract services to M/s. Patel Foundation. They have submitted that M/s. Patel Foundation was the main contractor. They have submitted that as per Entry No.12 and 13 of Mega Exemption Notification No.25/2012, they were exempted from levy of service tax. They have submitted the copy of Income Tax Returns for F.Y.2015-16 & 2016-17, copy of Audit Reports F.Y.2015-16 & 2016-17, copy of Service Tax returns for F.Y.2015-16 & 2016-17, sample invoices of works contract and sub-contract agreements for F.Y.2015-16 & 2016-17.



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PERSONAL HEARING:

12. Personal Hearing on the subject matter was granted to the assessee on 25.04.2022. Shri Dashan P. Trivedi, C.A. appeared on behalf of the noticee. He submitted that the assessee is covered under the Mega Exemption Notification No.25/2012-ST as they are government contractors and have provided services to government by way of construction etc. They have tendered additional submission dated 25.04.2022 during personal hearing in support of their contention.

DISCUSSION AND FINDINGS:

13. I have carefully gone through the facts of the case and records available in the case file, which include the SCN F. No. STC/15-62/OA/2021, the defence reply submitted by the assessee on 16.12.2021, and documents submitted and oral submission made by the assessee during the personal hearing.

14. I find that basically the essence of the case is that data of Sales /Gross receipt from services/ Total Amount Paid/Credited under 194C, 194H, 194I, 194J" was shared by the CBDT with CBIC for FY 2015-16 & 2016-17. The difference in taxable value was worked out after comparing the income declared in ITR /Form 26AS vis-à-vis taxable value disclosed in ST-3 Returns. The difference of Rs. 34,09,55,100/- in value of services was observed for FY 2015-16 & 2016-17. On the basis of which, it appeared that the assessee had short paid the service tax of Rs. 5,02,65,787/- on such differential value, for providing the taxable service. The breakup of the same for the F.Y. 2015-16 & 2016-17 is as given below.

F.Y.	Taxable Value as per ST3 returns (In Rs.)	Gross Receipts from services (Value from ITR/26AS)(in Rs.)	Difference between value of services form ITR/26AS and Gross Value in Service Tax Provided (in Rs.)	Resultant Service Tax short paid (In Rs.)
2015-16	0	17,54,95,659/-	17,54,95,659/-	2,54,46,871/-
2016-17	0	16,54,59,441/-	16,54,59,441/-	2,48,18,916/-
TOTAL				5,02,65,787/-

Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs.5,02,65,787/- on the taxable value of Rs. 34,09,55,100/- for the Financial Year 2015-16 and 2016-17 under proviso to section 73(1) of Finance Act, 1994 or not.

15. Thus, first and foremost it is important to understand the liability or otherwise of the assessee for paying Service Tax. I am of the opinion that for understanding the same it is necessary to understand the activities being carried out by the assessee. I observe that after introduction of new system of taxation of services in negative list regime, any service for a consideration is taxable except those services which are clearly specified in the negative or exempt list by virtue of mega exemption notification.

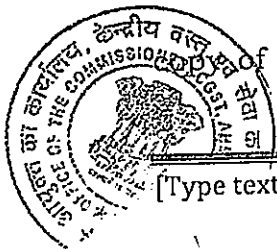
I find from the available records that the assessee are a partnership firm and they run their business in the name of M/s. Bahuchar Corporation.

I find that the assessee have submitted their written submission dated 16.12.2021 & 25.04.2022 alongwith the following documents.

- Audited P & L Statement for F.Y.2015-16 & 2016-17.
- ST-3 returns for F.Y.2015-16 & 2016-17.
- Income Tax returns for F.Y.2015-16 & 2016-17.
- Sample invoices of works contract and sub-contract agreements for F.Y.2015-16 & 2016-17.
- Copy of Form 26AS for F.Y.2015-16 & 2016-17.
- Copy of Sales Register for F.Y.2015-16 & 2016-17.

16. I discern that the assessee in his defence reply dated 16.12.2021, has stated that they were government sub-contractor. That, they were providing works contracts service as sub-contractor to M/s. Patel Foundation and M/s. Patel foundation was the main government contractor, who was exempted from levy of service tax under clause 12 & 13 of Mega Exemption Notification No.25/2012. Further, the assessee in their additional reply dated 25.04.2022 have submitted the copy of Form 26AS for F.Y.2015-16 & 2016-17,

Copy of sales register for F.Y. 2015-16 & 2016-17. They have submitted that



they are government contractor and bill of each site had been prepared by government department; they have submitted that the bills of the sites which were allotted by Patel Foundation to them were also prepared by government only, that they have not prepared separate bill for the work.

17. I find that the assessee are holding Service Tax Registration No.AASFM4719LSD001 under the category of works contract service and they had filed ST3 returns for the period 2015-16 & 2016-17. The details of the ST3 returns filed by the assessee are as under;

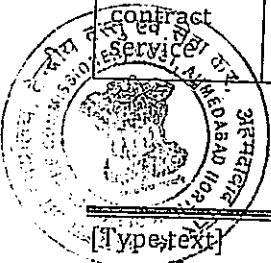
2015-16

April to September 2015-16							
	Gross Taxable value	Exempted service	Abatement	Paid by service receiver	Total amount claim as deduction	service tax payable	S.Tax paid
works contract service	45717941	0	27430765	18287176	45717941	0	0

October to March 2015-16							
	Gross Taxable value	Exempted Service	Abatement	Any other claim as deduction	Total amount claim as deduction	service Tax payable	
works contract service	128128437	48755811	47623576	31749050	128128437	0	0
TOTAL OF 2015-16	173846378	48755811	75054341	50036226	173846378	0	0

2016-17

April to September 2016-17							
	Gross Taxable value	Exempted service	Abatement	Paid by service receiver	Total amount claim as deduction	service tax payable	S.Tax paid
works contract service	44628976	0	26777386	17851590	44628976	0	0



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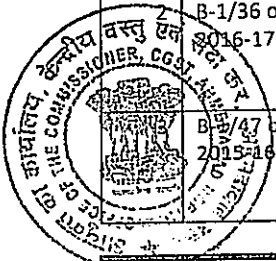
October to March 2016-17

	Gross Taxable value	Exempted Service	Abatement	Any other claim as deduction	Total amount claim as deduction	service tAx payable	
works contract service	84494512	0	50696707	33797805	84494512	0	0
TOTAL OF 2015-16	129123488	0	77474093	51649395	129123488	0	0

18. From the returns filed by the assessee I find that the assessee were providing works contract services and have filed the due ST3 returns. On going through the ST-3 returns filed by the assessee, I find that they have availed the benefit of Notification No.30/2012, Sl.No.9 & 24/2012, Sl.No.1 for April to September-2015-16, Notification No.25/2012, Sl.No.12(d) & 24/2012, Sl.No.1 for October to March-2015-16, Notification No.30/2012, Sl.No.9 & 24/2012, Sl.No.1 for April to September-2016-17 and Notification No. 24/2012, Sl.No.1 for October to March-2015-16. I also find that the assessee have shown Service Tax payable as "0" in the ST-3 return filed for the period 2015-16 & 2016-17. I find that the assessee in defence reply dated 16.12.2021 has submitted that they were exempt from levy of Service Tax as per entry no. 12 & 13 of Notification No.25/2012.

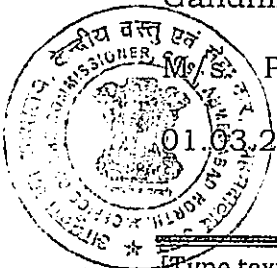
19. On the basis of documents submitted by the assessee I find that they have provided the works contract services as given in table below;

Sr.No	Work Order No.	Date of work order	name of work	work awarded by	Original work allotted to	Sub Contract work agreement with	
1	B-1/SH80 of 2016-17	14.3.17	construction of new Annexe building	Road & Building	Ashish Construction	Bahuchar Corporation	copy of work order allotted to main contractor not provided, as per sub contract agreement work order after 01.03.2015
	B-1/36 of 2016-17	24.3.17	construction of new Annexe building	Road & Building	Ashish Construction	Bahuchar Corporation	as above
	B-1/47 of 2015-16	28.03.16	construction of new Annexe building	Road & Building	Ashish Construction	Bahuchar Corporation	As above



4	B-1/46 of 2015-16	29.01.16	C category residential quarter	Road & Building	Ashish Construction	Bahuchar Corporation	As above
5	B-1/47 of 2015-16	28.03.16	construction of new Annexe building	Road & Building	Ashish Construction	Bahuchar Corporation	As above
6	B-1/5 of 2012-13	18.05.12	Construction of swarnim sanskrutik Kendra	Gandhinagar urban development authority	Patel foundation	Bahuchar Corporation	
7	PIU/Civil/W O /2331/2015	02.09.15	Additional work of kalavati rasiklal parikh ayurvedic hospital	Chief Engineer, Project Implementati on Unit, Gandhinagar	Patel foundation	Bahuchar Corporation	Work order after 01.03.15
8	TD-84 of 15-16	12.7.15	Construction of Police Quarter at mutedi	Gujarat State Police Housing Corporation	Patel foundation	Bahuchar Corporation	Work order after 01.03.15
9	B-2/2	1.1.15	Construction of C category residential quarters	Executive Engineer (R&B), Ahmedabad	Patel Foundation	Bahuchar Corporation	
10	B-2/4	3.3.14	Construction of new annexe building	Executive Engineer (R&B), Ahmedabad	Patel Foundation	Bahuchar Corporation	

19.1 I find that the assessee have submitted that the original work of Sr.No.1 to 5 of above table was awarded by Exe.Eng. (R&B), Ahmedabd to M/s. Ashish Construction Co. However, the assessee have not provided the copy of work order allotted to M/s. Ashish Construction Co. Further, on going through the RA Bill submitted by the assessee I find that work contract for Sr.No.1 to 5 have been awarded after 01.03.2015. Since, the work order have been issued after 01.03.2015, the condition of the Notification No.25/2012-ST dated 20.06.2012, that the contract which had been entered prior to the 1st March,2015 and on which appropriate stamp duty, where applicable had been paid prior to such date were eligible for availment of Sr.No.12A of Notification No.25/2012-ST dated 20.06.2012 have not fulfilled by the assessee. Hence, the assessee are not entitled eligible for benefit of exemption Notification No.25/2012-ST. For work at Sr.No.7 & 8 of the above table works contract have been awarded by Chief Engineer Project Implementation Unit, Gandhinagar & Gujarat State Police Housing Corporation after 01.03.2015 to M/s. Patel Foundation. Since, the work order have been issued after 01.03.2015, the condition of the Notification No.25/2012-ST dated 20.06.2012



that contract which had been entered prior to the 1st March,2015 and on which appropriate stamp duty, where applicable had been paid prior to such date were eligible for availment of Sr.No.12A of Notification No.25/2012-ST dated 20.06.2012 have not fulfilled by the assessee. Hence, the assessee are not entitled for eligible of benefit of exemption Notification No.25/2012-ST. For work at Sr.No.6, 9 & 10 of the above table works contract have been issued before 01.03.2015, and accordingly the assessee can avail the benefit of Exemption Notification No.25/2012-ST dated 20.06.2012.

19.2 I find that the assessee have submitted that they have worked as sub-contractor for government and are eligible for Exemption Notification No.25/2012-ST , Sr.No.12 & 13. In order to understand the issue in the correct context/perspective, I hereby reproduce the same as under:

Notification No. 25/2012-Service Tax:

G.S.R. 467(E).- 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) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

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

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
- (c) a structure meant predominantly for use as (i) an educational,(ii) a clinical, or (iii) an art or cultural establishment;
- (d) canal, dam or other irrigation works;
- (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
- (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

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

- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
- (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

- (c) a building owned by an entity registered under section 12 AA of the Income Tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
- (d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;



19.3 I find that vide Notification No.6/2015-Service Tax dated 01.03.2015 entry no. 12, Sr. No. (a), (c) and (f) of Notification No. 25/2012-ST have been omitted. I hereby reproduce the same as under;

Notification No.6/2015-St dated 01.03.2015.

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.25/2012- 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. 467 (E), dated the 20th June, 2012, namely:-

(ii) in entry 12, items (a), (c) and (f) shall be omitted;

Subsequently, Notification No.9/2016-ST dated 01.03.2016 was issued under which Notification No.25/2012-ST dated 20.06.2012 was again amended and following entries were inserted as per which only those works were exempted which are entered before 01.03.2012, thereby those work were taxable if contract was entered on or after 01.03.2015. The said Notification No.9/2016-ST dated 01.03.2016 is reproduced herewith as below;

G.S.R.257 (E).-In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.25/2012-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. 467 (E), dated the 20th June, 2012, namely:-
1. In the said notification,-

.....

.....

(iv) after entry 12, with effect from the 1st March, 2016, the following entry shall be inserted, namely-

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

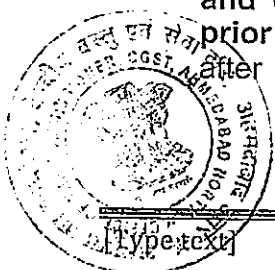
(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

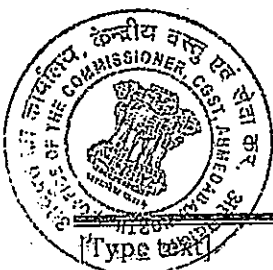
under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date: provided that nothing contained in this entry shall apply on or

after the 1st April,2020;";



[Type text]

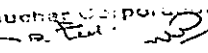
20. I find that as discussed in para 19 & 19.1 above the assessee are not entitled for benefit of exemption notification No.25/2012-ST dated 20.06.2012 for work carried out by them for Sr.No.1 to 5 & 7,8 of table of para 19, as the works order was issued after 01.03.2015. As per Notification No.6/2016-ST dated 01.03.2016 in which the entry no.12A was inserted in Notification No.25/2012-ST dated 20.06.2012 which made clear that exemption of Notification No.25/2012-ST dated 20.06.2012 will be available to the contracts which had been entered into prior to 1st March,2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date. Further, for Sr.No.6,9 & 10 of table of para 19, the assessee had got work contract order for Construction of swarnim sanskrutik Kendra, Construction of C category residential quarters & Construction of new annexe building before 01.03.2015. However, I find that assessee have submitted that they were not preparing separate bill for the work carried out by them, they have simply stated that bills of the sites which were allotted by the Patel Foundation to them were prepared by the Government only. I am not convinced with the arguments put forth by the assessee on this issue. Further, on going through the ledger account for labour civil construction income for the period 1-Apr-2015 to 31-Mar-2016 & 1-Apr-2016 to 31-Mar-2017, it is seen that the assessee had collected or shown as receivable the Service Tax from M/s. Patel Foundation and M/s. Ashish Construction Co. in their ledger account. The copy of the ledger account for the period 1-Apr-2015 to 31-Mar-2016 & 1-Apr-2016 to 31-Mar-2017 is reproduced below for ease of ready reference;



Bahuchar Corporation
 8, Medhavadi - II, B/h,
 Sakkar Bunglows, K.K.Nagar,
 Road, Ghatlodia, Ahmedabad
 Gujarat - 380061, India
Labour Civil Construction Income
 Ledger Account

1-Apr-2015 to 31-Mar-2016

Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit	
6-2015	Dr (as per details)	Journal	25		94,14,120.00	
	Patel Foundation (Bill)	00,28,665.00 Dr				
	Retention Deposite	4,70,706.00 Dr				
	Discount To Main Contractor (TDS)	1,88,282.00 Dr				
	Discount to Main Contractor	94,141.00 Dr				
	Discount to Main Contractor (Vat TDS)	56,485.00 Dr				
	Welfare Cess	84,141.00 Dr				
	Material Testing Charges	1,02,533.00 Dr				
	Material Recovery Exp .	73,400.00 Dr				
	T.D.S. Receivable	1,88,282.00 Dr				
	VAT TDS A/C	56,485.00 Dr				
8-2015	Dr (as per details)	Journal	54		NR.75,363.00	
	Patel Foundation (Bill)	75,44,415.00 Dr				
	Retention Deposite	4,43,768.00 Dr				
	Discount To Main Contractor (TDS)	1,77,507.00 Dr				
	Discount to Main Contractor (Vat TDS)	53,252.00 Dr				
	Discount to Main Contractor	88,754.00 Dr				
	Welfare Cess	88,754.00 Dr				
	Material Recovery Exp .	1,50,400.00 Dr				
	Material Testing Charges	88,754.00 Dr				
	T.D.S. Receivable	1,77,507.00 Dr				
	VAT TDS A/C	53,252.00 Dr				
	Dr (as per details)	Journal	55		1,12,68,133.00	
	Patel Foundation (Bill)	81,24,510.00 Dr				
	Retention Deposite	5,63,307.00 Dr				
	Discount To Main Contractor (TDS)	2,23,323.00 Dr				
	Discount to Main Contractor (Vat TDS)	67,587.00 Dr				
	Discount to Main Contractor	1,17,683.00 Dr				
	Welfare Cess	1,12,681.00 Dr				
	Material Recovery Exp .	67,750.00 Dr				
	Material Testing Charges	44,289.00 Dr				
	T.D.S. Receivable	2,23,323.00 Dr				
	VAT TDS A/C	67,697.00 Dr				
	Service Tax Exp (Patel Foundation)	6,30,804.00 Dr				
	Service Tax Exp (Patel Foundation)	4,97,020.00 Dr				
	Service Tax Exp (Patel Foundation)	5,27,200.00 Dr				
9-2015	Dr (as per details)	Journal	85		1,68,824.00	
	Patel Foundation (Bill)	1,42,581.00 Dr				
	Discount To Main Contractor (TDS)	3,376.00 Dr				
	Discount to Main Contractor	1,688.00 Dr				
	Discount to Main Contractor (Vat TDS)	1,013.00 Dr				
	Retention Deposite	4,034.00 Dr				
	Material Testing Charges	1,614.00 Dr				
	Welfare Cess	1,688.00 Dr				
	T.D.S. Receivable	3,376.00 Dr				
	Service Tax Exp (Patel Foundation)	9,454.00 Dr				
	Carried Over					2,97,24,440.00

For. Bahuchar Corporation


continued ...

Bahuchar Corporation
 Labour Civil Construction Income Ledger Account : 1-Apr-2015 to 31-Mar-2016

Date	Particulars	Vch Type	Vch No.	Debit	Page 2 Credit	
	Brought Forward					2,97,24,440.00
25-9-2015	Dr (as per details)	Journal	90		61,71,615.00	
	Patel Foundation (Bill)	49,76,801.00 Dr				
	Discount To Main Contractor (TDS)	1,23,432.00 Dr				
	Discount to Main Contractor	61,717.00 Dr				
	Discount to Main Contractor (Vat TDS)	37,030.00 Dr				
	Welfare Cess	61,716.00 Dr				
	Retention Deposite	3,08,581.00 Dr				
	Material Testing Charges	61,716.00 Dr				
	Material Recovery Exp .	34,550.00 Dr				
	T.D.S. Receivable	1,23,432.00 Dr				
	VAT TDS A/C	37,030.00 Dr				
	Service Tax Exp (Patel Foundation)	3,45,810.00 Dr				
28-9-2015	Dr (as per details)	Journal	94		98,21,886.00	
	Patel Foundation (Bill)	80,17,801.00 Dr				
	Discount To Main Contractor (TDS)	1,96,438.00 Dr				
	Discount to Main Contractor	1,14,720.00 Dr				
	Discount to Main Contractor (Vat TDS)	58,931.00 Dr				
	Material Testing Charges	98,219.00 Dr				
	Retention Deposite (GSPHC B-256 -Mudali)	9,82,185.00 Dr				
	Welfare Cess	98,219.00 Dr				
	VAT TDS A/C	58,931.00 Dr				
	T.D.S. Receivable	1,96,438.00 Dr				
	Service Tax Exp (Patel Foundation)	5,50,026.00 Dr				
	Service Tax Receivable	5,50,026.00 Cr				
20-11-2015	Dr (as per details)	Journal	168		50,87,645.00	
	Patel Foundation (Bill)	41,01,069.00 Dr				
	Discount To Main Contractor (TDS)	1,01,753.00 Dr				
	Discount to Main Contractor	50,876.00 Dr				
	Discount to Main Contractor (Vat TDS)	30,526.00 Dr				
	Retention Deposite	2,54,382.00 Dr				
	Welfare Cess	50,876.00 Dr				
	T.D.S. Receivable	1,01,753.00 Dr				
	VAT TDS A/C	30,526.00 Dr				
	Material Recovery Exp .	30,100.00 Dr				
	Material Testing Charges	50,876.00 Dr				
	Service Tax Exp (Patel Foundation)	2,84,908.00 Dr				
25-11-2015	Dr (as per details)	Journal	173		1,32,51,806.00	
	Patel Foundation (Bill)	1,09,17,713.00 Dr				
	Discount To Main Contractor (TDS)	2,65,038.00 Dr				
	Discount to Main Contractor	1,54,782.00 Dr				
	Discount to Main Contractor (Vat TDS)	79,511.00 Dr				
	Material Testing Charges	1,32,518.00 Dr				
	Retention Deposite (GSPHC B-256 -Mudali)	13,25,101.00 Dr				
	Welfare Cess	1,32,518.00 Dr				
	VAT TDS A/C	79,511.00 Dr				
	T.D.S. Receivable	2,65,038.00 Dr				
	Service Tax Exp (Patel Foundation)	7,42,101.00 Dr				
	Service Tax Receivable	7,42,101.00 Cr				
	Carried Over					6,46,57,382.00

continued ..



Bahuchar Corporation Labour Civil Construction Income Ledger Account : 1-Apr-2015 to 31-Mar-2016						Page 3
Date	Particulars	Vch Type	Vch No.	Debit	Credit	
	Brought Forward				6,40,57,392.00	
26-11-2016	Dr (as per details)	Journal	174		15,53,486.00	
	Patel Foundation (Bill)	13,54,639.00 Dr				
	Discount To Main Contractor (TDS)	31,070.00 Dr				
	Discount to Main Contractor	15,524.00 Dr				
	Discount to Main Contractor (Vat TDS)	9,332.00 Dr				
	T.D.S. Receivable	31,070.00 Dr				
	VAT TDS A/C	9,321.00 Dr				
	Welfare Cess	15,535.00 Dr				
	Service Tax Exp (Patel Foundation)	86,995.00 Dr				
	Dr (as per details)	Journal	175		1,89,21,164.00	
	Patel Foundation (Bill)	1,59,86,111.00 Dr				
	Discount To Main Contractor (TDS)	3,78,423.00 Dr				
	Discount to Main Contractor	1,89,212.00 Dr				
	Discount to Main Contractor (Vat TDS)	1,13,527.00 Dr				
	Retention Deposits	2,71,932.00 Dr				
	Welfare Cess	1,89,212.00 Dr				
	T.D.S. Receivable	3,78,423.00 Dr				
	VAT TDS A/C	1,13,527.00 Dr				
	Material Recovery Exp .	52,000.00 Dr				
	Material Testing Charges	1,89,212.00 Dr				
	Service Tax Exp (Patel Foundation)	10,59,565.00 Dr				
25-1-2016	Dr (as per details)	Journal	253		1,21,23,446.00	
	Patel Foundation (Bill)	97,70,655.00 Dr				
	Discount To Main Contractor (TDS)	2,42,460.00 Dr				
	Discount to Main Contractor	1,42,339.00 Dr				
	Discount to Main Contractor (Vat TDS)	76,060.00 Dr				
	Material Testing Charges	1,21,234.00 Dr				
	Retention Deposit (GSPHC B-256 -Mudali)	12,12,345.00 Dr				
	Welfare Cess	1,21,234.00 Dr				
	VAT TDS A/C	72,741.00 Dr				
	T.D.S. Receivable	2,42,469.00 Dr				
	Labour Licence	1,21,000.00 Dr				
	Service Tax Exp (Patel Foundation)	6,78,912.00 Dr				
	SBA Cess	24,248.00 Dr				
	Service Tax Receivable	6,78,912.00 Cr				
	SBA Cess - Receivable	24,248.00 Cr				
	Dr (as per details)	Journal	254		1,36,94,395.00	
	Patel Foundation (Bill)	1,25,42,555.00 Dr				
	Discount To Main Contractor (TDS)	2,73,888.00 Dr				
	Discount to Main Contractor (Vat TDS)	82,166.00 Dr				
	Discount to Main Contractor	1,36,944.00 Dr				
	Welfare Cess	1,36,944.00 Dr				
	T.D.S. Receivable	2,73,888.00 Dr				
	VAT TDS A/C	82,166.00 Dr				
	Material Recovery Exp .	28,900.00 Dr				
	Material Testing Charges	1,36,944.00 Dr				
30-1-2016	Dr SBA Cess - Receivable	Journal	259		30,003.00	
	Carried Over				11,03,79,886.00	

For Bahuchar Corporation

continued ...

Bahuchar Corporation Labour Civil Construction Income Ledger Account : 1-Apr-2015 to 31-Mar-2016						Page 4
Date	Particulars	Vch Type	Vch No.	Debit	Credit	
	Brought Forward				11,03,79,886.00	
20-2-2016	Dr (as per details)	Journal	288		30,80,730.00	
	Patel Foundation (Bill)	27,13,681.00 Dr				
	Discount To Main Contractor (TDS)	61,815.00 Dr				
	Discount to Main Contractor	30,807.00 Dr				
	Discount to Main Contractor (Vat TDS)	18,544.00 Dr				
	Welfare Cess	30,807.00 Dr				
	T.D.S. Receivable	61,815.00 Dr				
	VAT TDS A/C	18,544.00 Dr				
	Maintenance Deposits - Guda	1,54,537.00 Dr				
25-3-2016	Dr (as per details)	Journal	355		1,34,50,196.00	
	Patel Foundation (Bill)	79,90,516.00 Dr				
	Discount To Main Contractor (TDS)	2,84,276.00 Dr				
	Discount to Main Contractor	1,57,723.00 Dr				
	Discount to Main Contractor (Vat TDS)	80,608.00 Dr				
	Material Testing Charges	1,34,346.00 Dr				
	Retention Deposit (GSPHC B-256 -Mudali)	13,43,461.00 Dr				
	Welfare Cess	1,34,346.00 Dr				
	VAT TDS A/C	80,608.00 Dr				
	T.D.S. Receivable	2,84,276.00 Dr				
	Star Rate Recovery	29,60,036.00 Dr				
	Service Tax Exp (Patel Foundation)	7,52,338.00 Dr				
	SBA Cess	26,870.00 Dr				
	Service Tax Receivable	7,52,338.00 Cr				
	SBA Cess - Receivable	26,870.00 Cr				
	Dr SBA Cess - Receivable	Journal	368		26,870.00	
	Dr Service Tax Receivable	Journal	367		7,52,338.00	
31-3-2016	Dr (as per details)	Journal	380		38,77,231.00	
	Patel Foundation (Bill)	34,12,471.00 Dr				
	Discount To Main Contractor (TDS)	73,545.00 Dr				
	Discount to Main Contractor	36,772.00 Dr				
	Discount to Main Contractor (Vat TDS)	22,063.00 Dr				
	T.D.S. Receivable	73,545.00 Dr				
	VAT TDS A/C	22,063.00 Dr				
	Welfare Cess	36,772.00 Dr				
	Dr (as per details)	Journal	400		1,50,00,513.00	
	Patel Foundation (Bill)	1,22,21,898.00 Dr				
	Discount To Main Contractor (TDS)	3,00,010.00 Dr				
	Discount to Main Contractor	1,81,325.00 Dr				
	Discount to Main Contractor (Vat TDS)	90,003.00 Dr				
	T.D.S. Receivable	3,17,411.00 Dr				
	VAT TDS A/C	90,003.00 Dr				
	Material Testing Charges	1,50,005.00 Dr				
	Retention Deposit (GSPHC B-256 -Mudali)	15,00,051.00 Dr				
	Welfare Cess	1,50,005.00 Dr				
	Service Tax Exp (Patel Foundation)	8,40,028.00 Dr				
	SDA Cess	30,002.00 Dr				
	Service Tax Receivable	8,40,028.00 Cr				
	SBA Cess - Receivable	30,002.00 Cr				
	Carried Over				14,63,77,764.00	

For Bahuchar Corporation

continued ...



Bahuchar Corporation
Labour Civil Construction Income Ledger Account : 1-Apr-2015 to 31-Mar-2016

Date	Particulars	Vch Type	Vch No.	Debit	Page 5 Credit
	Brought Forward				14,63,77,764.00
31-3-2016	Dr (as per details)	Journal	401	99,53,000.00	
	Patel Foundation (Bill)	91,36,854.00 Dr			
	Discount To Main Contractor (TDS)	1,99,060.00 Dr			
	Discount to Main Contractor	99,530.00 Dr			
	Discount to Main Contractor (Vat TDS)	59,718.00 Dr			
	T.D.S. Receivable	1,99,060.00 Dr			
	VAT TDS A/C	59,718.00 Dr			
	Welfare Cess	99,530.00 Dr			
	Material Testing Charges	99,530.00 Dr			
	Dr (as per details)	Journal	402	1,33,86,330.00	
	Patel Foundation (Bill)	1,18,01,197.00 Dr			
	Retainion Deposite	4,82,078.00 Dr			
	Discount To Main Contractor (TDS)	2,67,727.00 Dr			
	Discount to Main Contractor	1,33,863.00 Dr			
	Discount to Main Contractor (Vat TDS)	80,318.00 Dr			
	T.D.S. Receivable	2,67,727.00 Dr			
	VAT TDS A/C	80,318.00 Dr			
	Material Recovery Exp .	5,378.00 Dr			
	Material Testing Charges	1,33,863.00 Dr			
	Welfare Cess	1,33,863.00 Dr			
	Dr (as per details)	Journal	403	23,09,526.00	
	Patel Foundation (Bill)	21,22,999.00 Dr			
	Discount To Main Contractor (TDS)	46,190.00 Dr			
	Discount to Main Contractor	23,096.00 Dr			
	Discount to Main Contractor (Vat TDS)	13,857.00 Dr			
	T.D.S. Receivable	46,191.00 Dr			
	VAT TDS A/C	13,857.00 Dr			
	Material Testing Charges	20,241.00 Dr			
	Welfare Cess	23,005.00 Dr			
	Dr (as per details)	Journal	404	26,44,599.00	
	Patel Foundation (Bill)	21,54,187.00 Dr			
	Discount To Main Contractor (TDS)	52,892.00 Dr			
	Discount to Main Contractor	26,446.00 Dr			
	Discount to Main Contractor (Vat TDS)	15,868.00 Dr			
	T.D.S. Receivable	52,892.00 Dr			
	VAT TDS A/C	15,868.00 Dr			
	Welfare Cess	26,446.00 Dr			
	Deposit For Extra/Excess For Electric Work-'C'Type	3,00,000.00 Dr			
	Dr Service Tax Receivable	Journal	412	8,40,028.00	
	Cr Closing Balance			17,55,11,247.00	
				17,55,11,247.00	17,55,11,247.00
				17,55,11,247.00	17,55,11,247.00

For Bahuchar Corporation
Partner



Bahuchar Corporation
8, Madhavadi -II, B/h,
Satkar Bunglows, K.K.Nagar-
Road, Ghatlodia, Ahmedabad
Gujarat - 380061, India

Labour Civil Construction Income
Ledger Account

1-Apr-2015 to 31-Mar-2016

Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
24-6-2015	Dr Patel Foundation (Bill)	Journal	25		94,14,120.00
10-8-2015	Dr Patel Foundation (Bill)	Journal	54		88,75,363.00
	Dr Patel Foundation (Bill)	Journal	55		1,12,66,133.00
21-9-2015	Dr Patel Foundation (Bill)	Journal	85		1,68,824.00
25-9-2015	Dr Patel Foundation (Bill)	Journal	90		61,71,615.00
29-9-2015	Dr Patel Foundation (Bill)	Journal	94		98,21,886.00
20-11-2015	Dr Patel Foundation (Bill)	Journal	168		50,87,645.00
25-11-2015	Dr Patel Foundation (Bill)	Journal	173		1,32,51,806.00
	Dr Patel Foundation (Bill)	Journal	174		15,53,486.00
	Dr Patel Foundation (Bill)	Journal	175		1,89,21,164.00
25-1-2016	Dr Patel Foundation (Bill)	Journal	253		1,21,23,446.00
	Dr Patel Foundation (Bill)	Journal	254		1,36,94,395.00
30-1-2016	Dr SBA Cess - Receivable	Journal	259		30,003.00
20-2-2016	Dr Patel Foundation (Bill)	Journal	288		30,90,730.00
25-3-2016	Dr Patel Foundation (Bill)	Journal	365		1,34,50,196.00
	Dr SBA Cess - Receivable	Journal	366		26,870.00
	Dr Service Tax Receivable	Journal	367		7,52,338.00
31-3-2016	Dr Patel Foundation (Bill)	Journal	399		36,77,231.00
	Dr Patel Foundation (Bill)	Journal	400		1,50,00,513.00
	Dr Patel Foundation (Bill)	Journal	401		99,53,000.00
	Dr Patel Foundation (Bill)	Journal	402		1,33,86,330.00
	Dr Patel Foundation (Bill)	Journal	403		23,09,526.00
	Dr Patel Foundation (Bill)	Journal	404		26,44,599.00
	Dr Service Tax Receivable	Journal	412		8,40,028.00
					17,55,11,247.00
Cr	Closing Balance			17,55,11,247.00	17,55,11,247.00
				17,55,11,247.00	17,55,11,247.00

For Bahuchar Corporation

(Signature)
(Signature)



Bahuchar Corporation (P)
 8, Madhavadi -II, B/H,
 Satkar Bunglows, K.K.Nagar -
 Road, Ghatalodia, Ahmedabad
 Gujarat - 380081, India
Labour Civil Construction Income
 Ledger Account

1-Apr-2016 to 31-Mar-2017

Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
-2016	Dr (as per details)	Journal	33		5,54,662.00
	Ashish Construction Co	4,00,004.00 Dr			
	Discount To Main Contractor (TDS)	10,070.00 Dr			
	Discount to Main Contractor (Vat TDS)	3,021.00 Dr			
	Retention Deposite	28,766.00 Dr			
	TDS Receivable F.Y.2016-17	11,093.00 Dr			
	Welfare Cess	5,547.00 Dr			
	Material Testing Charges	5,753.00 Dr			
	Service Tax Exp (Ashish Construction)	20,350.00 Dr			
	SBA Cess	1,048.00 Dr			
-2016	Dr (as per details)	Journal	50		1,42,60,578.00
	Patel Foundation (Bill)	94,21,920.00 Dr			
	Discount to Main Contractor	1,72,382.00 Dr			
	Discount To Main Contractor (TDS)	3,01,764.00 Dr			
	Discount to Main Contractor (Vat TDS)	85,563.00 Dr			
	Material Testing Charges	1,42,608.00 Dr			
	Retention Deposil (GSPHC B-256 -Mudeti)	14,26,058.00 Dr			
	TDS Receivable F.Y.2016-17	2,85,212.00 Dr			
	VAT TDS A/C	85,563.00 Dr			
	Welfare Cess	1,42,606.00 Dr			
	Star Rate Recovery	21,06,014.00 Dr			
	Service Tax Exp (Patel Foundation)	7,98,592.00 Dr			
	SBA Cess	20,522.00 Dr			
	Service Tax Receivable	7,98,592.00 Cr			
	SBA Cess - Receivable	20,522.00 Cr			
2016	Dr (as per details)	Journal	60		5,59,362.00
	Ashish Construction Co	4,58,658.00 Dr			
	Discount To Main Contractor (TDS)	11,187.00 Dr			
	Discount to Main Contractor (Vat TDS)	3,351.00 Dr			
	Water Charge	2,797.00 Dr			
	Retention Deposite	29,103.00 Dr			
	TDS Receivable F.Y.2016-17	11,187.00 Dr			
	Welfare Cess	5,594.00 Dr			
	Material Testing Charges	5,321.00 Dr			
	Service Tax Exp (Ashish Construction)	28,552.00 Dr			
	SBA Cess	1,056.00 Dr			
	K.K.C Exp	1,056.00 Dr			

Carried Over

1,53,74,602.00

continued

Date	Particulars	Vch Type	Vch No.	Debit	Page 2 Credit
	Brought Forward				1,53,74,602.00
11-7-2016	Dr (as per details)	Journal	91		1,01,26,209.00
	Patel Foundation (Bill)	82,61,368.00 Dr			
	Discount to Main Contractor	1,23,134.00 Dr			
	Discount To Main Contractor (TDS)	2,02,324.00 Dr			
	Discount to Main Contractor (Vat TDS)	60,757.00 Dr			
	Material Testing Charges	1,01,262.00 Dr			
	Retention Deposil (GSPHC B-256 -Mudeti)	10,12,621.00 Dr			
	Welfare Cess	1,01,262.00 Dr			
	Service Tax Exp (Patel Foundation)	5,67,069.00 Dr			
	SBA Cess	20,252.00 Dr			
	K.K.C Exp	20,252.00 Dr			
	TDS Receivable F.Y.2016-17	2,02,324.00 Dr			
	VAT TDS A/C	60,757.00 Dr			
	Service Tax Receivable	5,67,068.00 Cr			
	SBA Cess - Receivable	20,252.00 Cr			
	K.K.C Receivable	20,252.00 Cr			
8-8-2016	Dr (as per details)	Journal	124		94,34,508.00
	Patel Foundation (Bill)	60,31,083.00 Dr			
	Discount to Main Contractor	1,14,724.00 Dr			
	Discount To Main Contractor (TDS)	1,88,690.00 Dr			
	Discount to Main Contractor (Vat TDS)	56,607.00 Dr			
	Material Testing Charges	94,345.00 Dr			
	Retention Deposil (GSPHC B-256 -Mudeti)	9,43,451.00 Dr			
	TDS Receivable F.Y.2016-17	1,88,690.00 Dr			
	VAT TDS A/C	56,607.00 Dr			
	Welfare Cess	94,345.00 Dr			
	Star Rate Recovery	16,65,866.00 Dr			
	Service Tax Exp (Patel Foundation)	5,28,332.00 Dr			
	SBA Cess	18,870.00 Dr			
	K.K.C Exp	18,888.00 Dr			
	Service Tax Receivable	5,28,332.00 Cr			
	SBA Cess - Receivable	18,870.00 Cr			
	K.K.C Receivable	18,868.00 Cr			
11-8-2016	Dr (as per details)	Journal	140		94,77,010.00
	Patel Foundation (Bill)	86,49,699.00 Dr			
	Discount To Main Contractor (TDS)	1,89,540.00 Dr			
	Discount to Main Contractor	94,770.00 Dr			
	Discount to Main Contractor (Vat TDS)	50,802.00 Dr			
	TDS Receivable F.Y.2016-17	1,89,540.00 Dr			
	VAT TDS A/C	50,802.00 Dr			
	Welfare Cess	94,770.00 Dr			
	Material Testing Charges	94,770.00 Dr			
	Material Recovery Exp .	50,197.00 Dr			

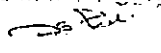
Carried Over

4,44,12,329.00

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Bahuchar Corporation (P) Labour Civil Construction Income Ledger Account : 1-Apr-2016 to 31-Mar-2017				Page 3	
Date	Particulars	Vch Type	Vch No.	Debit	Credit
	Brought Forward				4,14,12,329.00
16-9-2016	Dr (as per details)	Journal	157		97,55,715.00
	Patel Foundation (Bill)	82,17,189.00 Dr			
	Discount To Main Contractor (TDS)	1,95,114.00 Dr			
	Discount to Main Contractor	1,18,630.00 Dr			
	Discount to Main Contractor (Vat TDS)	58,534.00 Dr			
	Material Testing Charges	97,557.00 Dr			
	Retention Deposit (GSPHC B-256 -Mudell)	7,17,486.00 Dr			
	TDS Receivable F.Y.2016-17	1,03,114.00 Dr			
	VAT TDS A/C	58,534.00 Dr			
	Welfare Cess	97,557.00 Dr			
	Service Tax Exp (Patel Foundation)	5,46,320.00 Dr			
	SBA Cess	19,511.00 Dr			
	K.K.C Exp	10,512.00 Dr			
	Service Tax Receivable	5,46,320.00 Cr			
	SBA Cess - Receivable	19,511.00 Cr			
	K.K.C Receivable	10,512.00 Cr			
17-10-2016	Dr (as per details)	Journal	191		1,14,02,420.00
	Patel Foundation (Bill)	1,04,42,793.00 Dr			
	Discount to Main Contractor	1,38,653.00 Dr			
	Discount To Main Contractor (TDS)	2,28,048.00 Dr			
	Discount to Main Contractor (Vat TDS)	68,415.00 Dr			
	Material Testing Charges	1,14,024.00 Dr			
	TDS Receivable F.Y.2016-17	2,28,048.00 Dr			
	VAT TDS A/C	68,415.00 Dr			
	Welfare Cess	1,14,024.00 Dr			
	Service Tax Exp (Patel Foundation)	6,38,536.00 Dr			
	SBA Cess	22,804.00 Dr			
	K.K.C Exp	22,805.00 Dr			
	Service Tax Receivable	6,38,536.00 Cr			
	SBA Cess - Receivable	22,804.00 Cr			
	K.K.C Receivable	22,805.00 Cr			
26-10-2016	Dr (as per details)	Journal	212		1,39,01,024.00
	Patel Foundation (Bill)	1,02,62,915.00 Dr			
	Discount to Main Contractor	1,69,047.00 Dr			
	Discount To Main Contractor (TDS)	2,78,038.00 Dr			
	Discount to Main Contractor (Vat TDS)	83,412.00 Dr			
	Material Testing Charges	1,39,019.00 Dr			
	TDS Receivable F.Y.2016-17	2,78,038.00 Dr			
	VAT TDS A/C	83,412.00 Dr			
	Welfare Cess	1,39,019.00 Dr			
	Star Rate Recovery	24,69,023.00 Dr			
	Service Tax Exp (Patel Foundation)	7,70,508.00 Dr			
	SBA Cess	27,804.00 Dr			
	K.K.C Exp	27,804.00 Dr			
	Service Tax Receivable	7,70,508.00 Cr			
	SBA Cess - Receivable	27,804.00 Cr			
	K.K.C Receivable	27,804.00 Cr			
5-1-2017	Dr (as per details)	Journal	29A		46,99,070.00
	Patel Foundation (Bill)	43,80,738.00 Dr			
	Discount To Main Contractor (TDS)	93,091.00 Dr			
	Discount to Main Contractor (Vat TDS)	28,194.00 Dr			
	Discount to Main Contractor	46,991.00 Dr			
	TDS Receivable F.Y.2016-17	93,091.00 Dr			
	VAT TDS A/C	28,194.00 Dr			
	Welfare Cess	46,991.00 Dr			
	Carried Over				8,41,71,458.00

For Bahuchar Corporation


Bahuchar Corporation (P) Labour Civil Construction Income Ledger Account : 1-Apr-2016 to 31-Mar-2017				Page 5	
Date	Particulars	Vch Type	Vch No.	Debit	Credit
	Brought Forward				11,73,05,310.00
8-3-2017	Dr (as per details)	Journal	427		1,74,05,148.00
	Patel Foundation (Bill)	1,57,68,331.00 Dr			
	Discount to Main Contractor	2,11,647.00 Dr			
	Discount To Main Contractor (TDS)	3,48,103.00 Dr			
	Discount to Main Contractor (Vat TDS)	1,04,431.00 Dr			
	Material Testing Charges	1,74,051.00 Dr			
	TDS Receivable F.Y.2016-17	3,48,103.00 Dr			
	VAT TDS A/C	1,04,431.00 Dr			
	Welfare Cess	1,74,051.00 Dr			
	Withheld For P.F.Challan Of GSPHC Mudell	1,74,000.00 Dr			
	Service Tax Exp (Patel Foundation)	9,74,688.00 Dr			
	SBA Cess	34,810.00 Dr			
	K.K.C Exp	34,810.00 Dr			
	Service Tax Receivable	9,74,688.00 Cr			
	SBA Cess - Receivable	34,810.00 Cr			
	K.K.C Receivable	34,810.00 Cr			
20-3-2017	Dr (as per details)	Journal	452		1,57,31,505.00
	Patel Foundation (Bill)	1,50,45,827.00 Dr			
	Discount To Main Contractor (TDS)	3,34,630.00 Dr			
	Discount to Main Contractor	1,67,317.00 Dr			
	Discount to Main Contractor (Vat TDS)	1,00,389.00 Dr			
	TDS Receivable F.Y.2016-17	3,34,630.00 Dr			
	VAT TDS A/C	1,00,389.00 Dr			
	Welfare Cess	1,67,315.00 Dr			
	Withheld For Colour & Chinnaczzalt Of R&B Anoxo	1,68,887.00 Dr			
	Material Recovery Exp	1,43,826.00 Dr			
	Material Testing Charges	1,67,315.00 Dr			
24-3-2017	Dr (as per details)	Journal	461		5,59,279.00
	Ashish Construction Co	4,66,370.00 Dr			
	Discount To Main Contractor (TDS)	10,733.00 Dr			
	Discount to Main Contractor (Vat TDS)	3,220.00 Dr			
	TDS Receivable F.Y.2016-17	11,186.00 Dr			
	Welfare Cess	5,593.00 Dr			
	Material Testing Charges	5,526.00 Dr			
	Service Tax Exp (Ashish Construction)	56,351.00 Dr			
	Dr (as per details)	Journal	462		2,79,109.00
	Ashish Construction Co	2,31,530.00 Dr			
	Discount To Main Contractor (TDS)	5,329.00 Dr			
	Discount to Main Contractor (Vat TDS)	1,599.00 Dr			
	TDS Receivable F.Y.2016-17	5,382.00 Dr			
	Welfare Cess	2,791.00 Dr			
	Water Charge	1,396.00 Dr			
	Material Testing Charges	2,907.00 Dr			
	Service Tax Exp (Ashish Construction)	27,975.00 Dr			
27-3-2017	Dr (as per details)	Journal	463		46,21,129.00
	Patel Foundation (Bill)	42,88,407.00 Dr			
	Discount To Main Contractor (TDS)	92,423.00 Dr			
	Discount to Main Contractor	46,211.00 Dr			
	Discount to Main Contractor (Vat TDS)	27,727.00 Dr			
	TDS Receivable F.Y.2016-17	92,423.00 Dr			
	VAT TDS A/C	27,727.00 Dr			
	Welfare Cess	46,211.00 Dr			
	Carried Over				15,69,01,480.00

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Bahuchar Corporation (P)
Labour Civil Construction Income Ledger Account : 1-Apr-2016 to 31-Mar-2017

Date	Particulars	Vch Type	Vch No.	Debit	Credit
	Brought Forward				15,09,01,480.00
30-3-2017	Dr (as per details)	Journal	480	80,31,435.00	
	Patel Foundation (Bill)	73,55,509.00 Dr			
	Discount to Main Contractor	97,062.00 Dr			
	Discount To Main Contractor (TDS)	1,60,629.00 Dr			
	Discount to Main Contractor (Vat TDS)	48,189.00 Dr			
	Material Testing Charges	80,314.00 Dr			
	TDS Receivable F.Y.2016-17	1,60,629.00 Dr			
	VAT TDS A/C	48,189.00 Dr			
	Welfare Cess	80,314.00 Dr			
	Service Tax Exp (Patel Foundation)	4,49,760.00 Dr			
	SBA Cess	16,062.00 Dr			
	K.K.C Exp	16,064.00 Dr			
	Service Tax Receivable	4,49,760.00 Cr			
	SBA Cess - Receivable	16,062.00 Cr			
	K.K.C Receivable	16,064.00 Cr			
	Cr Closing Balance				16,49,32,915.00
				16,49,32,915.00	16,49,32,915.00

For. Bahuchar Corporation
[Signature]
Partner

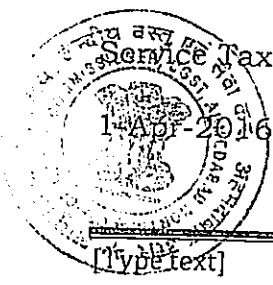
Bahuchar Corporation (P)
8, Madhavadi -II, Bih,
Salkar Bunglows, K.K.Nagar-
Road Ghallodia, Ahmedabad
Gujarat - 380061, India
Labour Civil Construction Income
Ledger Account

1-Apr-2016 to 31-Mar-2017

Date	Particulars	Vch Type	Vch No.	Debit	Credit
20-5-2016	Dr Ashish Construction Co	Journal	33		5,54,662.00
8-6-2016	Dr Patel Foundation (Bill)	Journal	50		1,42,60,578.00
16-6-2016	Dr Ashish Construction Co	Journal	60		5,59,362.00
11-7-2016	Dr Patel Foundation (Bill)	Journal	91		1,01,26,209.00
8-8-2016	Dr Patel Foundation (Bill)	Journal	124		94,34,508.00
31-8-2016	Dr Patel Foundation (Bill)	Journal	140		94,77,010.00
16-9-2016	Dr Patel Foundation (Bill)	Journal	157		97,55,715.00
17-10-2016	Dr Patel Foundation (Bill)	Journal	191		1,14,02,420.00
26-10-2016	Dr Patel Foundation (Bill)	Journal	212		1,39,01,924.00
5-1-2017	Dr Patel Foundation (Bill)	Journal	299		46,99,070.00
11-1-2017	Dr Patel Foundation (Bill)	Journal	311		2,02,70,631.00
25-1-2017	Dr Patel Foundation (Bill)	Journal	334		7,85,692.00
10-2-2017	Dr Patel Foundation (Bill)	Journal	368		1,20,77,529.00
8-3-2017	Dr Patel Foundation (Bill)	Journal	427		1,74,05,148.00
20-3-2017	Dr Patel Foundation (Bill)	Journal	452		1,67,31,505.00
24-3-2017	Dr Ashish Construction Co	Journal	461		5,59,279.00
	Dr Ashish Construction Co	Journal	462		2,79,109.00
27-3-2017	Dr Patel Foundation (Bill)	Journal	463		46,21,129.00
30-3-2017	Dr Patel Foundation (Bill)	Journal	480		80,31,435.00
	Cr Closing Balance				16,49,32,915.00
				16,49,32,915.00	16,49,32,915.00

For. Bahuchar Corporation
[Signature]
Partner

Therefore, I am constrained to hold that, the assessee are not eligible to avail benefit of Notification NO.25/2012-ST. Their claim for exemption benefit is therefore liable for rejection for the work contract service provided by them. Further, as discussed above, the assessee had collected/shown receivable Service Tax in their ledger account for the period 1-Apr-2015 to 31-Mar-2016 & 1-Apr-2016 to 31-Mar-2017, accordingly, they were liable to pay service tax.



[Type text]

21. Further, I find that the in SCN F. No. STC/15-62/OA/2021 taxable value has been shown as "0" (Zero) for F.Y.2015-16 & 2016-17 as compared to actual taxable value of Rs.17,38,46,378/- for F.Y.2015-16 and Rs.12,91,23,488/- for F.Y.2016-17. I find that the assessee have filed the ST3 returns for the period 2015-16 & 2016-17 with taxable value as discussed in para 17 of the current Order-in-Original; thus, there was apparent mistake in difference in value of taxable service as contested by the department and actual total difference in value of service for both the F.Y. 2015-16 & 2016-17. It is quite clear that the SCN issuing authorities had erred while issuing the subject SCN.

21.1 Nevertheless, I find that works contract service is a composite service consisting of material used and labour/service provided to the client. The valuation to determine the liability of service tax due on works contract service for value of service portion in the execution of a works contract to be carried out as per Rule 2A(ii) of the Service Tax (Determination of Value) Rules,2006.The said rules herein are as under;

"2A. Determination of value of service portion in the execution of a works contract.-

Subject to the provisions of section 67, the value of service portion in the execution of a works contract , referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

(i)

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

22. On perusal of para 4 of the subject SCN, I find that the demand of Service Tax for the period 2017-18 (up to June,2017) , which was not ascertainable/quantified at the time of issuance of the subject SCN, 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 under proviso to Section 73(1) read with master circular no.1053/02/2017-CX dated 10.03.2017. However, I do not find any charges leveled for the demand for the

period 2017-18 (up to June,2017) in the subject SCN. I also find that no data for the period 2017-18 (up to June, 2017) is available in the instant case file, and the same has also not been provided by the department. The assessee also have not provided the documents for the period 2017-18 (up to June,2017), hence, I refrain myself for entering into any discussion for the period 2017-18 (up to June, 2017) to determine the liability or otherwise of Service Tax for the period 2017-18 (upto June,2017). I also find that SCN had been issued on the basis of data shared by CBDT with CBIC in respect of taxable value declared in ST3 returns vis-à-vis values declared in gross receipts form services (Value from ITR/26AS), hence, I am not entering in to any discussion beyond the charges framed in SCN.

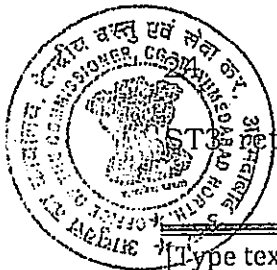
23. Further, the then effective provisions of the Central Excise Act, 1944 and the Central Excise Tariff Act, 1985, as repealed vide Section 174(1) of the CGST Act, 2017 and the then effective provisions of the Chapter V of the Finance Act, 1994, as omitted vide Section 173 of the CGST Act, 2017, and the then effective provisions of the Finance Act,1994, have been saved vide Section 174(2), of the CGST Act, 2017, which is read as under;

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not-

(f) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;"

Therefore, the provisions of the said repealed/amended Acts and Rules made there under are rightly enforceable for the purpose of demand of duty, interest, etc. and imposition of penalty under this notice.

On going through the documents submitted by the assessee and ST3 returns for the period 2015-16 & 2016-17, I find that the assessee has



rendered taxable service namely "Works Contract Service" and not paid the service tax during the year 2015-16 & 2016-17 and thereby violated the provision of Section 68 read with Rule 6 of the Service Tax Rules. It is also noticed that the same had come to the notice of the department only after the submission of the documents by the assessee subsequent to the issuance of the SCN, which clearly proves malafide intention of the assessee. I therefore find that the said service tax not paid is required to be confirmed, demanded and recovered along with interest from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years and the demand sustainable on above ground shall be recovered under Section 75 of the Finance Act, 1994 for the delayed payment.

25. I find that the assessee vide letter dated 13.12.2021 has submitted the copies of ST3 returns for the period 2015-16 & 2016-17; Copies of returns of total income filed before the income tax department for F.Y. 2015-16 & 2016-17 alongwith the copy of financial statement comprising of audited balance sheet, profit and loss statement and schedules forming part of financial statements; audit report under Section 44AB of the Income Tax Act, 1961 issued by Darshan P. Trivedi & Associates for the Financial year 2014-15, 2015-16 & 2016-17.

26. Further, the demand of Service Tax have been calculated on the Gross receipts from services (value from ITR/26AS) of Rs. 17,54,95,659/- for F.Y. 2015-16 & Rs. 16,54,59,441/- for F.Y.2016-17 in the subject SCN. In view of the above discussion and the detailed scrutiny of documents tendered by the assessee, I am of the view that the assessee are liable to pay service tax of Rs. 2,01,06,315/- for the F.Y. 2015-16 & 2016-17 as calculated below;

F.Y.	15-16	16-17
Gross Amount as per ST3 returns	173846378	129123488
Gross receipts from services as per SCN	175495659	165459441
Gross Taxable value considered as shown in SCN	175495659	165459441

less: abatement 60% (Rule2A of Service Tax(determination of value) Rules,2006)), being services provided by the assessee are of "Works Contract Services" of original works.	105297395	99275665
Taxable value	70198264	66183776
Service Tax payable	10178748	9927566
Service Tax paid (as per ST3 returns)	0	0
Service Tax recoverable	10178748	9927566
TOTAL SERVICE TAX RECOVERABLE 15-16,16-17	20106315	

27. In view of the above findings, the assessee are liable to pay Service Tax on taxable income received towards works contract service of original work as calculated in para 26 above, accordingly Service Tax of Rs. 2,01,06,315/- is demanded and is to be recovered from the assessee under Section 73 of the Finance Act,1994 for works contract service provided by them as discussed herein above.

28. Further, I find that invoking extended period of limitation has been discussed in the SCN at length. It is my considered view that the Government has, from the very beginning, put in place mechanism of trust-based compliance on the part of manufacturers/ supplier of goods/ output service providers/ taxpayers and accordingly, measures such as self-assessment etc., based on mutual trust and confidence have been put in place. In the spirit of mutuality of trust and transparent tax administration with reduced compliance burden vis-à-vis rules & procedures the government has consciously promoted the industries interest. Further, a manufacturer/ supplier of goods/ service provider/ taxpayer is not required to maintain any statutory or separate records under the provisions of the Finance Act, 1994 and Rules made thereunder, as considerable amount of trust is placed on them and private records maintained by them, for their normal business purposes, are accepted, practically for all the purposes. All these operate on the basis of expectation of honesty, truthfulness and due diligence on the part of the assessee. Therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on them. From the evidences, it is observed that the assessee had knowingly suppressed the fact

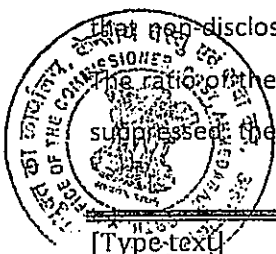
of receiving income under works contract service. This deliberate act of suppressing income under Finance Act, 1994 is in utter disregard to the requirements of law and breach of trust reposed in them and is certainly not in tune with Government's efforts in the direction to create a voluntary tax compliance regime.

28.1 Further, it is observed that the assessee was fully aware about the fact that they were receiving such income which was chargeable to Service Tax. However, in spite of knowing the facts; they chose not to pay the said applicable dues related to Service Tax. This has been done to escape from the eyes of the department with intent to evade the payment of dues related to Service Tax under the Finance Act, 1994. This fact of non-payment of dues related to Service Tax would have remained unnoticed, if the third party data had not been received from CBDT. These acts on the part of the assessee tantamounts to willful suppression, concealment and mis-statement of facts, with intent to evade the payment of dues related to Service Tax.

29. I find that even during the opportunities arising during the adjudication process, they have not been able to prove their contentions/arguments and thus suppression with an intent to evade payment, on part of the assessee, is proved beyond doubt and proviso to section 73(1) of the finance act, 1994 has rightly been applied in the instant case and therefore, by their such act of omission and commission, the assessee have rendered themselves liable for penalty.

I rely upon the judgment in the case involving Aircel Digilink India Ltd. V/s. Commissioner of Central Excise, Jaipur, reported in 2006 (3) STR 386 (Tri.-Del) and the case involving Bharti Cellular Ltd. V/s Commissioner of Central Excise, Delhi, reported in 2006 (3) STR 423 (Tri.-Del). In both cases, the Hon'ble Tribunal upheld invocation of extended period after taking note of the fact that appellants had not disclosed certain details and mode of computation in their ST-3 details and that there was nothing on record to suggest that appellants ever approached the office of the service tax authorities to ascertain the details of their liability to pay the service tax. Similarly, in case of Insurance & Provident Fund Department V/s. Commissioner of Central Excise, Jaipur-I, 2006 (2) STR 369 (Tri.-Del.), Hon. Tribunal held

that non-disclosure of full amount of premium collected would attract invocation of extended period. The ratio of the above judgments can be applied to the present case also as the assessee had not only suppressed the material facts from the department but had also failed to comply with law and



procedures, including payment, of service tax. In view of the above, I hold that in the facts and circumstances of the present case, proviso to section 73 (1) of finance act, 1994, is rightly invoked for raising the demand for service tax against the assessee.

30. In view of the above, I find that extended period for recovery of service tax short paid/not paid by the assessee on rendering of said taxable services, under the proviso to section 73(1) of the finance act, 1994 was rightly invoked and the SCN is sustainable on limitation. Therefore, the service tax amount of Rs.2,01,06,315/- is recoverable from the assessee along with interest as provided in proviso to section 73(1) of the finance act, 1994 read with section 75 of the act *ibid*.

31. Since in the instant case, suppression of material facts have been established beyond doubt after discussions in the paras supra, I consider this to be a fit case for imposition of penalty under Section 78 of the Finance Act, 1994 which reads as under:

“SECTION 78. Penalty for failure to pay service tax for reasons of fraud, etc. —

(1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the 24 date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined :

Provided further that where service tax and interest is paid within a period of thirty days of — the date of service of notice under the proviso to (i) sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded; (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :



Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period :

Explanation. — For the purposes of this sub-section, "specified records" means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of accounts shall be considered as the specified records."

31.1 Since, it is already proved that the assessee had suppressed the facts, the consequences shall automatically follow. Hon'ble Supreme Court has settled this issue in the case of U.O.I Vs. Dharmendra Textile Processors reported in 2008(231)ELT3(SC) and further clarified the same in the case of U.O.I. Vs. RSWM reported in 2009(238)ELT3(SC). Hon'ble Supreme Court has held that the presence of *malafide* intention is not relevant for imposing penalty and *mens rea* is not an essential ingredient for imposition of penalty for tax delinquency which is a civil obligation. Further, Hon'ble High Court of Karnataka at Bangalore in the case of Motor World (2012(27)STR225(Kar.)) has held that;

"Section 78 applies to a case where a person has registered himself under the Act and failed to file the prescribed return and in such return filed, he has suppressed or concealed the value of taxable service or has furnished inaccurate value of such taxable service.....

.....Therefore, the argument that once acts of suppression, concealment and furnishing inaccurate particulars are established, the penalty follows as a matter of course or in other words is automatic, is without any substance as it runs counter to the express provision contained in Sections 78 and 80 of the Act. When once it is held that there is no reasonable cause, then the authority is empowered to impose penalty as prescribed under Section 78, for such failure. Here the penalty prescribed is penalty which shall not be less than but which shall not exceed twice the amount or service tax sought to be evaded by reason of suppression or concealment or the value of taxable service or the furnishing of inaccurate value of such taxable service.

21. When once the ingredients of Section 78 are established and there is no reasonable cause for failure. Section 80 is not attracted. Then the authority has to impose a minimum penalty of the amount or service tax sought to be evaded and the maximum is double the said amount. Here, there is no discretion, which is vested with the authority. The discretion is only confined to impose a penalty above the minimum and less than the maximum provided for under the Act....."

31.2 Thus penalty under Section 78, is attracted whenever any Service Tax has not been levied or not paid or has been short levied or short paid or erroneously refunded by the reasons of fraud, suppression of facts, willful mis-statement or contravention of any provisions of Finance Act, 1994 or of the rules made there under with intent to evade the payment of service tax and this penalty shall not be less than the duty evaded. Accordingly, the assessee

have rendered themselves liable to penalty under Section 78 of the Finance Act, 1994 as they were not paying service tax in spite of the fact that they were providing the taxable service. However, as per the second proviso to section 78, where such service tax along with interest is paid within 30 days from the date of communication of the order penalty would be further reduced to 25% of the service tax so determined. The benefit of reduced penalty shall be available only if such penalty along with interest is also paid within 30 days from the date of receipt of the order.

32. Further, in view of the discussion made in the forgoing paras, I hold that the assessee has failed to pay the service tax on the income received for "works contract services" by suppressing the facts from the department by contravening the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and Section 67(1) of the Finance Act, 1994 read with Rule 5(1) of the Service Tax Rules, 1994. The Service Tax totally amounting to Rs.2,01,06,315/- is recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 and they have also rendered themselves liable to pay interest under section 75 of the Finance Act, 1994. They have further rendered themselves liable for penalty under the provisions of Section 78 of the Finance Act, 1994.

33. Regarding penalty under Section 77, I find that the assessee has also contravened the provision of Section 67 of the Finance Act, 1994 in as much as they failed to determine the correct value of taxable services; violated the provisions of Section 68 of the act read with Rule 6 of the Service Tax Rules, 1994 by not paying the Service Tax during the F.Y. 2015-16 & 2016-17. Further, the assessee has not assessed the tax dues, properly on the services provided by them, as discussed above, and has failed to file correct ST3 returns in time thereby violating the proviso of Section 70 of the act read with Rule 7 of the Service Tax Rules, 1994. In view of the above, they are liable for imposition of appropriate penalty under Section 77 of the Finance Act, 1994.

34. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order:

ORDER

I confirm the demand and order recovery of Service Tax of Rs. 2,01,06,315/- (Rs. Two Crore One Lakh Six Thousand Three Hundred and Fifteen Only) including cess (as per para 26 of the OIO) from the assessee under the provision of Section 73 of the Finance Act, 1994.





- (ii) I order to recover interest at the applicable rate from the assessee under the provisions of Section 75 of the Finance Act, 1994 on the demand at (i) above.
- (iii) I impose penalty of Rs. 2,01,06,315/- (Rs. Two Crore One Lakh Six Thousand Three Hundred Fifteen Only) under section 78 of the Finance Act, 1994. If the service tax amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the Service Tax amount, provided if such penalty is also paid within such period of 30 days.
- (iv) I impose penalty of Rs.10,000/- (Rupees Ten Thousand Only) upon them under section 77(2) of the Finance Act,1994.

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

Dt.18.05.2022.

F.No.STC/15-62/OA/2021

To,
M/s. Bahuchar Corporation
8, Madhav Wadi-II,
B/H. Satkar Bunglows,
K.K. Nagar Road,
Ghatlosdia,
Ahmedabad
Gujarat- 380 061.

Copy to:

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

