


<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 &amp; Services Tax &amp; Central Excise, Ahmedabad North, Custom House(1<sup>st</sup> Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>		

**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा .सं/. STC/15-64/OA/2020

DIN-20220264WT000000CFCA

आदेश की तारीख / Date of Order :31.01.2022  
जारी करने की तारीख / Date of Issue :01.02.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV  
आयुक्त / COMMISSIONER

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-57/2021-22**

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.

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

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

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

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैंतियों में दाखिल चार प्र , 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 जाएंगी म एक प्रमाणित प्रति होगी।

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

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

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

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

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

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

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

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

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

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice No. STC/15-64/OA/2020 dated 29.09.2020 issued to M/s. Patel Foundation, 37, Ratnaraj Society, Opp. Neelkanth Mahadev, Rannapark, Ghatlodia, Ahmedabad-380 061.

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 57 /2021-22**

M/s. Patel Foundation, 37, Ratnaraj Society, Opp. Neelkanth Mahadev, Rannapark, Ghatlodia, Ahmedabad-380061, were issued SCN No. STC/15-64/OA/2020 dated 28.09.2020 by the Principal Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

**BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S. PATEL FOUNDATION, ARE AS FOLLOWS:**

M/s. Patel Foundation, 37, Ratnaraj Society, Opp. Neelkanth Mahadev, Rannapark, Ghatlodia, Ahmedabad-380061 (hereinafter referred to as the 'Assessee' for the sake of brevity) are engaged in providing taxable services, and are holding Service Tax Registration No.AACFP6392AST001.

2. 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" in respect of M/s. Patel Foundation was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15, 2015-16 and 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the records available with the Divisional office of Division-VII and on going through the Third Party Data provided by CBDT of the said assessee for the F.Y.2014-15, 2015-16, and 2016-17, the total sales of service (Value from ITR/ Form 26) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y.2014-15, 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.2014-15, 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.2014-15, 2015-16, and 2016-17. The difference in value as observed for F.Y.2014-15, 2015-16, and 2016-17 was found to be as under:

	F.Y.	Total amount paid/credited under 194C, 194H, 194I or ITR	Gross Value of Service Provided (As per ST-3 Returns)	Difference Between Total Amount Paid/ Credited from TDS and Gross Value of Services as Per STR	Service Tax short paid (including Cess)
1	2014-15	37,46,855	0	37,46,855	4,63,111
2	2015-16	41,38,64,255	31,96,24,011	9,42,40,244	1,36,64,835
3	2016-17	51,64,74,144	43,54,39,043	8,10,35,101	1,21,55,265
	Total			17,90,22,200	2,58,20,100

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs.2,58,20,100/- (including Cess) on the differential value of Rs.17,90,22,200/-

4. Letters dated 09.02.2018, 12.06.2019 and 17.07.2020 were issued to the assessee to explain the difference and to submit documents in support thereof viz.

Balance Sheet, Profit and Loss Account, Income Tax Return, Form 26AS, etc. However, the assessee neither submitted the details nor submitted any explanation for the same. Therefore, the service tax liability of the assessee was worked out on the basis of income mentioned in ITR /Form 26AS, which were shared by Income tax Department. The said income was considered as the Total Taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.

5. 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 66B in such manner and within such period which is prescribed under Rule 6 of the Service tax Rules 1994. Therefore, it appeared that the said assessee had short paid the service tax as tabulated above.

6. As per the provisions of Section 70 (Furnishing of Returns) of the Finance Act, 1994 :

“(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.

(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.”

7. As per the provisions of Section 73(1) of the Finance Act, 1994 where any Service Tax has not been levied or paid or has been short levied or short paid by reasons of willful mis-statement or suppression of facts with intent to evade payment of Service Tax, the Central Excise Officer may within five years from the relevant date, serve a notice on the person chargeable with Service Tax which has not been levied or paid or which has been short levied or short paid requiring him to show cause why he should not pay the amount specified in the notice.

8. As per Rule 6 of the Service Tax Rules, 1994, the Service Tax shall be paid to the credit of the Central Government by 5<sup>th</sup> day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that the assessee shall submit their Service Tax returns in the form ST-3 within the prescribed time.

9. From the documentary evidence available at the relevant time, it appeared that the said assessee had failed to pay/short paid/deposit Service Tax to the extent of Rs.2,58,20,100/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year FY 2014-15, 2015-16 and 2016-17 vis-à-vis their ITR/Form 26AS. The said short payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of

Rs. 2,58,20,100/- (including Cess) worked out on value of Rs.17,90,22,200/- and therefore, Service Tax was required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

10. Therefore, it appeared that the said assessee had (i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994; (ii) Failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994; (iii) Failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they had not paid service tax as worked out in the Table for Financial Year 2014-15, 2015-16 and 2016-17; (iv) contravened the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 which appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (v) made themselves liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994; (vi) also contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

11. 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, that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2014-15, 2015-16 and 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, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 2,58,20,100/-. 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 were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

12. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (at such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appeared that the said assessee had short paid/not-paid Service Tax of Rs. 2,58,20,100/- on the actual value received

towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 ibid not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee had suppressed the facts from the department and had contravened the provisions with an intent to evade payment of Service Tax. The said assessee had not discharged their Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.

13. No data was shared by the CBDT, for the period FY 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 FY 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 issued by the CBEC, New Delhi clarified that:

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

14. The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the FY 2017-18 (upto June-2017) had not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. The assessee had also failed to provide the required information even after the issuance of letters and summons from the Department and the assessable value for the FY 2017-18 (upto June-2017) was not ascertainable at the time of issuance of this Show Cause Notice. If any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action was to be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the FY 2017-18 (upto June-2017) covered under subject Show Cause Notice, was to be recovered from the assessee.

15. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax and they appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of Service Tax as discussed in the foregoing

paras and therefore, the Service Tax amounting to Rs. 2,58,20,100/-(inclusive of Cess) not paid was required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

16. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it appeared that the said assessee had contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee appeared to have rendered the assessee liable to penalty under Section 76 & Section 77 of the Finance Act.

17. In addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appeared that the said assessee had willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of Service Tax thus rendering them liable for penalty under Section 78 of the Finance Act, 1994.

18. Therefore, Show Cause Notice dated 28.09.2020 was issued to the assessee asking them as to why:

- (i) Service Tax of Rs. 2,58,20,100/- short/ not paid, should not be confirmed and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (ii) Service tax liability for the FY 2017-18 (upto June 2017) to be ascertained, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them under Section 75 of the Finance Act, 1994;
- (iv) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994.
- (v) Penalty under the provisions of Section 77(1) under the Finance Act, 1994 should not be imposed on the assessee for failure to provide the documents called for.
- (vi) Penalty under the provisions of Section 77(2) of the Finance Act, 1994, should not be imposed on the assessee for failure to assess their correct Service tax liability and for failure to file correct returns under Section 70 of the Finance Act, 1994.

**DEFENCE REPLY:**

19. The assessee vide their letter dated 12.10.2020 have submitted their written submission, wherein they interalia have stated that the difference in the taxable value for the FY 2015-16, was due to service tax exemption available to them for the work

contract agreement executed prior to 01.03.2015. Further, the service tax was also paid by M/s. GSPHCL (Gujarat State Police Housing Corp. Ltd.). They have submitted the copy of Form 26AS AY 2015-16 (For FY 2014-15), Work Contract Income Ledger For 2015-16, Audit Report in Form 3CB (FY 2014-15). They have also submitted copies of RA bills and work orders pertaining to the period 2015-16.

The assessee vide their further letter dated 13.10.2021, have submitted the copies of RA Bill, Work Order, Work Contract Income ledger for FY 2014-15 to 2016-17 and year wise service tax calculation for FY 2015-16 to 2016-17. The assessee has also stated that they have paid tax in excess to the tune of Rs. 66 Lakhs (on the basis of tender issued prior to 01.03.2015) and that there is no shortage of payment of service tax on their part.

The assessee, vide their letter dated Nil (Received on 11.01.2022) with respect to hearing granted on 11.01.2022 (vide letter dated 27.12.2021), has requested to process the matter on the basis of their earlier written submissions.

**PERSONAL HEARING:**

20. Personal Hearing was granted to the assessee on 28.09.2020, 22.10.2021, 23.11.2021, 10.12.2021 and 11.01.2022. The assessee had sought extension of time for the personal hearings vide their letter dated 27.09.2021 (for PH on 28.09.2021) and 23.11.2021 (for PH on 23.11.2021), and accordingly they were given the fresh date of hearings. The assessee however has not attended any of the personal hearings granted to them. The assessee vide their letter dated Nil (received on 11.01.2022), however has requested to process the matter on the basis of their earlier written submissions. Accordingly, I proceed to decide the matter without conducting personal hearing on the basis of the records available in the file.

**DISCUSSION AND FINDINGS:**

21. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence replies submitted on 12.10.2020, 13.10.2021 and 11.01.2022 and the documents submitted by the assessee.

22. On going through the SCN, 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" were shared by the CBDT for FY 2014-15 to 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. 17,90,22,200/- in value was observed for FY 2014-15 to 2016-17, therefore, it appeared that the assessee had short paid the service tax of Rs. 2,58,20,100/- on such differential value, for providing the taxable service. Therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 2,58,20,100/- on the taxable value of Rs.17,90,22,200/- for the Financial Year 2014-15 to 2016-17 under proviso



to section 73(1) of Finance Act, 1994 or not.

23. I find that the assessee vide their letters dated 12.10.2020, 13.10.2021 have submitted their submission and documents. The documents submitted were copies of RA Bill, Work Order, Work Contract Income Ledger for FY 2014-15 to 2016-17 and year wise service tax calculation for FY 2015-16 to 2016-17 (and not for 2014-15). The assessee has declined the offer of the personal hearings and has requested to decide the issue ex-parte on the basis of available evidences. Therefore, I don't have any recourse left with but to proceed for adjudication on the basis of available records and the documents submitted by the assessee.

24. On going through the Sales Register, RA bills and Work Order submitted by the assessee it is seen that the assessee had provided services to the Government, Government Department, Government Company/ Authority, Government Council, Nagar Palika/ Panchayat. The details of the service provided by the assessee are as under:

FY 2014-15			
Sr.No.	Recipient of Service	Description of service	Amount of service
1	Gujarat Council for Elementary Education (Serva Siksha Abhiyan)	Construction of Class Rooms and Staff Quarters	109795182
2	Gujarat State Police Housing Corporation Limited	Construction of Police staff Quarters/ new Compound wall	29219034
3	R & B , High Court	New Building Construction , Repairing & Misc. civil work	51470490
4	R & B Nadiad	Construction of collage building	15602553
5	R& B Shahibaug	Construction of New annexe building	28215070
6	R& B Palanpur	Construction of RMSA school,	60104192
7	R&B DholkaNagarpalika	Construction of compound wall	1542520
8	R&B Panchayat	Construction of staff quarters for teachers	4464403
9	PIU, Health department	Construction of Ayurvedic Hospital	54265175
10	Capital Project, Gandhinagar	Construction of Quarters	927677
11	GUDA	Construction of Swarnim Kendra	20036129
		Total	375642425

2015-16			
Sr.No.	Recipient of Service	Description of service	Amount of service
1	Gujarat Council for Elementary Education (Serva Siksha Abhiyan)	Construction of class rooms, KGBA, Upgradation of school infrastructure	88804365
2	GUDA (Gandhinagar Urban Development Authority)	Construction of swarnimkendra	3090730
3	Gujarat State Police Housing Corporation Limited	Construction of Police Quarters, Compound wall, Police Station, Repairing of building, Quarters for chetak Commando	140068716
4	PIU Building	Construction of Ayurvedic Hospital	168824
5	R&B Nadiad	Construction of Govt arts and commerce collage	46126305
6	R&B Palanpur	Construction of court building, School building	25653610
7	R&B High Court	Old bill	2454928
8	R& B Panchayat	Construction of Anganwadi Building	542171
9	R&B Shahibag	Construction of Quarters, New Annexe Building	106954606
		Total	413864255

2016-17			
Sr.No.	Recipient of Service	Description of service	Amount of service
1	Gujarat State Police Housing Corporation Limited	Construction of Police Quarters, Police Station, Quarters for chetak Commando	288344865
2	R&B Nadiad	Construction of Govt arts and commerce collage	18816287
3	R&B Ahmedabad	Construction of new annexe building, Quarters	36314406
4	R&B Palanpur	Construction of Court Building	46298188
5	R&B Panchayat	Construction of Anganwadi Building	638898
6	Gujarat Council for Elementary Education (Serva Siksha Abhiyan)	Construction of class rooms, School	126061500
		Total	516474144

25. I find that the assessee has stated that they were availing exemption for the work order issued prior to 01.03.2015 and in case of service provided to M/s. Gujarat State Police Housing Corporation Limited (GSPHCL), who were also liable to pay service tax, therefore, there was the difference in value of taxable service. The assessee has not mentioned specific exemption notification under which they have claimed the exemption from payment of tax. They have also not mentioned the correct notification number availed by them in their ST-3 Returns filed by them. On perusing the records, it is seen that they have availed the benefit of abatement of 60% from the Gross taxable value of service for discharging their service tax liability. Further, it is also seen from ST-3 Returns that they were also liable to pay service tax under Partial Reverse Charge Mechanism being the service provider as per Section 68(2) of the Finance Act, 1994. As per ST-3 Returns, the assessee has classified their services under "*Construction services other than residential complex, including commercial/industrial buildings or civil structures*". It is also evident from the copies of RA Bill Submitted by the assessee that they have provided the service of construction/repairing services in relation to Building and Civil Structure. From this factual position, it is undisputed fact that the assessee has rendered taxable services. It is also forthcoming from the documents though the assessee has not specifically mentioned, that the assessee has availed the benefit of abatement of 60% Gross value of taxable service under Service Tax (Determination of Value) Rules 2006 (Valuation Rules), considering the services rendered by them to be "Works Contract service".

26. As per Sr. No. 12 and 12A of Notification No. 25/2012-ST dated 20.06.2012, the service provided to the government, local authority or a governmental authority by way of construction, repair, maintenance, renovation, fitting out of civil structure /building meant for use other than commerce/industry, is exempt service. For ease of reference, the said Sr. No. 12 and 12A of the Notification is reproduced as under:

"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 of profession; (omitted by Notification No. 6/2015-ST dated 1.3.2015 w.e.f.1.4.2015.)*

(b) .....

(c) *a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; (omitted by Notification No. 6/2015-ST dated 1.3.2015 w.e.f.1.4.2015.)*

(d) *canal, dam or other irrigation works*

(e) .....

(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;"(omitted by Notification No. 6/2015-ST dated 1.3.2015 w.e.f.1.4.2015.)*

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

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

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

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

*under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:*

*Provided that nothing contained in this entry shall apply on or after the 1st April, 2020;]*  
*(Inserted vide Notification No. 9/2016- ST dated, 1.3.2016 w.e.f.1.3.2016.)”*

**“Special provision for exemption in certain cases relating to construction of Government buildings**

**“SECTION 102. . — (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable 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 establishment;*
  - (ii) a clinical establishment; or*
  - (iii) an art or cultural establishment;*
- (c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act,*

*under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.”*

**(This Section was inserted by the Finance Act, 2016, w.e.f.14-05-2016)**

**27.** From the above legal position, it is evident that the service 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 civil structure or any other original works for use other than the commercial, Industry or business or profession, was exempt till 31.03.2015. But, by virtue of insertion of new entry Sr. No. 12A to the Notification 25/202-ST vide Notification 09/2016-ST dt. 01.03.2016 and insertion of Section 102 vide Finance Act, 2016 dated 14.05.2016, the exemption was made available to the service provided pursuant to the work contract entered prior to 01.03.2015. As mentioned hereinabove, the assessee had provided services to different Divisions of Road & Building of Government of Gujarat, Gandhinagar Development Authority (GUDA), Gujarat State Police Housing Corporation Limited (GSPHCL) and Gujarat Council for

Elementary Education (Serva Siksha Abhiyan). I find that the Road & Building is a government department. GUDA ( Gandhinagar Urban Development Authority) is a Governmental Authority of Government of Gujarat; The important functions of the GUAD include the preparation of Development plan for the Gandhinagar Urban Agglomeration, to prepare the draft Town Planning Schemes, to implement the revised Town Planning Schemes and to monitor and control the development activities in accordance with the Revised Development Plan. Besides, it is also responsible for the development of the infrastructures like road, sewerage, water supply and other basic civic amenities. Gujarat Council for Elementary Education (GCEE) is an administrative agency of Department of Education Gujarat Government. The council is responsible for administration of elementary education in the state as well as implementing state level agency for Serva Siksha Abhiyan. The Council has been registered under the Societies Registration Act 1860. GSPHCL is a fully owned government company who undertakes the construction of residential, non-residential and all others type of buildings required for Gujarat Police, Jails, Home Guards and for other in the state of Gujarat. GUDA, GCEE and GSPHCL have been established by the State Government and are directly under control of the state government and they undertake the functions as entrusted to them by the government. Therefore, GUDA, GCEE and GSPHCL are the governmental authority. In this regard, I rely on the decision of the tribunal in the case of in the case of M/s. Krishi Construction Pvt Ltd reported at 2020 (43) G.S.T.L. 236 (Tri. - Hyd.), wherein the tribunal has held the Government companies and corporation to be governmental authority in para 12 of the decision, which is reproduced as under:

*"12. Having considered the rival contentions on this issue, we find that admittedly all the companies/Corporations have been established by the Government of Andhra Pradesh under the various Acts and/or 'Government order', as aforementioned and thus we hold that the appellant has provided service to Governmental authority. Evidently all the service recipients have been set up by the State Government, and are directly under the control of the various Ministries of the State Government. Thus, the service recipients are covered under sub-clause (i) of clause (5), of the definition of the term 'Govt. Authority', in Notification No. 25/2012-S.T. as amended by Notification No. 2/2014-S.T. (by way of substitution). Accordingly, we hold that the appellant is entitled to exemption under Notification No. 25/2012-S.T., and the demand of Rs. 97,63,710/- is set aside."*

28. Further, it is evident that the assessee is a partnership firm and had provided the works contract service to the body corporate i.e. M/s, Gujarat State Police Housing Corporation (GSPHCL). The Notification No. 30/2012-ST dt. 20.06.2012 issued under Section 68(2) of the Finance Act, 1994, prescribes the class of person liable to pay service tax under reverse charge mechanism being the recipient of service. Accordingly, as per Sr. No. 9 of the Notification No. 30/2012-ST dated 20.06.2012, works contract service provided by the assessee to the body corporate, the assessee being partnership firm, was liable to pay 50% of the tax under partial Reverse charge mechanism. The rest 50% of the service tax was required to be paid by the body

corporate. In the instant case, GSPHCL being the body corporate was liable to pay 50% of the service tax on the receipt of the service from the assessee. I find that assessee had filed the ST3 returns and paid service tax under partial reverse charge mechanism i.e.50% being provider of services thereon for F.Y.2015-16 & 2016-17.

29. Therefore, in view of this legal position, I find that the assessee was eligible for exemption from payment of service tax for the provision of service to the government and government authority by way of construction, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works of construction service, for the period prior to 31.03.2015 and the service provided after 31.03.2015 pursuant to work contract entered prior to 31.03.2015. Therefore, the service provided by the assessee to the Government and Governmental authority was exempt during the 2014-15 and the service provided by the assessee to the Government and the Governmental Authority was liable to service tax except where the work order/contract was issued/entered prior to 01.03.2015.

30. On perusing and scrutiny of the ST-3 Returns filed by the assessee for the financial year 2015-16 and 2016-17, the following aspects are discerned. The assessee has filed Nil Return for 2014-15 as the service provided by the assessee to the Government and Governmental authority was exempt during the 2014-15.

As per ST-3 Returns	FY 2015-16		Total
	Apr-Sep (H1)	Oct-March (H2)	
Gross Value of service Provided	81501516	232461446	313962962
Service Providers liability under Partial RCM	5661049	0	5661049
Gross Total	87162565	232461446	319624011
Less :Exempt service	0	58700651	58700651
Less: Abetment	52297539	104256480	156554019
Net Taxable value	34865026	69504315	104369341

As per ST-3 Returns	FY 2016-17		Total
	Apr-Sep (H1)	Oct-March (H2)	
Gross Value of service Provided	123220563	139199510	262420073
Service Providers liability under Partial RCM	0	173018970	173018970
Gross Total	123220563	312218480	435439043
Less : Deduction	18437050	34603794	53040844
Less: Abetment	73932339	187331086	261263425
Net Taxable value	30851174	90283600	121134774

31. The assessee has provided reconciliation statements for service tax for FY 2015-16 and 2016-17. On the basis of these statements and Works contract Income ledger for the year, the net taxable value for the 2014-15, 2015-16 and 2016-17 has been worked out as under:

	FY 2014-15	FY 2015-16	FY 2016-17
Turnover as per B/s/ Ledgers	375642425	413864255	516474144
Less : Exempt Turnover (Work order issue prior to 01.03.2015)	375642425	204760547	63029764
Add: Exempt but tax paid	0	118078543	0
Gross Value	0	327182251	453444380
Less: Tax inclusive of value of service to GSPHCL	0	7410048	15880434
Less: 50% value of service provided to GSPHCL(under RCM – as GSPHCL being the body corporate & recipient of service from partnership firm) u/r Noti. 30/2012-ST (Sr.No. 9)	0	66329334	136232215
Taxable value:	0	253442869	301331731

	Less: Abatement 60%		152065721	180799039
A	Net Taxable Value	0	101377148	120532692
B	Net Taxable value as per ST-3	0	104369341	121134774
C	Difference (A-B)	0	-2992193	-602082

32. From the above table, I find that the net taxable value worked out for FY 2015-16 and 2016-17 is less than the net taxable value arrived in the ST-3 Returns for FY 2015-16 and 2016-17 filed by the assessee. It is also apparent from the ST-3 Returns for FY 2015-16 and 2016-17, the assessee has paid the appropriate tax on the net taxable income shown in ST-3 Returns for these years. As regard FY 2014-15, as discussed earlier, no service tax was payable for the service provided by the assessee being the exempt service during FY 2014-15. From the above factual, legal position and documents submitted by the assessee, I find the difference in the value of service as alleged in the subject SCN is on account of the exemption and abatement claimed by the notice. I find that apart from the differences noticed in the figures reported in ST-3 returns and in ITR/Form 26AS, the department has not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non payment of service tax. Having considered these factual and documentary evidences available on records, I find that there is no short payment of service tax by the assessee. Thus, the subject SCN is liable to be dropped on merits being incorrect and legally not sustainable.

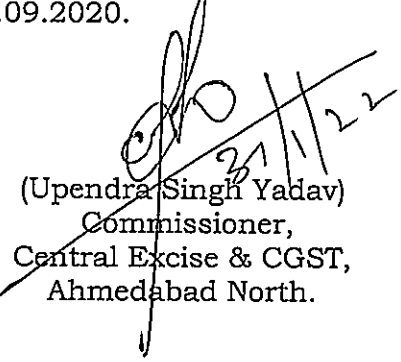
33. As regards the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee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

34. In view of the aforementioned detailed discussion and in view of the facts and circumstances pertaining to the subject case, the demand is not tenable in law. Accordingly, I do not consider it necessary to delve on the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise for imposing penalty.

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

**ORDER**

I drop the proceedings initiated against M/s. Patel Foundation, 37, Ratnaraj Society, Opp. Neelkanth Mahadev, Rannapark, Ghatlodia, Ahmedabad-380061, vide Show Cause Notice F.No. STC/15-64/OA/2020 dated 28.09.2020.

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

By Regd. Post AD./Hand Delivery  
F.No. STC/15-64/OA/2020

Date:31.01.2022.

To  
M/s. Patel Foundation,  
37, Ratnaraj Society,  
Opp. Neelkanth Mahadev,  
Rannapark, Ghatlodia,  
Ahmedabad-380061,

Copy to:

- 1 The Principal Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
- 2 The Deputy/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.
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