


<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/15-181/OA/21-22.

DIN-20220764WT000000FDBF

आदेश की तारीख / Date of Order : 04.07.2022
जारी करने की तारीख / Date of Issue : 05.07.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव

/ UPENDRA SINGH YADAV

आयुक्त

/ COMMISSIONER

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 7 /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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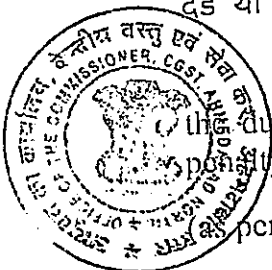
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, द्वितीय तल, बाहुमली भवन असरवा, गिरधर 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.

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



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

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

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से 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.

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:

Subject- Proceedings initiated vide Show Cause Notice No. STC/15-181/OA/21-22 dated 23.04.2021 issued to M/s. Vijay Sevaram Suhandani, 19, Golden Home, B/H Gurudwara, S.G. Highway, Thaltej, Ahmedabad- Gujarat-380 058.



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

M/s. Vijay Shewaram Suhandani, 19, Golden Home, B/H. Gurudwara, S.G. Highway, Thaltej, Ahmedabad, Gujarat-380 058, were issued SCN No. STC/15-181/OA/2021-22 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. VIJAY SHEWARAM SUHANDANI, ARE AS FOLLOWS:

M/s. Vijay Shewaram Suhandani, 19, Golden Home, B/H. Gurudwara, S.G. Highway, Thaltej, Ahmedabad, Gujarat-380 058 (hereinafter referred to as the 'Assessee' for the sake of brevity) were engaged in providing taxable services, and were holding Service Tax Registration No. ADFPS0864ESD001.

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. Vijay Shewaram Suhandani, was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 to 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-VI and on going through the Third Party Data provided by CBDT of the said assessee for the F.Y.2015-16 to 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 F.Y. 2015-16 to 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 F.Y.2015-16 to 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for 2015-16 and 2016-17. The difference in value as observed for F.Y.2015-16 and 2016-17 was found to be as under:

Sr. No.	Financial Year	Value Difference in ITR & STR / TDS & STR (Whichever is higher) (in Rs.)	Service Tax (in Rs.)
1	2015-16	90925776	12685914
2	2016-17	82821938	12354083
	Total	173747714	25039997

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. 2,50,39,997/- (including Cess) on the differential value of Rs.17,37,47,714/-.

4. As per the provisions of Section 72 of the Finance Act, 1994, if any person, liable to pay service tax having made a return, fails to assess the tax, the Central

Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

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.

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.

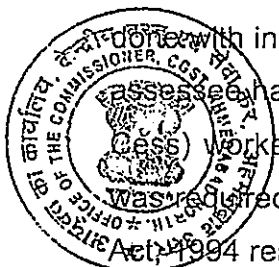
(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed."

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 5th 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.2,50,39,997/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 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. 2,50,39,997/- (including Cess) worked out on value of Rs. 17,37,47,714/- and therefore, the said Service Tax was 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 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) 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 2015-16 and 2016-17. From the evidences gathered/ available at the relevant time, it appeared that the 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.2,50,39,997/-. 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. 2,50,39,997/- 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. 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. 2,50,39,997/-(inclusive of Cess) not paid by the assessee was required to be demanded and recoverable 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.

14. 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.

15. 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.

16. The assessee was given opportunity to appear for pre-SCN consultation on 23.04.2021, but the same was not attended by them.

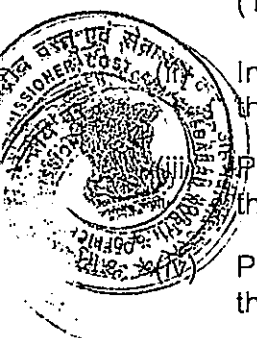
17. Therefore, Show Cause Notice dated 23.04.2021 was issued to the assessee asking them as to why:

- (i) Differential amount of Service Tax of Rs. 2,50,39,997/- (Rupees Two Crore Fifty Lakh Thirty Nine Thousand Nine Hundred Ninety Seven only) short/ not paid, should not be confirmed and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.

Interest at the appropriate rate should not be demanded and recovered from them under Section 75 of the Finance Act, 1994;

Penalty should not be imposed upon them under the provision of Section 76 of the Finance Act, 1994.

Penalty should not be imposed upon them under the provision of Section 77 of the Finance Act, 1994.



- (v) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994.

DEFENCE REPLY:

18. The assessee vide letter dated 23.06.2021 tendered their written submission. The assessee submitted that they were engaged in construction activities; that they have provided construction services mainly to different Departments of Government of Gujarat; that they have provided only work contract services during 2015-16 and 2016-17. The assessee submitted that they have provided works contract services to the following projects of Government of Gujarat, during the year 2015-16 and 2016-17, which were exempted from levy of Service Tax as per entry No. 12A of Notification No. 25/2012-ST dated 20.06.2012.

Period	Date of contract/ work order	Name of the Project	Whether taxable or exempted
April-2015 to Sep-2015	28-10-2014	SARVA SHIKSHA ABHIYAN - P-999	EXEMPTED - CONSTRUCTION OF SCHOOL BUILDING
	02-08-2013	ROAD & BUILDING - MANDAL	EXEMPTED - CONSTRUCTION OF SCHOOL BUILDING
	20-01-2014	SARVA SHIKSHA ABHIYAN - P-805	EXEMPTED - CONSTRUCTION OF SCHOOL BUILDING
	07-07-2014	SARVA SHIKSHA ABHIYAN - P-892	EXEMPTED - CONSTRUCTION OF SCHOOL BUILDING
	28-10-2014	SARVA SHIKSHA ABHIYAN - P-999	EXEMPTED - CONSTRUCTION OF SCHOOL BUILDING
October-2015 to March- 2016	07-07-2014	SARVA SHIKSHA ABHIYAN - P-892	EXEMPTED - CONSTRUCTION OF SCHOOL BUILDING
	04-08-2014	PROJECT IMPLEMENTATION UNIT	EXEMPTED - CONSTRUCTION OF HOSPITAL BUILDING
	28-10-2014	SARVA SHIKSHA ABHIYAN - P-999	EXEMPTED - CONSTRUCTION OF SCHOOL BUILDING
	28-01-2015	SARVA SHIKSHA ABHIYAN - P-1058	EXEMPTED - CONSTRUCTION OF SCHOOL BUILDING
	28-01-2015	SARVA SHIKSHA ABHIYAN - P-1059	EXEMPTED - CONSTRUCTION OF SCHOOL BUILDING
	04-08-2014	PROJECT IMPLEMENTATION UNIT	EXEMPTED - CONSTRUCTION OF HOSPITAL BUILDING
	05-08-2015	SARVA SHIKSHA ABHIYAN - P-1157	TAXABLE
	28-01-2015	SARVA SHIKSHA ABHIYAN - P-1059	EXEMPTED - CONSTRUCTION OF SCHOOL BUILDING
	28-01-2015	SARVA SHIKSHA ABHIYAN - P-1058	EXEMPTED - CONSTRUCTION OF SCHOOL BUILDING
	28-10-2014	SARVA SHIKSHA ABHIYAN - P-999	EXEMPTED - CONSTRUCTION OF SCHOOL BUILDING
	07-08-2015	SARVA SHIKSHA ABHIYAN-P- UPS 41	TAXABLE
	04-08-2015	PROJECT IMPLEMENTATION UNIT	EXEMPTED
	28-01-2015	SARVA SHIKSHA ABHIYAN - P-1058	EXEMPTED - CONSTRUCTION OF SCHOOL BUILDING
	05-08-2015	SARVA SHIKSHA ABHIYAN - P-1157	TAXABLE
	28-01-2015	SARVA SHIKSHA ABHIYAN - P-1059	EXEMPTED - CONSTRUCTION OF SCHOOL BUILDING
	28-01-2015	SARVA SHIKSHA ABHIYAN - P-1059	EXEMPTED - CONSTRUCTION OF SCHOOL BUILDING
	04-08-2014	PROJECT IMPLEMENTATION UNIT	EXEMPTED - CONSTRUCTION OF HOSPITAL BUILDING
	05-08-2015	SARVA SHIKSHA ABHIYAN - P-1157	TAXABLE
	04-08-2014	PROJECT IMPLEMENTATION UNIT	EXEMPTED - CONSTRUCTION OF HOSPITAL BUILDING
	October-2016 to March-	13-04-2016	GUJARAT AGRO INDUSTRIES
13-04-2016		SARVA SHIKSHA ABHIYAN - P-1259	TAXABLE
13-04-2016		SARVA SHIKSHA ABHIYAN - P-1266	TAXABLE
09-05-2016		SARVA SHIKSHA ABHIYAN - P-1294	TAXABLE
20-05-2016		ROAD & BUILDING DEPARTMENT - DETROJ	TAXABLE
09-05-2016		SARVA SHIKSHA ABHIYAN - P-1303	TAXABLE



07-08-2015	SARVA SHIKSHA ABHIYAN - P-UPS41	TAXABLE
13-04-2016	SARVA SHIKSHA ABHIYAN - P-1266	TAXABLE
09-05-2016	SARVA SHIKSHA ABHIYAN - P-1294	TAXABLE
09-05-2016	SARVA SHIKSHA ABHIYAN - P-1303	TAXABLE
20-05-2016	ROAD & BUILDING DEPARTMENT - DETROJ	TAXABLE
13-04-2016	SARVA SHIKSHA ABHIYAN - P-1259	TAXABLE
05-08-2015	SARVA SHIKSHA ABHIYAN - P-1157	TAXABLE
16-01-2017	SARVA SHIKSHA ABHIYAN - P-1511	TAXABLE
16-01-2017	SARVA SHIKSHA ABHIYAN - P-1521	TAXABLE
09-05-2016	SARVA SHIKSHA ABHIYAN - P-1303	TAXABLE
05-11-2016	TRIPUR BUILDERS - DHANERA	TAXABLE

The assessee submitted the period wise gross value of services provided by them for the period April,2015 to September,2015 were as under:

Date of Contract	Department	Date of Bill	Amount	Abated Value &40% (Rs.)	Amount of Taxable value (Rs.)	Rate of Service Tax (%)	Amount of Service Tax (Rs.)	Bill Amount
28.10.2014	SARVA SHIKSHA ABHIYAN - P999	20.05.15	6294174.00	-	-	-	-	6294174.00
02.08.2013	ROAD & BUILDING-MANDAL	20.05.15	578870.00	-	-	-	-	578870.00
20.01.2014	SARVA SHIKSHA ABHIYAN - P805	23.05.15	1756544.00	-	-	-	-	1756544.00
07.07.2014	SARVA SHIKSHA ABHIYAN - P892	25.05.15	6432690.00	-	-	-	-	6432690.00
28.10.2014	SARVA SHIKSHA ABHIYAN - P999	28.05.15	7062419.00	-	-	-	-	7062419.00
	Total A		22124697.00	-	-	-	-	22124697.00

They submitted that the extended period of limitation cannot be invoked for the period April,15 to Sept,15. They have submitted that as per Section 73(1) of Finance Act a show cause notice is to be issued within the period of thirty (30) months from the relevant date, the term of relevant date have been defined under Section 73(6), the date of filing the return pertaining to relevant period. where any service tax has not been levied or paid or has been short-levied or short-paid SCN have to be issued within a period of thirty (30) months from the relevant date. They have submitted that, even if suppression of facts was considered by the Department, for whatsoever reasons, then also the date of filing of ST-3 Return for the said period was 25,Oct,2015 and therefore the SCN demanding short payment of Service Tax for the period April, 15 to Sept, 15 was 24th Oct,2020. However, SCN was received by them on 26.04.2021. They have submitted that, as per the provisions of section 73 (1) of the Finance Act, 1994, the said period was already hit by limitation of time. No demand can be issued with respect to the said period.



The assessee has submitted the value of service provided for the period October, 2015 to March, 2016 as under:

Date of Contract	Department	Date of Bill	Amount	Abated Value & 40% (Rs.)	Amount of Taxable value (Rs.)	Rate of Service Tax (%)	Amount of Service Tax (Rs.)	Bill Amount
07-07-2014	SARVASHIKSHA ABHIYAN - P-892	10-10-2015	47,03,375.00	-	-	-	-	47,03,375.00
04-08-2014	PROJECT IMPLEMENTATION UNIT	02-10-2015	80,71,147.00	-	-	-	-	80,71,147.00
28-10-2014	SARVA SHIKSHA ABHIYAN - P-999	01-11-2015	26,47,365.00	-	-	-	-	26,47,365.00
28-01-2015	SARVASHIKSHA ABHIYAN - P-1058	02-11-2015	61,15,176.00	-	-	-	-	61,15,176.00
28-01-2015	SARVA SHIKSHA ABHIYAN - P-1059	02-11-2015	50,22,507.00	-	-	-	-	50,22,507.00
04-08-2014	PROJECT IMPLEMENTATION UNIT	02-11-2015	32,53,169.00	-	-	-	-	32,53,169.00
05-08-2015	SARVA SHIKSHA ABHIYAN - P-1157	10-02-2016	46,71,761.81	18,68,704.73	18,68,704.73	14.50	2,70,962.19	49,42,724.00
28-01-2015	SARVA SHIKSHA ABHIYAN - P-1059	10-02-2016	61,64,577.00	-	-	-	-	61,64,577.00
28-01-2015	SARVA SHIKSHA ABHIYAN - P-1058	10-02-2016	40,31,810.00	-	-	-	-	40,31,810.00
28-10-2014	SARVASHIKSHA ABHIYAN - P-999	10-02-2016	30,60,158.00	-	-	-	-	30,60,158.00
07-08-2015	SARVA SHIKSHA ABHIYAN - P UPS 41	20-03-2016	41,90,992.44	16,76,396.98	16,76,396.98	14.50	2,43,077.56	44,34,070.00
04-08-2014	PROJECT IMPLEMENTATION UNIT	29-03-2016	47,37,874.00	-	-	-	-	47,37,874.00
28-01-2015	SARVA SHIKSHA ABHIYAN - P-1058	31-03-2016	39,11,819.00	-	-	-	-	39,11,819.00
05-08-2015	SARVA SHIKSHA ABHIYAN - P-1157	31-03-2016	43,38,156.90	17,35,262.76	17,35,262.76	14.50	2,51,613.10	45,89,770.00
28-01-2015	SARVA SHIKSHA ABHIYAN - P-1059	31-03-2016	31,15,645.00	-	-	-	-	31,15,645.00
	TOTAL B		6,80,35,533.15				7,65,652.85	6,88,01,186.00

They have submitted that the extended period of limitation cannot be invoked for the period Oct, 15 to March, 15. They have submitted that as per Section 73(1) of Finance Act a show cause notice is to be issued within the period of thirty (30) months from the relevant date, the term of relevant date have been defined under section 73(6), the date of filing the return pertaining to relevant period. They have submitted that from the table above as well as ST3 returns, they have declared the value of exempted service as well as value of taxable service in their ST3 returns. The extended period for the said duration can't be invoked for this reason ; that the date of filing ST-3 Return for the said period Oct, 15 March, 16 was 25, April, 2016 and therefore the SCN demanding short payment of Service Tax for the period Oct, 15 March, 16 was to be issued on or before 24th Oct, 2018. However, the present SCN was received by them on 26.04.2021. They have submitted that, as per the provisions of Section 73 (1) of the Finance Act, 1994, the said period was already hit by limitation of time. No demand can be raised with respect to the said period.

The assessee has submitted the consolidated figures for F.Y.2015- and stated that the gross value as per actual/ledger almost tallied gross value taken into consideration by the department in the under:

Gross Value as per actual/ledger (Rs.)	Value as declared in ST3 returns (Rs.)
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		Taxable	Exempted
April,15 to Sept,15	2,21,24,697.00	—	—
Oct,15 to March,16	6,88,01,186.00	1,39,63,334.00	5,00,96,748.00
Total	9,09,25,883.00	1,39,63,334.00	5,00,96,748.00

The assessee has submitted the value of service provided for the period April-2016 to Septemr,2016 as under:

Date of Contract	Department	Date of Bill	Amount	Abated Value &40% (Rs.)	Amount of Taxable value (Rs.)	Rate of Service Tax (%)	Amount of Service Tax (Rs.)	Bill Amount
28.01.2015	SARVA SHIKSHA ABHIYAN - P-1059	21.06.2016	16,30,679.00	-	-	-	-	16,30,679.00
04.08.2014	PROJECT IMPLEMENTATION UNIT	15.07.2016	29,35,205.00	-	-	-	-	29,35,205.00
05.08.2015	SARVA SHIKSHA ABHIYAN P-1157	15.08.2016	52,65,429.25	21,06,171.70	21,06,171.70	15.00	3,15,925.75	55,81,355.00
04.08.2014	PROJECT IMPLEMENTATION UNIT	21.09.2016	49,11,993.00	-	-	-	-	49,11,993.00
	TOTAL A				21,06,171.70		3,15,925.75	1,50,59,232.00

The assessee has submitted that the extended period of limitation cannot be invoked for the period April, 16 to Sept, 16 as the due date of filing ST-3 Return for the period April,16 to Sept, 16 was 25th Oct,2016 and therefore the SCN demanding short payment of Service Tax for the period April, 16 to Sept, 16 was to be issued on or before 24th April,2019 as per Section 73(1) of the Finance Act,1994. However, the SCN was received by them on 26.04.2021. Thus, as per the provisions of section 73 (1) of the Finance Act, 1994, the said period was already hit by limitation of time. No demand can be raised with respect to the said period.

The assessee has submitted the value of service provided for the period October,2016 to March,2017 as under:

Date of Contract	Department	Date of Bill	Amount	Abated Value &40% (Rs.)	Amount of Taxable value (Rs.)	Rate of Service Tax (%)	Amount of Service Tax (Rs.)	Bill Amount
13.04.2016	GUJARAT AGRO INDUSTRIES	13-10-2016	41,24,795.00	-	-	-	-	41,24,795.00
13.04.2016	SARVASHIKSHA ABHIYAN - P-1259	15-10-2016	30,93,969.81	12,37,587.92	12,37,587.92	15.00	1,85,638.19	32,79,608.00
13.04.2016	SARVASHIKSHA ABHIYAN - P-1266	20-10-2016	39,39,776.42	15,75,910.57	15,75,910.57	15.00	2,36,386.58	41,76,163.00
09.05.2016	SARVASHIKSHA ABHIYAN - P-1294	20-10-2016	27,13,983.02	10,85,593.21	10,85,593.21	15.00	1,62,838.98	28,76,822.00
20.05.2016	ROAD & BUILDING DEPARTMENT - DETROJ	20-10-2016	26,99,416.04	10,79,766.42	10,79,766.42	15.00	1,61,964.96	28,61,381.00
09.05.2016	SARVASHIKSHA ABHIYAN - P-1303	25-10-2016	34,82,637.74	13,93,055.09	13,93,055.09	15.00	2,08,958.26	36,91,596.00
07.08.2015	SARVASHIKSHA ABHIYAN - P CPS41	25-10-2016	39,90,144.34	15,96,057.74	15,96,057.74	15.00	2,39,308.66	42,29,553.00
13.04.2016	SARVASHIKSHA ABHIYAN - P-1266	22-12-2016	28,03,108.49	11,21,243.40	11,21,243.40	15.00	1,68,186.51	29,71,295.00
09.05.2016	SARVA SHIKSHA ABHIYAN - P 1294	22-12-2016	29,04,703.77	11,61,881.51	11,61,881.51	15.00	1,74,282.23	30,78,986.00
09.05.2016	SARVA SHIKSHA ABHIYAN - P-1303	22-12-2016	39,79,865.09	15,91,946.04	15,91,946.04	15.00	2,38,791.91	42,18,657.00
28.08.2016	ROAD & BUILDING DEPARTMENT-	20-01-2017	31,68,102.83	12,67,241.13	12,67,241.13	15.00	1,90,086.17	33,58,189.00

Period	Department	Date	Gross Value as per actual/ledger (Rs.)	Value as declared in ST3 returns (Rs.)	Taxable	Exempted	Total	
13.04.2016	DIETROJ SARVA SHIKSHA ABHIYAN - P- 1259	15-02-2017	34,90,726.42	13,96,290.57	13,96,290.57	15.00	2,09,443.58	37,00,170.00
05.08.2015	SARVASHIKSHA ABHIYAN - P- 1157	08-03-2017	35,04,535.85	14,01,814.34	14,01,814.34	15.00	2,10,272.15	37,14,808.00
09.05.2016	SARVA SHIKSHA ABHIYAN - P 1294	15-03-2017	43,50,140.57	17,40,056.23	17,40,056.23	15.00	2,61,008.43	46,11,149.00
20.05.2016	ROAD & BUILDING DEPARTMENT - DIETROJ	17-03-2017	22,46,166.04	8,98,466.42	8,98,466.42	15.00	1,34,769.96	23,80,936.00
16.01.20 17	SARVA SHIKSHA ABHIYAN - P- 1511	31-03-2017	28,69,577.36	11,47,830.94	11,47,830.94	15.00	1,72,174.64	30,41,752.00
16.01.20 17	SARVASHIKSHA ABHIYAN-P-1521	31-03-2017	11,58,466.98	4,63,386.79	4,63,386.79	15.00	69,508.02	12,27,975.00
09.05.20 16	SARVA SHIKSHA ABHIYAN - P- 1303	31-03-2017	64,81,199.06	25,92,479.62	25,92,479.62	15.00	3,88,871.94	68,70,071.00
05.11.20 16	TRIPUR BUILDERS- DHANERA	31-03-2017	31,59,219.81	12,63,687.92	12,63,687.92	15.00	1,89,553.19	33,48,773.00
	TOTAL B		6,41,60,534.62	2,40,14,295.85			36,02,144.38	6,77,62,679.00

The assessee has submitted the consolidated figures for F.Y.2016-17 and stated that the gross value as per actual/ledger almost tallied with gross value taken into consideration by the department in the SCN, as under:

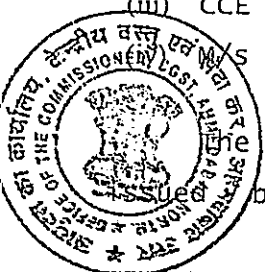
Period	Gross Value as per actual/ledger (Rs.)	Value as declared in ST3 returns (Rs.)	
		Taxable	Exempted
April, 16 to Sept, 16	1,50,59,232.00	52,65,429.00	94,77,877.00
Oct, 16 to March, 17	6,77,62,679.00	6,37,21,349.00	41,24,795.00
Total	8,28,21,911.00	6,89,86,778.00	1,36,02,672.00

The assessee has submitted that the RA bills/invoices were prepared by accounts section of the respective Government Department and the above Figures are inclusive of service Tax, wherever the services provided were taxable. They have submitted the certificate issued by HSK & CO LLP, Chartered Accountant regarding correctness of details of bills and details of works contract.

The assessee has submitted that the Chartered Accountants' certificate may be treated as the documentary evidence in support of their stand/contention. The assessee has relied upon the following citations in support of their contention;

- (i) M/s Windsor machines Ltd. Vs. Commissioner of Central Excise and Service Tax, Ahmedabad-I (2015-TIOL-1834-CESTAT-AHM).
- (ii) M/s Interplex India Pvt. Ltd. Vs CC (2013-TIOL-657-CESTAT-AHM).
- (iii) CCE Vs. M/s Parle International Ltd. (2013-TIOL-730-CESTAT-AHM).
- (iv) HD Patil Vs. CCE (2013-TIOL-256-CESTAT-MUM).

The assessee has submitted that a letter dated 19.10.2020 was submitted by the Superintendent, CGST, Range-II, Division VI,



Ahmedabad-North asking for providing the details of services provided by them during the financial year 2015-16, 2016-17 and 2017-18 (Upto June, 17). In response to the said letter the assessee has replied that audit of the records of the company had already been undertaken by Central Tax Audit, Ahmedabad for the period Oct, 14 to June, 17 and they have received Audit report and paid the late fee of Rs.20,500/- vide DRC-03 as per audit report. The assessee submitted that vide letter dated 15.04.2022 (received on 21.04.2022) the Range Superintendent had, again requested the assessee to provide the details of services provided during the financial year 2015-16, 2016- 17 and 2017-18 (Upto June, 17). They have submitted that before collecting the data/documents and submitting the same to the department, they had received the subject SCN.

The assessee has submitted that they were not called for pre-SCN consultation. If, the said opportunity had been given, they would have explained the exemption nature of the services provided by them and could have avoided undue issuance of the SCN.

- The show cause notice is vague, non-est and perverse, therefore it is liable to be dropped.

The assessee has submitted that, no clear case was made out by the department in the show cause notice and no proper/ complete investigation was carried out by the department to understand the scope of work undertaken, and legal provisions applicable in the case of assessee for execution of work/ providing the services to Government of Gujarat under the provisions of Finance Act, 1994. The show cause notice has merely extracted the statutory provision without assigning the reason as to why the assessee were liable to pay service tax. They have submitted that the whole proceedings gets vitiated for want of proper show cause notice. In the case of CCE Vs. Brindavan Beverages (P) Ltd., reported in 2007 (213) E.L.T. 487 (S.C.), the Hon'ble Supreme Court has held that SCN is foundation on which the Department has to build up its case. If allegations in show cause notice were not specific and on the contrary vague, lack details and/ or unintelligible, it is sufficient to hold that the assessee has not been given proper opportunity to meet allegations indicated in show cause notice. The assessee has relied upon the following judgments in support of their arguments;

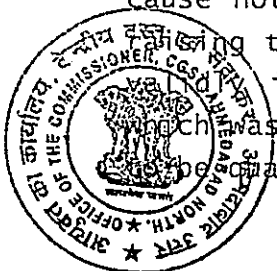
CCE v. Brindavan Beverages 2007 (213) E.L.T. 487 (S.C.)
 Royal Oil Field Pvt. Ltd. V. UOI 2006 (194) E.L.T. 385 (Born.)
 Lakshmidhand Vs. Government of India 1983 (12) ELT 322.
 Collector of Central excise Vs. H.M.M Ltd. 1995 (76) ELT 497 (SC)
 Amrit Foods Vs. CCE 2005 (190) ELT 433 (SC)
 Madhur Hosiery INDS. Vs. CCE 2006 (200) ELT 147.



- At the outset, there is no basis in the SCN to raise the demand against the Noticees. SCN does not analyze how the Noticees are liable to discharge service tax under the statutory taxable categories, hence the SCN issued, is in violation of principals of 'natural justice'.

The assessee has submitted that, the SCN has concluded that service tax returns were not filed properly during the concerned period therefore, the exact service tax liability can be adjudged based on the total income shown in the income tax return/ figures of income provided by assessee without considering whether the same was for provision of service or not, and the SCN concluded the demand of Rs. 2,50,39,997/ -, itself clarifies that the present SCN is vague. They have relied upon the case of M/s. Shubham Electricals v. CST & ST, Rohtak 2015 (40) S.T.R. 1034 (Tri. - Del.). They have also relied upon the case of M/s Coromandel Infotech India Ltd. v. Commissioner of GST and C.E. 2019 (1) TMI 323, the SCN does not identify the exact service tax bases on taxable value of service provided, therefore, the SCN is not maintainable and is liable to be dropped. They have further submitted that the conclusion of short payment of service tax based on the income tax returns of the assessee without ascertaining the taxable value or the statements; hence the SCN is not maintainable. They have relied upon the Hon'ble CESTAT in the case of M/s GEPS Projects v. Commissioner of Central Excise and Service Tax, Noida, 2018 (9) TMI 1517 - CESTAT, ALLAHABAD.

The assessee has submitted that a show cause notice is not merely an empty formality. The opportunity to show cause must be the real and substantive which means the assessee concerned must know as to why the issuing authority is holding the view of assessee being liable to pay tax. It will enable the assessee to meet the case sought to be made out against them. When an obligation was cast upon the authority to give notice to show cause before reaching the conclusion against the person affected by its action, the purpose and requirement to issue show cause notice is two-fold (i) the assessee must get an opportunity to meet the case against him and (ii) he must have an opportunity to set forth their own case to show as to why an adverse order should not be passed against them. Thus, unless and until prima-facie reasons and materials were recorded in the SCN, no opportunity can even be given to the assessee to meet their case. They have relied upon the decision of the Hon'ble Bombay High Court in the case of M/s. Rajmal Lakhchand v. Commissioner of Customs, 2010 (255) ELT 357 (Bom), which had been affirmed by the Hon'ble Supreme Court in 2012 (278) ELT 577 (SC). They have further relied upon the decision of the Hon'ble Bombay High Court in Royal Oil Field Pvt. Limited v. Union of India, 2006 (194) ELT 385 (Bom), wherein it was held that if a show cause notice is totally vague and does not disclose any material for issuing the demand, then such a show cause notice cannot be said to be issued and thus, is liable to be quashed. The present SCN, which was based on mere assumptions, cannot be sustained and is liable to be quashed.



The assessee has submitted that the Hon'ble Supreme Court in a plethora of cases has held that the SCN is the foundation for the judicial proceedings and the basic requirement for following the principles of natural justice, i.e. opportunity to defend is denied if SCN is without reasoning or without specific grounds. They have relied upon the following cases;

- a. CCE v. Brindavan Beverages P. Ltd., 2007 (213) ELT 487 (SC)
- b. Kaur & Singh v. Collector of Central Excise, New Delhi, 1997 (94)E.L.T.289 (S.C.)
- c. Royal Oil Filed P. Ltd. v. Union of India, 2006 (194) ELT 385 (Bom.)
- d. Oryx Fisheries (P) Ltd. v UOI, (2010) 13 SCC 427

The assessee has further relied upon the cases of i. Om Vir Singh u. Union Of India, 2016 (340) E.L.T. 277 (Guj.). ii. Vaiyapuri v. Commissioner of Cus. (Seaport), Chennai, 2015 (325) E.L.T. 403 (Tri. - Chennai).

The assessee has submitted that the SCN has been issued to them without following the directions/in gross violation of instructions of CBIC contained in the letter F.No.137/47 2020-St dated 23rd April, 2021 of CBIC New Delhi.

> The department has failed to discharge its burden of proof to the effect that the assessee are liable to pay service tax.

The assessee has submitted that, when tax demand is raised by the Department on the ground of short/ non-levy of tax, the burden of proof to establish such short/ non-levy of tax is on the Department and the Department had failed to discharge its burden in view of the submissions made. They have relied upon the following case laws;

- a. Union of India v. Garware Nylons Ltd., (1996) 10 SCC 413
- b. Commissioner of Customs, Mumbai v. Foto Centre Trading Co., 2008 (225) ELT 193 (Bom.)
- c. Commr. of C. Ex., Chandigarh v. Khalsa Charan Singh And Sons, 2010 (255) ELT 379 (P&H)

The assessee has further submitted that burden of proof lies upon the party, whether plaintiff or defendant, who substantially asserts the affirmative of the issue. This rule, derived from the maxim of Roman Law, *ei qui affirmat, non ei qui negat*, incumbit probation, is adopted partly because it was but just that he who invokes the aid of the law should be the first to prove their case; and partly because, in the nature of things, a negative is more difficult to establish than an affirmative. The phrase 'burden of proof' is used in two distinct meanings in the law of evidence, viz., the burden of establishing a case and burden of introducing evidence. The burden of establishing a case remains throughout the trial where it was originally placed; it never shifts. The burden of producing evidence shift constantly as the evidence is introduced by one side or the other. The burden of producing evidence is also known as 'onus of proof'. In support of their arguments, the assessee has relied upon on decision of M/s. Rajendra Jagannath Parekh and Ajay Shashikant



Parekh vs. Commissioner of Custom, reported in 2004 (175) ELT 238 (Tri-Mumbai).

The assessee has submitted that the parties, on whom 'onus of proof' lies, must in order to succeed, establish a prima facie case. On the other hand, the burden of proof should be strictly discharged. In other words, one has to prove the point which he asserts on his own evidence and not by any weakness in the case of defendant. It is a settled legal position that the burden of proof never shifts. Where, Revenue has raised demand of tax by alleging short/ non-levy, the burden of proof is always on the Revenue to prove such allegations/ assertions and it never shifts. They have relied upon the following case laws;

- a. *Commissioner v. Kuber Tobacco Products Ltd.,- 2016 (339) E.L.T. A130 (Del.)*
- b. *Commissioner of Central Excise, Coimbatore v. Vyas Textiles, 2015 (327)E.L.T. 681 (Tri. - Chennai)*
- c. *Commissioner of Customs, Amritsar v. Neeldhara Transfers, 2012 (284)E.L.T. 673 (Tri. - Del.)*

The assessee has submitted that the burden of proof is on the Department to prove that the assessee had short paid/ not paid the service tax which the department has failed to discharge. Therefore, it is submitted that the SCN deserves to be dropped.

- No short-payment/non-payment of Tax on the part of assessee as the services provided by the assessee are exempted under Sr. No. 12/12A of Notification No. 25/2012- ST dated 20.06.2012.

The assessee has submitted that there is no short payment/ non-payment of service tax on the part of assessee as the works contract services provided by them by way of construction of School Building as well as Hospital Buildings (Healthcare facilities) are exempted as per Sr. No. 12/12A of Notification No. 25 / 2012 - ST dated 20.06.2012.

The assessee has submitted that the works contract services provided to M/s Gujarat Agro Industries Ltd., are exempted as per provisions of Section 66D of the Finance Act, 1994. They have submitted that they have provided Works Contract Service to M/s Gujarat Agro Industries by way of construction of Civil and Electrical works, Compound Wall and Godown for Potato Cold Storage, Deesa, Distt. Banaskantha and the said services falls within the ambit of Section 66D (d) (v) of the Finance Act, 1994.

The assessee has submitted that they have provided works contract services for construction of School Buildings and Hospital Buildings as well as works contract service for construction of godown for storage of agricultural produce viz. potatoes. They have submitted the soft copies of all tender & specification books as well as soft copies of work orders, issued by different Government Departments. They have submitted the details of each and every tender work order separately as under;

Construction of school building;

(1) S.S.A. (SARVA SHIKSHA ABHIYAN) P-999

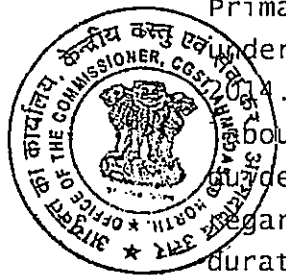
The State Project Director, Sarva Shiksha Abhiyan (SSA) under Government of Gujarat have allotted work under open bid system for the Construction of (15 Nos.) Additional Class rooms for Primary Schools in different locations of Mehsana District under Package No. DIR / ACR / MEH / 999 by work Order dtd 28-10-2014. The assigned work includes execution with all material / labour required for construction by adhering to the guidelines/specifications mentioned in Tender Documents book regarding monitoring of Quality / Material / workmanship, duration, etc. The rates/quote/consideration to be received by the assessee was inclusive of all the taxes, wherever/whatever applicable. They have submitted that from the tender document/ work order, it can be seen that they have provided works contract services to Government Department in the form of construction of School Buildings which was exempted from levy of Service Tax as per Entry No. 12 A of Noti. No. 25/2012-ST dated 20.06.2012.

(2) S.S.A. (SARVA SHIKSHA ABHIYAN) P-805

The State Project Director, Sarva Shiksha Abhiyan (SSA) under Government of Gujarat have allotted work under open bid system for the Construction of (24 Nos.) Additional Class rooms for Primary Schools in different locations of Banaskantha District under Package No. DIR / ACR / BK / 805 by work Order dtd 20-01-2014. The assigned work includes execution with all material / labour required for construction by adhering to the guidelines/specifications mentioned in Tender Documents book regarding monitoring of Quality / Material / workmanship, duration, etc. The rates/quote/consideration to be received by the assessee was inclusive of all the taxes, wherever/whatever applicable. They have submitted that from the tender document/ work order, it can be seen that they have provided works contract services to Government Department in the form of construction of School Buildings which was exempted from levy of Service Tax as per Entry No. 12 A of Noti. No. 25/2012-ST dated 20.06.2012.

(3) S.S.A. (SARVA SHIKSHA ABHIYAN) P-892

The State Project Director, Sarva Shiksha Abhiyan (SSA) under Government of Gujarat have allotted work under open bid system for the Construction of (24 Nos.) Additional Class rooms for Primary Schools in different locations of Banaskantha District under Package No. SSAM / ACR / BK / 892 by work Order dtd 07-07-2014. The assigned work includes execution with all material / labour required for construction by adhering to the guidelines/specifications mentioned in Tender Documents book regarding monitoring of Quality / Material / workmanship, duration, etc. The rates/quote/consideration to be received by



the assessee was inclusive of all the taxes, wherever/whatever applicable. They have submitted that from the tender document/work order, it can be seen that they have provided works contract services to Government Department in the form of construction of School Buildings which was exempted from levy of Service Tax as per Entry No. 12 A of Noti. No. 25/2012-ST dated 20.06.2012.

(4) S.S.A. (SARVA SHIKSHA ABHIYAN) P - 1058

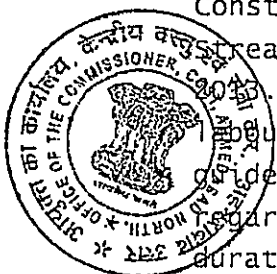
The State Project Director, Sarva Shiksha Abhiyan (SSA) under Government of Gujarat have allotted work under open bid system for the Construction of (16 Nos.) Additional Class rooms for Primary Schools in different locations of Banaskantha District under Package No. SSA / ACR / BK / 1058 by work Order dtd 28-01-2015. The assigned work includes execution with all material / labour required for construction by adhering to the guidelines/specifications mentioned in Tender Documents book regarding monitoring of Quality / Material / Workmanship, duration, etc. They have submitted that from the tender document/work order, it can be seen that they have provided works contract services to Government Department in the form of construction of School Buildings which was exempted from levy of Service Tax as per Entry No. 12 A of Noti. No. 25/2012-ST dated 20.06.2012.

(5) S.S.A. (SARVA SHIKSHA ABHIYAN) P - 1059

The State Project Director, Sarva Shiksha Abhiyan (SSA) under Government of Gujarat have allotted work under open bid system for the Construction of (17 Nos.) Additional Class rooms for Primary Schools in different locations of Banaskantha District under Package No. SSA / ACR / BK / 1059 by work Order dtd 28-01-2015. The assigned work includes execution with all material / labour required for construction by adhering to the guidelines/specifications mentioned in Tender Documents book regarding monitoring of Quality / Material / Workmanship, duration, etc. They have submitted that from the tender document/work order, it can be seen that they have provided works contract services to Government Department in the form of construction of School Buildings which was exempted from levy of Service Tax as per Entry No. 12 A of Noti. No. 25/2012-ST dated 20.06.2012.

(6) R & B, Mandal

The Executive Engineer, Ahmedabad (R & B Division), Government of Gujarat have allotted work under open bid system for the Construction of New Government Higher Secondary School (Science Stream) At Mandal of Ahmedabad District by work Order dtd 02-08-2015. The assigned work includes execution with all material / labour required for construction by adhering to the guidelines/specifications mentioned in Tender Documents book regarding monitoring of Quality / Material / Workmanship, duration, etc. They have submitted that from the tender document/



work order, it can be seen that they have provided works contract services to Government Department in the form of construction of School Buildings which was exempted from levy of Service Tax as per Entry No. 12 A of Noti. No. 25/2012-ST dated 20.06.2012.

They have further submitted that as per the conditions of Entry No. 12 A of Noti. No. 25/2012-ST dated 20.06.2012, wherever the contracts/work orders are issued prior to 01.03.2015 and completed by 31.03.2020 are exempted. Above contracts/work orders discussed by the assessee pertains to/ were issued prior to 01.03.2015 and hence assessee have claimed exemption from payment of Service Tax on consideration received in respect of such work orders only. The assessee has submitted that they have also provided works contract service to Government Departments in the form of construction of school buildings, since the contracts/work orders were issued after 01.03.2015, the same were liable for tax and hence assessee have discharged their Service Tax liability on consideration received in respect of such work orders. The assessee have provided work sheet of service tax liability for the period April,2015 to March,2017.

> **Construction of Hospital Buildings**

The Chief Engineer, (Commissioner of Health), Gandhinagar have allotted work under open bid system for the New Construction of *C* Type Staff Quarters (2 Nos.) At Kami, Modai, Rudan, Varsola At Ta - Mahemdavad & Nani Khadol, Chune], Sanani at Ta - Mahudha; District Kheda by work Order dtd 04-08-2014. The assigned work includes execution with all material / labour required for construction by adhering to the guidelines/specifications mentioned in Tender Documents book regarding monitoring of Quality / Material / Workmanship, duration, etc. The above tender document/ work order, it can be seen that the works contract services provided to Government Department in the form of construction of hospital Buildings which was exempted as per Entry No. 12 A of Noti. No. 25/2012-ST dated 20.06.2012.

> **Construction of Godown for storage of Agriculture Produce viz. Potatoes**

The assessee has submitted that the Additional General Manager Gujarat Agro Industries floated tender for construction of the cold storage with Infrastructural facilities for farmers for storage of the agricultural products. The work Order for Civil and Electric works, Compound Wall Godown at Potato Cold Storage Deesa, Distt. Banaskantha, Gujarat was issued under open tender by work Order No. - M&P/DEESA/O&G/2016-17/1792 dated 13-04-2016. The work includes construction of cold storage and ancillary facilities like compound wall / U.G. Tank / Security Cabin etc. The assigned work includes execution with all material / labour required for construction by adhering to the guidelines/specifications mentioned in Gujarat Agro Industries Tender book ; regarding monitoring

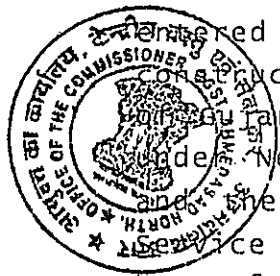


of Quality / Material / Workmanship, duration, etc. The rates/quote/consideration to be received by the assessee was inclusive of all the taxes, wherever/whatever applicable. From the tender document/ work order, it can be seen that they have provided works contract services to Gujarat Agro Industries which is a Government of Gujarat Enterprise in the form of construction of godown for storage of Agriculture Produce which was exempted as per Section 66 D of the Finance Act,1994. Further, the rates were also inclusive of all taxes, wherever/ whatever applicable.

➤ **Audit of financial records of the assessee by the service tax authorities**

The assessee has submitted that their financial records were always subject to audit by the service tax authorities. It was undisputed fact that the financial records of the assessee were being audited by the service tax authorities regularly. In such circumstance to allege any suppression, willful misstatement on the part of the assessee is unsustainable. The assessee have relied up on the Hon'ble Supreme Court case of M/s. Pragathi Concrete Products reported in 2015 (322) ELT 819 (SC).

The assessee has submitted the copy of the Final Audit Report No.1030/Service Tax/2019-20 dated 24.01.2020 issued by Assistant Commissioner, Central Tax Audit, Circle-III, Ahmedabad. They have submitted that records of the assessee were audited by officers of Central Tax Audit, Ahmedabad on 03 & 14, 21.11.2019, 10 & 18.12.2019 for the period from Oct,14 to June, 2017. Thus, the period covered in the present SCN was covered under the period of audit. From the said audit report, it can be seen that no objection was raised by officers of Central Tax Audit, Ahmedabad except for late filing of ST-3 Returns for the period Oct,14 to March,15 and April,15 to Sept,15 for which a demand of Rs.20,500/- as late fee was raised in the said audit report. The assessee submitted that during the course of audit, officers of Central Tax Audit, Ahmedabad had also called for copies of all the contracts/work orders and officers of Central Tax Audit, Ahmedabad were also of the opinion that the Services provided by the assessee were works contract services of construction of buildings for the purpose of education mainly to Sarva Siksha Abhiyan projects as well as construction of hospital buildings for Government of Gujarat, during the year 2015-16 and 2016-17, which were exempted as per entry No. 12A of Noti. No. 25/2012-ST dated 20.06.2012 where the contracts were entered prior to 01.03.2015 and the services provided for construction of godown for Gujarat Agro Industries (a Government of Gujarat Enterprise) was also exempted since it was covered under Negative List under Section 66D of the Finance Act,1994. Therefore no objection with respect to short payment of Service Tax was raised in the said Audit Report. The assessee have further sub mitted that they had requested for the



photocopy of the entire F.No.VI/1(b)-58/Cir-III/AP-20/19-20 (Note sheet pages as well as correspondence pages pertaining to Final Audit Report No. 1030/ Service Tax/2019-20 dated 24.01.2020) from the office of Commissioner, Central Tax Audit, Ahmedabad under RTI Act, 2005. However, the same had been denied by the concerned office.

➤ **Without prejudice, Revenue declared under the Income tax cannot be considered as revenue for levy of service tax**

The assessee has submitted that the revenue declared under the Income tax return cannot be considered as revenue for levy of service tax. They have submitted that the demand cannot be raised based on the income tax return without identifying the specific taxable service or service recipient. The service tax liability should be attributed to identifiable taxable service provided to another person. The income shown in the income tax return cannot form basis for confirming service tax demand. They have relied upon the following case laws;

- M/s. Deltax Enterprises v. C.C.E., Delhi-I 2018 (10)G.S.T.L.392 (Tri.-Del.).
- CST, ST, Delhi v. Convergys India Service Pvt. Ltd. 2018 (1) TMI 1174-CESTAT CHANDIGARH.
- C.C.E. v. Ramesh Studio & Color Lab 2010 (5) TMI 466.
- C.C.E., Ludhiana v. Mayfair resorts 2011 (21) S.T.R. 589 (Tri. - Del.)
- Ravi Foods Pvt. Ltd. v. C.C.E., Hyderabad - 2011 (266) E.L.T. 399 (Tri.-Bang.)
- C.C.E., Ludhiana v. Deluxe Enterprises 2011 (22) S.T.R. 203 (Tri. - Del.)
- Kipps Education Centre v. C.C.E., Ludhiana 2009 (13) S.T.R. 422 (Tri. - Del.)
- Friends Auto Industries v. C.C.E., Ludhiana 2017 (3) TMI 358.

The assessee has submitted that aforementioned judgment clarifies that the income tax return is not the criteria to identify the service tax liability. The present SCN is liable to be dropped.

The assessee has submitted that the service tax cannot be demanded on the basis of difference in the amount under FORM 26AS and ST-3 returns; that the service tax shall be leviable on the provision of service and the same shall not fall within the purview of mega exemption notification. The present SCN issued without considering the mega exemption notification is baseless. The present SCN is liable to be dropped.

➤ **Issuance of show cause notice without ascertaining the classification of service and actual tax liability is in itself bad in law and liable to be set aside**

The assessee has submitted that, the department has concluded the tax liability based on the value of income under Income tax; that they have not analyzed the contract and the documentary evidences. The present show cause notice is liable to be dropped. They have relied upon the case of M/s.



Shubham Electricals v. CST & ST, Rohtak 2015 (40) S.T.R.1034(Tri.-Del.). The said order has been duly affirmed by the Hon'ble High Court in the case of Principal Commissioner ST Delhi v. M/s Shubham Electricals 2016 (42) S.T.R.]312 (Del.). They have also relied upon the case of M/s Coromandel Info tech India Ltd. v. Commissioner of GST and C.E. 2019 (1) TMI 323. The assessee has submitted that, the department has concluded that the assessee were liable to pay service tax, however, nowhere in the show cause notice the department has ascertained the actual classification of the services of the assessee. Hence, the show cause notice is liable to be dropped.

➤ **Service tax, if at all payable, is incorrectly calculated by the department as entire amount has been treated as value of services.**

The assessee has submitted that even if service tax is payable, the payments received by the assessee cannot be taken as the value of the taxable service as it was inclusive of service tax where ever applicable. Service Tax is an indirect tax. Service tax was payable on gross amount charged by service provider for service provided or to be provided. As per this system of taxation, tax borne by the consumer of goods/ services was collected by the assessee (manufacturer / service provider) and remitted to the Government. When the amount was collected for the provision of services, the total compensation received should be treated as inclusive of service tax due to be paid by the ultimate customer of the services unless service tax was also paid by the customer separately. So considered, when no tax was collected separately, the gross amount has to be adopted to quantify the tax liability treating it as value of taxable service plus service tax payable. This principle has been legislated with effect from 18-4-2006 in section 67(2). Sub-section (2) of section 67 provides that where the gross amount charged by a Service Provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable services shall be such amount, as with the addition of tax payable, is equal to the gross amount charged. Value of taxable service will be calculated by back calculations so that with addition of service tax applicable, the total amount is equal to the gross amount charged. The assessee has submitted the decisions of the Hon'ble Tribunal in support of their contentions;

- i. Meghdoot Gramoudyog Sewa Sansthan Vs. CCE, 2014 (312) ELT 699 (T).
- ii. CCE Vs. Bombay Snuff Pvt. Ltd., 2010 (262) ELT 487.

They have submitted that Section 67(2) of the Act states the gross amount charged by the service provider shall include the service tax paid or payable along with the said consideration. They have relied upon the Larger Bench decision of the Hon'ble Tribunal in the case of Sri Chakra Tyres 1999 (108) ELT 361. The decision of the Larger Bench has been affirmed by the Hon'ble Supreme Court as the departmental appeal has been dismissed vide Order dated 26th Feb. 2002 reported in 2002 (142) ELT A279



(SC). The assessee has also relied upon the decision of the Hon'ble Supreme Court in the case of CCE v. Maruti Udyog Limited, 2002 (49) RLT 1(SC). They have submitted that the Trade Notice No.20/2002 dated 23.5.2002 of Delhi-II Commissionerate has been issued in this regards which states that;

"The liability to pay the service tax remains with the service provider in the current scenario. Failure to realize or even charge the 5% service tax does not negate this statutory liability. In event of any such failure, the amounts released from client in lieu of having rendered the service(s) will be taken to constitute amounts inclusive of service tax. Accordingly, the amount of service tax will be determined and required to be deposited to the credit of the Central Government".

The assessee has submitted that adjustment for cum duty tax should have been made in the demand issued vide the present SCN by the Department in the absence of which the SCN is liable to be set aside. They have relied upon the decisions of M/s Raj Mahal Hotel v. CCE, Jaipur, 2006-TIOL-1339-CESTAT; Rampur Engineering v. CCE, 2006-TIOL-994-CESTAT and Panther Detective Services & Panther Security Service Pvt. Ltd. 2006 (4) S.T.R. 116 (Tri. - Del.) wherein it was held that amount is to be treated as cum tax.

The assessee has relied upon the decision of Hon'ble Apex Court in the case of Commissioner v. Advantage Media Consultants, 2009 (14) STR 149 (SC) wherein cum-tax benefit has been given for payment of service tax. They have relied upon the following decisions;

- i. Gem Star Enterprises (P) Limited v. Commissioner of Central Excise, 2007(7) STR 342 (Tri-Bang)
- ii. Abirami Retreading Company v. Commissioner of Central Excise, 2009 (13) STR 679 (Tri-Chennai)
- iii. Bright Security Services v. Commissioner of Central Excise, 2012 (26) STR 342 (Tri-Bang)
- iv. Andhra Pradesh Tourism Development Corporation Limited v. Commissioner of Central Excise, 2012 (28) STR 595 (Tri-Bang)

The assessee has submitted that the Hon'ble CESTAT Kolkata in case of Advantage Media Consultant reported in 2008 (10) STR 449 (Tri.-Kol) has held that in case of service tax demand cum tax benefit is available to the assessee; that the said decision of CESTAT Kolkata is affirmed by Hon'ble Supreme Court as reported in 2009 (14) STR 149 (SC); that therefore, the impugned show cause notice deserves to be set aside.

They have submitted that in light of the above, it is clear that for service tax calculation, the consideration received by the assessee should be considered as cum tax payment. There is a difference between service tax demanded in the SCN and service tax paid. Cum-tax valuation. Therefore, the SCN should be dropped.

Service tax, if at all payable, is incorrectly calculated by the Department as entire amount has been treated as value of

services without deducting abatement under Works Contract Service.

The assessee has submitted that, the Clause 44 of section 65B of Finance Act, 1994, defines the Works Contract as follows:

“works contract” means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

Section 66E of the Finance Act, 1994 specifies, Declared services, namely:—

*“(a).....
(h) service portion in the execution of a works contract;”*

They have submitted that, there are two basic ingredients for classifying the Service as Works Contract Service

- (i) Primary condition is that the contract shall involve transfer of property in goods in executing such contract which should be leviable to tax as sale of goods;
- (ii) The contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property.

They have submitted that, if the service Provider uses the goods in execution of works Contract, the property of which is transferred, it qualifies as works contract. From the nature of Contract/Agreement entered by the assessee with Government of Gujarat, there was an element of transfer of property/materials involved in the execution of such contract, and such transfer of property / materials were leviable to tax as sale of goods (such as sales tax, VAT or WCT, etc.), which was covered under the category of 'Works Contract Service'. Thus, from the terms and conditions of the said contract, the services provided by the assessee, fall within the ambit of works contract service.

They have submitted that valuation of service portion in execution of a works contract have been defined in clause (54) of section 65B of the Act. Typically every works contract involves an element of sale of goods and provision of service. It is a well settled position of law, declared by the Supreme Court in BSNL V. UOI 3 STT 245 that a works contract can be segregated into a contract of sale of goods and contract of provision of service. In this case, it was observed that provisions of valuation of service were governed by Section 67 of the Act read with Service Tax (Determination of Value) Rules, 2006. with a view to bring certainty and simplicity in the manner of determining the value of service portion in works



contracts have been provided in Rule 2A of the Service Tax (Determination of Value) Rules, 2006. In order to align this rule with the new system of taxation of services based on the negative list the old rule 2A has been replaced by a new rule by the Service Tax (Determination of Value) Second Amendment Rules, 2012.

They have submitted that as per Notification No. 24/2012 Dated 06.06.2012, 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:-

- (a) Regular Scheme [Rule 2A (i)]
- (b) Standard Deduction Scheme [Rule 2A (ii)]

Regular Scheme:-

Rule 2A(i) of the said rules, provides that value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract. However, such gross amount charged shall not include VAT/Sale Tax.

The assessee has submitted that in the instant case, it was difficult for the assessee to provide the value of property in goods transferred in the execution of the said works contract, to arrive at such a value. Therefore, taxable value of services under this scheme can't be ascertained.

Standard Deduction Scheme:-

Rule 2A(ii) of the said rules provides that where value have not been determined under Rule 2A(i) as above, 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:-

Notification No. 11/2014 Dated 11 July, 2014 under Service Tax (Determination of Value) Rules, 2006 provides for:

Sr. No.	In case of works contracts entered into	Service Tax shall be payable on % of the total amount charged for the works contract
A	For execution of Original Works	40%
B	in case of works contract, not covered under sub-clause (A), including works contract entered into for,- (i) maintenance or repair or reconditioning or restoration or servicing of any goods; or (ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property	70%

Original Work:- (1) "original works" means-

- (i) all new constructions;
- (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

Total amount:- "total amount" means – the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

- (a) the amount charged for such goods or services, if any; and
- (b) the value added tax or sales tax, if any, levied thereon.

"Fair Market Value" –

The fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

The assessee has submitted that in the instant case, the value of taxable services in the execution of a works contract was required to be determined in the manner envisaged under Standard Deduction Scheme. The assessee had executed original works under Works Contract Service, assessee were entitled for abatement of 40% of gross amount for arriving at taxable value for the purpose of calculation of Service Tax liability, if at all payable, which have not been done in the Show Cause Notice.

Service Tax, if at all payable, is incorrectly calculated by the department as rate of Service Tax has been calculated @ 15% for the entire period of 2015-16 and 206-17.

The assessee has submitted that the rate of Service Tax (ST), Education Cess (Edu. Cess) and Secondary & Higher Secondary Education Cess (SHEC), Swachha Bharat Cess (SBC) and Krishi Kalyan cess (KKC) prevailing during the period under review were as under:-

Period	Rate of taxes during different period under review					Total
	ST	Edu. Cess	SHEC	SBC	KKC	
15 to 31.05.15	12	2% of ST	1% of ST			12.36
5 to 14.11.15	14					14
15 to 31.05.16	14			0.5		14.50
16 to 31.03.17	14			0.5	0.5	15

However, the service tax liability is calculated in the Show Cause Notice by considering rate of Service Tax as 15% instead of different rates for different period prevailing, as mentioned above.

- Extended period of limitation is inapplicable in the present case. Therefore, service tax cannot be demanded invoking the provision to sub-section (1) to section 73 of the Finance Act, 1994.

The assessee has submitted that the extended period of limitation was not invocable in the present case as there was no suppression of facts with intent to evade payment of service tax. The demand for the period 2015-16 to 2016-17 is barred by limitation. The assessee have submitted that the demand raised in the show cause notice is based on the Income tax return which is a public document therefore, the allegation of suppression of facts with an intent to evade payment of Service Tax cannot be sustained. The extended period of limitation is not invocable.

- No suppression since the demand is based on the income tax return which is public document.

The assessee has submitted that the show cause notice is issued for demanding the service tax for the financial year 2015-16 to 2016-17. They have submitted that the impugned show cause notice has travelled beyond the normal period of limitation of thirty months under Section 73(1) of the Finance Act, 1994, the demand for the impugned period prior is non-maintainable.

The assessee has submitted that in light of the above provision as well as various decisions of the Hon'ble Supreme Court, it is a settled law that the extended period of limitation of five years under the proviso to Section 73(1) can only be invoked in the case of fraud, collusion, wilful mis-statement, suppression of facts or contravention of any provision of the act or rules thereunder with an intention to evade payment of duty, and such intentional non-compliant conduct on the part of the assessee has to be specifically brought out by the department as opposed to mere allegations to such effect.

They have relied upon the judgment of the Hon'ble Supreme Court in the case of Commissioner of Central Excise vs. Bajaj Auto Limited reported in [2010 (260) E.L.T. 17 (S.C.)] wherein it was held that the initial burden is on the department to prove that the situation visualized by the proviso existed. It was held that if the department is unable to establish the invocation of the extended period at the outset, then in that the demand is to be restricted to the normal period of limitation.

The assessee has submitted that, the Department has nowhere alleged that the assessee had suppressed the true taxable value received by them with mala fide intention to evade the payment



of service tax. The assessee have submitted that the Department had erroneously arrived at the aforesaid conclusion without stating any reasons.

The assessee has submitted that the demand raised in the show cause notice based on the income tax return is a public document and it is trite law that if the information is available in the public document then the allegation of suppression cannot be sustained. They have relied upon the case of M/s Swarn Cars Pvt. Ltd. v. C.C.E., Kanpur 2020 (2) TMI 222.

The assessee has further submitted that non-disclosure of information which was not required to be disclosed or recorded by statutory provision or prescribed proforma does not amount to suppression or concealment and accordingly larger period of limitation cannot be invoked. They have relied upon the following case laws;

- a. *Anand Nishikawa Co. Ltd. vs. Commissioner of Central Excise Appeal, Meerut* [2005(188) E.L.T. 149(SC)]
- b. *Collector of Central Excise, Hyderabad vs. M/s. Chemphar Drugs and Liniments, Hyderabad* [1989 (40) E.L.T. 276 (S.C.)]
- c. *Pahwa Chemicals Private Limited vs. Commissioner of C. Ex., Delhi* [2005 (189) E.L.T. 257 (S.C.)]
- d. *Apex Electricals Pvt. Ltd. vs. Union of India* [1992 (61) ELT 413 (Guj)];
- e. *Prolite Engineering Co vs. Union of India* [1995 (75) ELT 257 (Guj.)] upheld in *Union of India vs. Prolite Engineering Co.* [1994 (70) ELT A153 (SC)];
- f. *Unique Resin Industries vs. Collector of Central Excise, Baroda* [1995 (75) ELT 861(Tri)];
- g. *CCE, Ahmedabad vs. Moti Laminates P. Ltd* [1997 (96) ELT 191(Tri)]

The assessee has submitted that it is well settled law that the Department cannot press into service the machinery for invoking the extended period of limitation unless there is established an act of suppression or mis-declaration with an intent to evade payment of duty. They have relied upon the following decisions;

- a. *Cosmic Dye Chemical vs. Collector of Central Excise, Bombay* 1995 (75) E.L.T. 721(S.C.)
- b. *Tamil Nadu Housing Board vs. Collector* 1994 (74) E.L.T. 9 (S.C.)
- c. *Cadila Laboratories Pvt. Ltd. vs. CCE* 2003 (152) E.L.T. 262 (S.C.)
- e. *Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay* 1995 (78) E.L.T. 401(S.C.)
- f. *M/s. Continental Foundation Joint Venture Holding, Naphtha H.P. vs. CCE, Chandigarh-I* 2007 (216) E.L.T. 177 (S.C.)
- g. *Alumeco Extrusion vs. CCE* 2010 (249) ELT 577
- h. *National Rifles vs. CCE* 1999 (112) E.L.T. 483
- i. *SPGC Metal Industries Pvt. Ltd. vs. CCE* 1999 (111) E.L.T. 286
- j. *Gujarat State Fertilizers vs. CCE, Vadodara* 1996 (84) E.L.T. 539
- k. *ITI (TID) Ltd. vs. CCE* 2007 (11) ELT 316 (Tri)
- l. *Neyveli Lignite Corporation Ltd. vs. CCE* 2007 (209) ELT 310 (Tri)
- m. *Commissioner vs. Bentex Industries* 2004 (173) ELT A079 (SC)
- n. *Commissioner vs. Binny Limited* 2003 (156) ELT A327 (SC)
- o. *Collector vs. Ganges Soap Works (P) Ltd.* 2003 (154) ELT A234 (SC)

The assessee has submitted that in order to allege suppression, there must be a positive act on the part of the assessee to withhold or hide the facts from the Department with a view to evade payment of tax. Mere non-payment of service tax

is not enough to allege that the assessee are guilty of suppression. They have relied upon the following judgments;

- a. Padmini Products v. CCE 1989 (43) ELT 195 (SC)
- b. CCE v. Chemphar Drugs & Liniments 1989 (40) ELT 276 (SC)
- c. Gopal Zarda Udyog v. CCE 2005 (188) ELT 251(SC)

The assessee has submitted that the show cause notice did not enumerate on what counts they had suppressed the facts. Mere mention of word 'suppression' in the notice does not make a case of invoking extended period. Hon'ble Supreme Court in various decisions had held that mere failure to give information is not suppression. There should be some positive misstatement with an intention to evade payment of duty. They have relied upon the case of *Mysore Kirloskar Ltd - 2008 (226) E.L.T.161 (S.C)*; *H.M.M Limited-1995 (76) E.L.T.497 (S.C)*. The decision of *H.M.M. Limited (supra)* has been followed by the Apex Court in the case of *Raj BhadurNarain Singh Sugar Mills - 1996 (88) ELT.24 (S.C)*.

The assessee has submitted that, there being no positive act on part of them to suppress any facts from the department and there being no evidence for such allegation, the 5 year clause is inapplicable. They have relied upon the case of *Continental Foundation v/s CCE 2007 (216) ELT 177 (SC)*.

The assessee has submitted that the omission to inform the department cannot be equated with suppression of facts. The allegation in the show cause notice that the assessee have not intimated the department and hence, have escaped proper assessment and therefore, the extended period of limitation is invokable, was indeed the reason given by the CESTAT in *Padmini Products Vs CCE 1988 (35) ELT 543*, to uphold extended period. The relevant extract of from the said judgment is reproduced below:

"7.Now adverting to the question of time bar, we find that the authorities have issued a Trade Notice holding Agarbatties as eligible for the benefit of exemption under Notification No. 55/75. It is pertinent to note that they have not held that the Dhoop is also eligible for the benefit of this Notification No. 55/75. The Dhoop sticks etc. we have held above are a product different from Agarbatties even though the two may belong to the same category. If the process of manufacture of the two is different, obviously, the two will have to be treated differently for the purpose of application of the benefit of notification. The clarification given in the context of Agarbatties cannot be made applicable to the Dhoop sticks etc. Inasmuch as the Noticee had manufactured the goods without informing the Central Excise authorities and had been removing them without payment of duty, these will have to be taken to attract the mischief of the provisions of Section 9(2) and the duty demanded for the longer time period is maintainable." They have submitted that, the Hon'ble Supreme Court vide its order reported at 1989 (43) ELT 195 (SC) reversed and set aside the aforesaid order of the CESTAT. The decision of the Supreme Court in the case of *Padmini Products (cited supra)* would squarely apply to the case of the assessee and therefore the entire demand of service tax, being beyond the normal period of limitation, is not sustainable.

The assessee has further relied upon the decision of the Supreme Court in the case of *Tamil Nadu Housing Board Vs Collector 1994 (74) ELT 9 (SC)*.



The assessee submitted that *Padmini Products case* and *Tamil Nadu Housing Boards case*, the assessee never had any registration or licence with the department and did not follow the excise formalities, still the Hon'ble Supreme Court concluded that 5 year clause is not applicable; that however, in the present case, the assessee was registered with the service tax department and had paid service tax regularly, wherever applicable, as well as filed statutory ST-3 returns. Extended period cannot be invoked in the facts of the present case.

The assessee has also relied upon the case of *M/s. Jai Prakash Industries Limited V/s CCE 2002 (146) ELT 481 (SC)*.

The assessee has submitted that as there is no suppression of facts by the them, the extended period of limitation is not invocable. The demand is barred by limitation. The Show Cause Notice does not disclose any specific acts in this case of fraud and suppression with intent to evade tax liability. The assessee have all along acted honestly in a bonafide manner. The extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994 cannot be invoked and the demand for the period beyond the normal period of limitation is wholly unsustainable and is liable to be set aside.

➤ **The Service Tax liability of the assessee vis-à-vis Service Tax paid by the assessee as per ST-3 Returns:**

The assessee has submitted that they have provided works contract services of construction of buildings for the purpose of education mainly to Sarva Siksha Abhiyan projects as well as construction of Hospital Buildings for Government of Gujarat, during the year 2015-16 and 2016-17, which were exempted as per entry No. 12A of Noti. No. 25/2012-ST dated 20.06.2012 provided the contracts were entered prior to 01.03.2015. The services provided for construction of godown for Gujarat Agro Industries (a Government of Gujarat Enterprise) exempted, it is covered under Negative List under Section 66D of the Finance Act,1994. They have submitted that last date of serving of SCN for demanding short/non-payment of Service Tax for the period of April,15 to Sept,15 (even by invoking extended period) was 24.10.2020 and the said period covered under the present SCN is hit by limitation of time, since the SCN was served on 26.04.2021). They have submitted that the remaining period of apart from the non-taxability of the services provided by assessee herein above, even otherwise assessee had declared value of all such exempted services in their ST-3 returns. Thus, such services can't be taxed on both the counts (i) since they are exempted as per entry No. 12A of Noti.

No. 25/2012-ST dated 20.06. 2012/covered under negative list as well as (ii) non invocation of extended period as there was no suppression. They have submitted that for the contracts entered after 01.03.2015, they have discharge Service Tax liability under works contract service.

The assessee have calculated Service Tax liability for the period April,15 to March,17. The service tax liability of the assessee vis-à-vis Service Tax paid as per ST-3 Returns are summarised as under:-

Period	Service Tax liability (Rs.)	Service Tax paid as per ST-3 Returns (Rs.)
April,15 to Sept,15	00.00	00.00
Oct,15 to March,16	7,07,477.00	7,65,476.00
April,16 to Sept,16	2,91,201.00	3,16,523.00
Oct,16 to March,17	33,20,237.00	36,06,869.00

They have submitted that the assessee have completely discharged Service Tax liability, and have paid Service Tax in excess to its actual liability. The demand raised in the aforesaid SCN is required to be set aside alongwith consequential reliefs. They have submitted the copies of ST3 returns filed by them.

➤ **The assessee has submitted that no interest could be levied as the tax itself is not payable:**

The assessee has submitted that the interest under Section 75 of Finance Act, is chargeable only when there has been a failure to deposit the amount of service tax due within the prescribed time lines. They have submitted that the Service Tax demand itself not sustainable, there can be no question of payment of any interest under Section 75 of the Finance Act, 1994. They have relied upon the case of Pratibha Processors vs. Union of India [1996 (88) ELT 12 (SC)]. The position of the same have also been upheld subsequently in the decision of the Hon'ble Supreme Court in the case of Commissioner of Customs, Chennai vs Jayathi Krishna & Co. [2000 (119) E.L.T. 4 (S.C.)]. They have further relied upon the case of CCE vs. HMM Ltd. reported in [1995 (76) ELT 497 (SC)] , and submitted that where the demand itself is unsustainable, the imposition of interest and penalty cannot sustain,

assessee are not liable to pay service tax. Hence, no question of imposing penalty on the assessee:

The assessee has submitted that they are not liable to pay service

tax, therefore that they cannot be subjected to penalty under Section 76, 77 and 78 of the Finance Act, 1994. They have submitted that as the penalty under Section 78 is not imposable, there is no short payment of service tax; that as per the merits of the case, the assessee is not liable for payment of Service tax; that for imposing penalty, there should be an intention to evade payment of service tax on the part of the assessee; that the penal provisions are only a tool to safeguard against contravention of the rules; that they have always been and were still under the bonafide belief that they were not liable for payment of service tax; that there was no intention to evade payment of service tax; that no penalty is imposable in the present case.

They have relied upon the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. v The State of Orissa reported in AIR 1970 (SC) 253. The said decision of the Apex Court, was followed by the Tribunal in the case of Kellner Pharmaceuticals Ltd. Vs CCE, reported in 1985 (20) ELT 80.

The assessee has relied upon the case of M/s. Pushpam Pharmaceuticals Company v CCE 1995 (78) ELT 401 (SC). They have submitted that similar view was held by the Hon'ble Supreme Court in the case in CCE vs. Chemphar Drugs and Liniments 1989 (40) ELT 276 (SC). They have submitted that penalty under section 78 of the Act is not sustainable in the present case.

The assessee has submitted that the present issue involves interpretation of legal provisions. The imposition of penalty was not warranted in the present case. They have relied upon the following judgments:

- (i) *Ispat Industries Ltd. v. CCE 2006 (199) ELT 509 (Tri.-Mum)*
- (ii) *Secretary, Town Hall Committee v. CCE 2007 (8) S.T.R. 170 (Tri. - Bang.)*
- (iii) *CCE v. Sikar Ex-serviceman Welfare Coop. Society Ltd. 2006 (4) S.T.R. 213 (Tri. - Del.)*
- (iv) *Haldia Petrochemicals Ltd. v. CCE 2006 (197) E.L.T. 97 (Tri. - Del.)*
- (v) *Siyaram Silk Mills Ltd. v. CCE 2006 (195) E.L.T. 284 (Tri. - Mumbai)*
- (vi) *Fibre Foils Ltd. v. CCE 2005 (190) E.L.T. 352 (Tri. - Mumbai)*
- (vii) *ITEL Industries Pvt. Ltd. v. CCE 2004 (163) E.L.T. 219 (Tri. - Bang.)*

The assessee has submitted that it is a well-settled principle of law that where there is no demand of duty, penalty cannot be imposed and interest can't be recovered - Coolade Beverages Limited (2004) 172 ELT 451(All). They have also relied upon the case laws of M/s. Deepak B. Patel vs CCE Mumbai reported at (2014) 314 ELT 712 (Tri- Mum) and M/s Shree Maruti Fabrics vs. Commissioner, Central Excise Ahmedabad-I reported at 2014 (311) ELT (Tri.-Ahmd).

The assessee has submitted that the Hon'ble Supreme Court



has consistently held that penalty can only be levied if an intentional act is committed and not otherwise. They have relied upon *the case of*;

a. *M/s.Tamil Nadu Housing Board vs. Collector of Central Excise, Madras [1994 (74) E.L.T. 9 (S.C.)]*

b. *DCW Ltd. vs. Asst. Collector of Central Excise [1996 (88) ELT 31(Mad.)]*

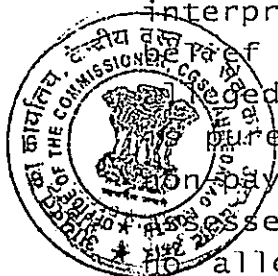
The assessee has submitted that no penalty should be imposed where the mensrea is absent. They have relied upon the case of *M/s. MALAY I NET COMMUNICATION - 2010 (18) S.T.R. 451 (Tri. - Del.)* and *ADHUNIK STEELS LTD.- 2009 (13) S.T.R. 487 (P & H)*.

The assessee has submitted that it is a settled position that something more than a mere failure to pay tax must be shown for penalty to be leviable, i.e. the assessee must be aware that the tax was leviable and must have avoided payment. The word 'evade' in this context means defeating the provision of law for paying duty. In the present facts, the factual developments establish that there have been no intention on the assessee's part to avoid any payment of Service Tax. The assessee have clearly not suppressed any facts from the Department and have provided all information to the Department which was requested in the course of audit. It is beyond doubt that at no point of time the assessee have intentionally sought to evade tax or committed an act of suppression. Consequently, the attempt to impose penalty is against the settled law of the Supreme Court and various other applicable precedents and requires to be set aside. They have submitted that as submitted in the previous paragraphs, there is no fraud, suppression or willful misstatement on part of the assessee, so as to attract penalty under section 76, 77 or 78 of the Finance Act, 1994.

The assessee has submitted that penalty u/s 76 as well as u/ s 78 were simultaneously invoked in the notice. It is settled law, as well as the provision of law that simultaneously both penalties cannot be invoked.

➤ **Section 80 will apply in the present case**

The assessee has submitted that they have furnished all information required, as and when sought by the department. The issue involved in the present case is one of interpretation of law. Assessee were/are under a bonafide belief that they were not liable to pay service tax, as alleged in the SCN. The question involved in the present case is purely of interpretation. This was a reasonable cause for non payment of service tax. No penalty can be imposed on the assessee under section 80 of the Act as well as there can be no allegation of suppression of facts in the present case



and the entire demand is hit by time bar.

The assessee has submitted that Section 80 of the Act provides that "Notwithstanding anything contained in the provisions of section 76, section 77 or section 78, no penalty shall be imposable on the assessee for any failure referred to in the said provisions, if the assessee proves that there was reasonable cause for the said failure". The assessee submitted that Section 80 was introduced in the Act keeping in view that service tax was a new levy and there was no clarity regarding the imposition of service tax. It is a benevolent provision specifically inculcated by the Legislature. There is no provision pari materia under the Customs Act, 1962, Central Excise Act, 1944, Income Tax Act, 1961 or the Local VAT Acts. Hence, no penalty at all should be imposed on the assessee in terms of Section 80.

The assessee has relied upon the decision of the Hon'ble Tribunal in the case of NRC Ltd. vs CCE 2007 (5) STR 308. They have also relied upon the decision of the Hon'ble Tribunal in the case of Secretary, Town Hall Committee Vs Commissioner 2007 (8) STR 170 and M/s. Binlas Suplux Limited v/s CCE 2007 (7) STR 561.

The assessee has submitted that no penalty is imposable when they have acted on the bona fide belief that they were not liable to pay service tax. They have relied upon the case of M/s. JIVANBHAI D. MAKWANA - 2010 (20) S.T.R. 605 (Guj.); PANKAJ TYRE RETREADS - 2010 (19) S.T.R. 829 (Tri. - Ahmd.) and COSMOS DETECTIVE & SECURITY SERVICES - 2010 (19) S.T.R. 414 (Tri. - Ahmd.)

The assessee has relied upon the following judgments, that no penalty should be imposed on them in terms of Section 80:

- a. *Akbar Badruddin Jiwani v. Collector of Customs 1990 (047) ELT 0161 SC*
- b. *Hindustan Steel Ltd. v. The State of Orissa {1969 (2) SCC 627}*
- c. *Vinay Bele & Associates 2008 (9) STR 350 (Born)*
- d. *Ashish Patil 2008 (10) STR 8 (Born)*
- e. *Flyingman Air Courier (P) Ltd. v. CCE, Jaipur 2004 (170) E.L.T 417 (T)*
- f. *CCE v. Gamma Consultancy (P) Limited 2006 (4) STR 591 (T)*
- g. *Kellner Pharmaceuticals Ltd. v. CCE, reported in 1985 (20) ELT 80*
- h. *ETA Engineering Ltd. vs. CCE, Chennai, 2004 (174) E.L.T 19 (T-LB)*
- i. *Star Neon Singh vs. CCE, Chandigarh, 2002 (141) ELT 770 (T)*

The assessee has submitted that Penalty is not imposable when the matter relates to interpretation. They have relied upon the following judgments;

- a. *Aquamall Water Solutions Ltd. 2003 (153) ELT 428*



b. Blue Cross Laboratories Ltd. Vide order no. A/1529/C-IV/SMB/2007

c. Sports & Leisure Apparel Ltd. CCE, Noida 2005 (180) ELT 429

d. KK Apachan Vs. CCE, Palakkad (2007) 7 STR 230 (Cestat, Bangalore)

* e. Sharp Metal Industries VS. Commissioner of Central Excise, Lucknow (2012) 23 Taxmann.com 317

The assessee has submitted that no penalty can be imposed on the them.

Hence, the impugned order is liable to be set aside.

PERSONAL HEARING:

19. Personal Hearing was granted to the assessee on 10.05.2022. Shri Vijay S. Suhandani, Proprietor and Sh. Anil Gidwani, Advocate appeared for personal hearing. They have made reference to their earlier written submission dated 23.06.2021. They have stated that the assessee is covered under Mega Exemption Notification as they are providing construction services to government entities. The audit of the assessee was conducted by the department and no such objection was raised by the department. They have discharged their Service Tax liability. However the fact remain that major portion of their activities were covered under the Mega Exemption Notification . They requested to drop the proceedings in the interest of justice.

DISCUSSION AND FINDINGS:

20. I have carefully gone through the facts of the case, and records available in the case file, which include the SCN, the defence reply submitted on 23.06.2021, the documents submitted by the assessee and oral submission made during the course of personal hearing by authorized representative of the assessee.

21. 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 2015-16 and 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. 17,37,47,714/- in value was observed for FY 2015-16 and 2016-17, therefore, it was alleged that the assessee had short paid the service tax of Rs.2,50,39,997/- on such differential value, for providing the taxable service. Therefore, the subject SCN was issued.

Accordingly, I find that the issue which requires determination of now is whether the assessee is liable to pay service tax Rs. 2,50,39,997/- on the taxable value of Rs. 17,37,47,714/- for the Financial Year 2015-16 and 2016-17 under proviso to Section 73(1) of Finance Act, 1994 or not.



22. I find from the available records that the assessee is proprietorship firm and Shri Vijay S. Suhandani is a proprietor of the firm and he runs his business in the name of M/s. Kalpana Builders.

23. I find that the assessee have submitted their written submission dated 23.06.2021 along with the following documents.

- C.A. Certificate.
- Copy of Intimation letter issued by the Audit Commissionerate for conducting audit.
- Copy of Audit Report No.1030/2019-20 dated 24.01.2020.
- Copy of DRC-03.
- Copy of letter dated 15.04.2021 seeking explanation regarding short payment / non-payment of service tax.
- Soft copies in CD of works contract awarded to the assessee.
- Copy of RTI order No.04/RTI/CTA/2021-22 dated 03.06.2021.
- Copy of RTI order No. 04/RTI/CTA/2021-22 dated 01.06.2021.
- Calculation sheet for service tax liability.
- ST3 returns.

24. I find that that the assessee in their defence reply dated 23.06.2021 has stated that the audit of their records had been conducted by the audit department and they have submitted the copy of the Final Audit Report No.1030/Service Tax/2019-20 dated 24.01.2020. On the basis of audit report, they have contested that the demand of service tax for 2015-16 and 2016-17 is not proper and legal. Now, on perusing the said audit report, I find that the audit of the assessee was conducted covering the period from October,2014 to June,2017, and the final audit report was issued on 24.01.2020. It is also quite apparent that the audit had not noticed any short payment of service tax for providing the service by the assessee during the said period. It is pertinent to note that only one revenue para regarding late filing of ST3 returns was raised, to which the assessee had agreed and they had paid the amount of Rs. 20,500/- as pointed out by the audit. I find that as per Rule 5A(2) of the Service tax Rules 1994, the assessee was required to produce all the records maintained/ prepared in terms of sub-rule 2 of Rule 5 of Service tax Rules 1994, to the audit party deputed by the department for scrutiny of the same. The Rule 5A of Service Tax Rules, 1994 is reproduced as follows for ease of reference:

Rule [5A. Access to a registered premises. —(1) An officer authorised by the [Principal Commissioner or Commissioner, as the case may be] in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

[(2) Every assessee shall, on demand, make available to the officer authorised under sub-rule (1) or the audit-party deputed by the Commissioner or the Comptroller and Auditor-General of India or a cost accountant or chartered accountant nominated under section 72A of the Finance Act, 1994, -

- the records maintained or prepared by him in terms of sub-rule (2) of rule 5;*
- the cost audit reports, if any, under section 148 of the Companies Act, 2013 (18 of 2013); and*
- the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961),*

for the scrutiny of the officer or audit party or the cost accountant or chartered accountant, within the time limit specified by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be.]

24.1 The Rule 5A (2) interalia provides for scrutiny of records by the audit party deputed by the Commissioner. Such scrutiny essentially constitutes audit by the audit party consisting of departmental officers. Therefore, relying on the Final Audit Report, I find that there is no short payment on the part of the assessee for FY 2015-16 & 2016-17. Therefore, demand of service tax vide subject SCN for 2015-16 & 2016-17 without verification of records and only on account of difference in taxable value, that too on wrong set of facts, is bad in law and is absolutely incorrect and is not justified.

25. I also find that the assessee has vehemently denied the charges levelled against them and has contested that though they have filed ST-3 Returns but the value of service shown in the ST-3 Returns for FY 2015-16 and 2016-17, have not been taken into consideration while computing the difference in value of service as reflected in their Form 26AS vis-à-vis ST-3 Returns for FY 2015-16 and 2016-17. The assessee has also contested that the SCN was issued on the income tax returns, without completing the investigation by the department to understand the scope of work carried out by them for execution of work/providing the services to the Government of Gujarat, despite the fact that from that value deduction had to be made for value of exempt services, abatement and value on which service tax was already paid as per ST-3 returns already filed. In support of their arguments they have provided the reconciliation statement of income as reflected in ST-3 returns vis-a-vis Income as per P&L Accounts.

26. As regards the assessee's contention for the department not taking of cognizance of ST-3 Returns for FY 2015-16 and 2016-17 for demanding service tax from them, I find that the assessee has produced the copy of ST-3 Returns for FY 2015-16 and 2016-17 filed by them alongwith their written submission dated 23.06.2021. In the SCN, the department has not shown how the value difference in ITR & STR /TDS & STR (whichever is higher) had arisen.

26.1 It is quite clear that contrary to the bland assertion of the department that the assessee had not filed the ST-3 Returns for the period 2015-16 & 2016-17, the facts are totally different. The assessee had filed the service tax returns (ST-3) for the period 2015-16 & 2016-17. Further, it is discerned from the service tax returns that the assessee has provided the service under category of "works Contract Service" and has



availed the benefit of abatement under Notification No. 024/2012-ST.

26.2. The assessee has provided the work orders and tender documents in soft copy (in CD) alongwith their reply dated 23.06.2021, in support of their claim of exemption and abatement available to them. They have also provided the certificate issued by the KSK & CO LLP, Chartered Accounts, which show the date of contract, department for which they have carried out the work, date of bill, amount of gross value, details of work order. I reproduce the said certificate herein as under for ease of reference;

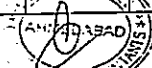
CA HSK & CO LLP Chartered Accountants

410, 4th Floor, The Grand Mall, Opp. SBI Zonal Office, S. M. Road, Ambawadi, Ahmedabad-380015.
Phone : +91-79-40058744 / 40326773 • E-mail : htco.ca@gmail.com • ssshah.ca@gmail.com

TO WHOM SO EVER IT MAY CONCERN

This is to certify that M/s. KALPANA BUILDERS (Proprietary Firm of Vijay S. Suhandani) situated at 19, Golden Homes, B/h. Gurudwara, S.G Highway, Thaltej, Ahmedabad.- 380059 having Service Tax Registration No : ADFP50864ESD001. Details of Bills and Details of Work Contract are as under

BILLS AND DEPARTMENT FOR WHICH BILL IS PREPARED					
APRIL, 15 TO SEPTEMBER, 2015					
DATE OF CONTRACT	DEPARTMENT	DATE OF BILL	AMOUNT OF GROSS VALUE INCLUSIVE OF SERVICE TAX WHEREVER TAXABLE (RS.)	AS PER WORK ORDER	REMARKS
28/10/2014	SARVA SHIKSHA ABHIYAN - P-999	20/05/2015	6,294,174.00	Construction of (15) Additional Classrooms in Mehsana District Pkg - DIR / ACR / MEH / 999	Bill Prepared by SSA Department
02/08/2013	ROAD & BUILDING - MANDAL	20/05/2015	578,870.00	Constructing of New Government Higher Secondary School (Science stream) at Mandal District Ahmedabad.	Bill Prepared by IT & D Department
20/01/2014	SARVA SHIKSHA ABHIYAN - P-805	23/05/2015	1,756,544.00	Construction of Classrooms (24) at different Primary Schools in Banaskantha District Pkg - DIR / ACR / BK / 805	Bill Prepared by SSA Department
07/07/2014	SARVA SHIKSHA ABHIYAN - P-892	25/05/2015	6,432,690.00	Construction of Classrooms (24) at different Primary Schools in Various Villages of Banaskantha District Pkg - SSAM / ACR / BK / 892	Bill Prepared by SSA Department
28/10/2014	SARVA SHIKSHA ABHIYAN - P-999	28/05/2015	7,062,419.00	Construction of (15) Additional Classrooms in Mehsana District Pkg - DIR / ACR / MEH / 999	Bill Prepared by SSA Department
TOTAL - A			32,124,697.00		
OCTOBER, 2015 TO MARCH, 2016					
DATE OF CONTRACT	DEPARTMENT	DATE OF BILL	AMOUNT OF GROSS VALUE INCLUSIVE OF SERVICE TAX WHEREVER TAXABLE (RS.)	AS PER WORK ORDER	REMARKS
07/07/2014	SARVA SHIKSHA ABHIYAN - P-892	10/10/2015	4,703,375.00	Construction of Classrooms (24) at different Primary Schools in Various Villages of Banaskantha District Pkg - SSAM / ACR / BK / 892	Bill Prepared by SSA Department
04/08/2014	PROJECT IMPLEMENTATION UNIT	02/10/2015	8,071,147.00	New Construction of 'C' Type Staff Quarters (2Nos.) At Kani, Modaj, Rudan, Varsola at Ta - Mahemdaba & Nani Khadol, Chunei, Sanani at Ta - Mahudha, Dist - Kheda.	Bill Prepared by P.I.U Department
28/10/2014	SARVA SHIKSHA ABHIYAN - P-999	01/11/2015	2,647,365.00	Construction of (15) Additional Classrooms in Mehsana District Pkg - DIR / ACR / MEH / 999	Bill Prepared by SSA Department
28/01/2015	SARVA SHIKSHA ABHIYAN - P-1058	02/11/2015	6,115,176.00	Construction of (16) Additional Classrooms in Banaskantha District Pkg - SSA / ACR / BK / 1058	Bill Prepared by SSA Department
20/01/2015	SARVA SHIKSHA ABHIYAN - P-1059	02/11/2015	5,022,507.00	Construction of (17) Additional Classrooms in Banaskantha District Pkg - SSA / ACR / BK / 1059	Bill Prepared by SSA Department
04/08/2014	PROJECT IMPLEMENTATION UNIT	02/11/2015	3,253,169.00	New Construction of 'C' Type Staff Quarters (2Nos.) At Kani, Modaj, Rudan, Varsola at Ta - Mahemdaba & Nani Khadol, Chunei, Sanani at Ta - Mahudha, Dist - Kheda.	Bill Prepared by P.I.U Department
05/08/2015	SARVA SHIKSHA ABHIYAN - P-1157	10/02/2016	4,042,724.00	Construction of (18) Additional Classrooms in Banaskantha District Pkg - DIR / ACR / BK / 1157	Bill Prepared by SSA Department



DATE OF CONTRACT	DEPARTMENT	DATE OF BILL	AMOUNT OF GROSS VALUE INCLUSIVE OF SERVICE TAX WHEREVER TAXABLE (RS.)	AS PER WORK ORDER	REMARKS
28/03/2015	SARVA SHIKSHA ABHIYAN - P-1050	10/02/2016	6,164,577.00	Construction of (17) Additional Classrooms in Banaskantha District Pkg - SSA / ACR / BK / 1050	Bill Prepared by SSA Department
28/03/2015	SARVA SHIKSHA ABHIYAN - P-1050	10/02/2016	4,031,810.00	Construction of (10) Additional Classrooms in Banaskantha District Pkg - SSA / ACR / BK / 1050	Bill Prepared by SSA Department
28/10/2014	SARVA SHIKSHA ABHIYAN - P-999	10/02/2016	3,060,156.00	Construction of (15) Additional Classrooms in Mehsana District Pkg - DIR / ACR / MEH / 999	Bill Prepared by SSA Department
02/08/2015	SARVA SHIKSHA ABHIYAN - P-UPS 41	20/03/2016	4,434,070.00	Upgradation of Existing School Infrastructure in (9) Primary School at Mehsana District. Package No - DIR / MCH / UPS / 41	Bill Prepared by SSA Department
04/08/2014	PROJECT IMPLEMENTATION UNIT	29/03/2016	4,732,074.00	New Construction of 'C' Type Staff Quarters (2Nos.) At Kanti, Modol, Rudan, Varsola at Ta - Mahudaba & Nani Khadol, Chunar, Sanani at Ta - Mahudaba, Dist - Kheda.	Bill Prepared by P.I.U. Department
28/01/2015	SARVA SHIKSHA ABHIYAN - P-1050	31/03/2016	3,911,819.00	Construction of (16) Additional Classrooms in Banaskantha District Pkg - SSA / ACR / BK / 1050	Bill Prepared by SSA Department
05/08/2015	SARVA SHIKSHA ABHIYAN - P-1157	31/03/2016	4,589,720.00	Construction of (10) Additional Classrooms in Banaskantha District Pkg - DIR / ACR / BK / 1157	Bill Prepared by SSA Department
21/03/2015	SARVA SHIKSHA ABHIYAN - P-1050	31/03/2016	3,115,645.00	Construction of (17) Additional Classrooms in Banaskantha District Pkg - SSA / ACR / BK / 1050	Bill Prepared by SSA Department
TOTAL A =			68,802,186.00		
TOTAL A + B =			90,925,883.00		

APRIL 2016 TO SEPTEMBER 2016

DATE OF CONTRACT	DEPARTMENT	DATE OF BILL	AMOUNT OF GROSS VALUE INCLUSIVE OF SERVICE TAX WHEREVER TAXABLE (RS.)	AS PER WORK ORDER	REMARKS
24/11/2015	SARVA SHIKSHA ABHIYAN - P-1050	21/06/2016	1,620,679.00	Construction of (17) Additional Classrooms in Banaskantha District Pkg - SSA / ACR / BK / 1050	Bill Prepared by SSA Department
04/08/2014	PROJECT IMPLEMENTATION UNIT	15/07/2016	2,935,205.00	New Construction of 'C' Type Staff Quarters (2Nos.) At Kanti, Modol, Rudan, Varsola at Ta - Mahudaba & Nani Khadol, Chunar, Sanani at Ta - Mahudaba, Dist - Kheda.	Bill Prepared by P.I.U. Department
05/08/2015	SARVA SHIKSHA ABHIYAN - P-1157	15/08/2016	3,581,355.00	Construction of (10) Additional Classrooms in Banaskantha District Pkg - DIR / ACR / BK / 1157	Bill Prepared by SSA Department
04/08/2014	PROJECT IMPLEMENTATION UNIT	21/09/2016	4,911,993.00	New Construction of 'C' Type Staff Quarters (2Nos.) At Kanti, Modol, Rudan, Varsola at Ta - Mahudaba & Nani Khadol, Chunar, Sanani at Ta - Mahudaba, Dist - Kheda.	Bill Prepared by P.I.U. Department
TOTAL A			15,059,232.00		

OCTOBER 2016 TO MARCH 2017

DATE OF CONTRACT	DEPARTMENT	DATE OF BILL	AMOUNT OF GROSS VALUE INCLUSIVE OF SERVICE TAX WHEREVER TAXABLE (RS.)	AS PER WORK ORDER	REMARKS
13/04/2016	GUJARAT AGRICULTURE INDUSTRIES	13/10/2016	4,124,795.00	Construction for Civil and Electric Works, Compound Wall and Godowns at Potato Cold Storage Dams, Dist. Banaskantha, Gujarat.	Bill Prepared by GAI Department
13/04/2016	SARVA SHIKSHA ABHIYAN - P-1294	15/10/2016	3,270,608.00	Construction of (14) Additional Classrooms in Banaskantha District Pkg - DIR / ACR / BK / 1294	Bill Prepared by SSA Department

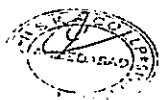
DATE OF CONTRACT	DEPARTMENT	DATE OF BILL	AMOUNT OF GROSS VALUE INCLUSIVE OF SERVICE TAX WHEREVER TAXABLE (RS.)	AS PER WORK ORDER	REMARKS
13/04/2016	SARVA SHIKSHA ABHIYAN - P-1266	20/10/2016	4,176,163.00	Construction of (13) Additional Classrooms in Banaskantha District Pkg - DIR / ACR / BK / 1266	Bill Prepared by SSA Department
09/05/2016	SARVA SHIKSHA ABHIYAN - P-1294	20/10/2016	2,076,822.00	Construction of (18) Additional Classrooms in Banaskantha District Pkg - DIR / ACR / BK / 1294	Bill Prepared by SSA Department
20/05/2016	ROAD & BUILDING DEPARTMENT - DETROI	20/10/2016	2,461,381.00	Construction of Government Higher Secondary School at Detroi, Dist. Ahmedabad.	Bill Prepared by R & B Department
09/05/2016	SARVA SHIKSHA ABHIYAN - P-1303	25/10/2016	3,691,596.00	Construction of (23) Additional Classrooms in Banaskantha District Pkg - DIR / ACR / BK / 1303	Bill Prepared by SSA Department
07/08/2015	SARVA SHIKSHA ABHIYAN - P-UPS41	25/10/2016	4,229,553.00	Upgradation of Existing School Infrastructure in (5) Primary School at Mehsana District. Package No - DIR / MCH / UPS / 41	Bill Prepared by SSA Department
13/04/2016	SARVA SHIKSHA ABHIYAN - P-1266	22/12/2016	2,071,295.00	Construction of (13) Additional Classrooms in Banaskantha District Pkg - DIR / ACR / BK / 1266	Bill Prepared by SSA Department
09/05/2016	SARVA SHIKSHA ABHIYAN - P-1294	22/12/2016	3,078,986.00	Construction of (18) Additional Classrooms in Banaskantha District Pkg - DIR / ACR / BK / 1294	Bill Prepared by SSA Department
09/05/2016	SARVA SHIKSHA ABHIYAN - P-1303	22/12/2016	4,218,657.00	Construction of (21) Additional Classrooms in Banaskantha District Pkg - DIR / ACR / BK / 1303	Bill Prepared by SSA Department
20/05/2016	ROAD & BUILDING DEPARTMENT - DETROI	20/01/2017	3,358,189.00	Construction of Government Higher Secondary School at Detroi, Dist. Ahmedabad.	Bill Prepared by R & B Department
13/04/2016	SARVA SHIKSHA ABHIYAN - P-1294	15/07/2017	3,700,170.00	Construction of (14) Additional Classrooms in Banaskantha District Pkg - DIR / ACR / BK / 1294	Bill Prepared by SSA Department
05/08/2015	SARVA SHIKSHA ABHIYAN - P-1157	08/03/2017	3,714,808.00	Construction of (18) Additional Classrooms in Banaskantha District Pkg - DIR / ACR / BK / 1157	Bill Prepared by SSA Department
09/05/2016	SARVA SHIKSHA ABHIYAN - P-1294	19/03/2017	4,611,149.00	Construction of (18) Additional Classrooms in Banaskantha District Pkg - DIR / ACR / BK / 1294	Bill Prepared by SSA Department
10/05/2016	ROAD & BUILDING DEPARTMENT - DETROI	17/03/2017	2,380,916.00	Construction of Government Higher Secondary School at Detroi, Dist. Ahmedabad.	Bill Prepared by R & B Department
16/01/2017	SARVA SHIKSHA ABHIYAN - P-1521	31/03/2017	3,041,752.00	Construction of (22) Additional Classrooms in Banaskantha District Pkg - SSA / ACR / BK / 1521	Bill Prepared by SSA Department
16/01/2017	SARVA SHIKSHA ABHIYAN - P-1521	31/03/2017	1,227,975.00	Construction of (10) Additional Classrooms in Banaskantha District Pkg - SSA / ACR / KHE / 1521	Bill Prepared by SSA Department
09/05/2016	SARVA SHIKSHA ABHIYAN - P-1303	31/03/2017	6,070,071.00	Construction of (23) Additional Classrooms in Banaskantha District Pkg - DIR / ACR / BK / 1303	Bill Prepared by SSA Department
05/11/2016	TRIPURA BUILDERS - DHANERA	31/03/2017	3,348,773.00	Construction of Model School in Banaskantha district. Package No. - RMSA / MS-GHL / BK / 126.	Bill Prepared by U Department
TOTAL B			67,762,679.00		
TOTAL A + B =			82,821,911.00		

The above certificate is issued on the basis of bills and works contract order produced before us.

Date: 03.06.2021
Place: Ahmedabad

For, H S K & CO LLP
Chartered Accountants

Harshad J. Thakkar
(Partner)



I find from the above certificate, that the assessee had income of Rs. 9,09,25,883/- of F.Y.2015-16 & Rs. 8,28,21,911/- for F.Y. 2016-17. I find that the same is tallied

with the Profit & Loss Account for the F.Y.2015-16 & 2016-17. The income shown in the P&L accounts are inclusive of Service Tax wherever taxable. I find that the assessee have provided exempted service for 2015-16 (April to September) for Rs. 2,21,24,697/-, however, they have filed return for the gross taxable value as "0" (Zero) . For the period 2015-16 (October to March), the assessee have filed ST3 return for gross amount of Rs.6,32,94,606/-, the exempted service of Rs.47,37,874/- provided to Project Implementation Unit has not been shown in ST3 return. For the period 2016-17 (April to September) the assessee have filed ST3 return for gross amount of Rs. 1,47,53,260/-. For the period 2016-17 (October to March), the assessee have filed ST3 return for gross amount of Rs. 6,01,14,479/-, the exempted service of Rs. 41,24,796/- provided to M/s. Gujarat Agro Industries has not been shown in ST3 return. I find that the assessee have filed ST3 returns for the period 2015-16 & 2016-17, and paid the legitimate service tax. The details of ST-3 returns filed by the assessee for the period 2015-16 & 2016-17 are as under;

April to September 2015-16

	Gross Taxable value	Exempted Service	Taxable value	Abatement	Total amount claim as deduction	Net Taxable Value	S.Tax Payable	S.Tax Paid
Construction services other than residential complex, including commercial/industrial buildings or civil structures	0	0	0	0	0	0	0	
works contract service	0	0	0	0	0	0	0	0

October to March 2015-16

	Gross Taxable value	Exempted Service	0	Abatement	Total amount claim as deduction	Net Taxable Value	S.Tax Payable	S.Tax Paid
Construction services other than residential complex, including commercial/industrial buildings or civil structures	0	0		0	0	0	0	
works contract service	63294606	50096748	13197858	7918715	58015463	5279143	765476	1374910
	63294606	50096748	13197858	7918715	58015463	5279143	765476	1374910



April to September 2016-17

	Gross Taxable value	Exempted Service		Abatement	Total amount claim as deduction	Net Taxable Value	S.Tax Payable	S.Tax Paid
works contract service	14753260	9477877	5275383	3165230	12643107	2110153	316523	316523

October to March 2016-17

	Gross Taxable value	Exempted Service		Abatement	Total amount claim as deduction	Net Taxable Value	S.Tax Payable	S.Tax Paid
Construction services other than residential complex, including commercial/industrial buildings or civil structures	0	0		0	0	0	0	
works contract service	60114479	0	60114479	36068687	36068687	24045792	3606868	3616700
TOTAL OF 2016-17	74867739	9477877	65389862	39233917.4	48711794	26155945	3923391	3933223

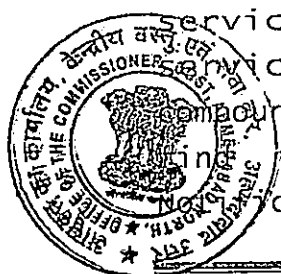
I find that the assessee have submitted that they have provided works contract service to Gujarat Agro Industries by way of construction of civil and electrical works, compound wall and godown at Deesa, Dist. Banaskantha for F.Y.2016-17. I find that the assessee have provided Works Contract Service to M/s Gujarat Agro Industries by way of construction of Civil and Electrical works, Compound wall and Godown at Deesa, Distt. Banaskantha, and claimed that the services provided to M/s. Gujarat Agro Industries falls within the ambit of Section 66D (d) (v) of the Finance Act,1994 and the same are exempted by way of provisions of Finance Act,1994. The Section 66D(d)(v) is reproduced below for ease of reference;

SECTION 66D. Negative list of services.— The negative list shall comprise of the following services, namely :—

(d) services relating to agriculture or agricultural produce by way of—

(v) loading, unloading, packing, storage or warehousing of agricultural produce;

However, I find that the service provided to M/s. Gujarat Agro Industries does not falls under the negative list of services under section 66(D), as the service provided by the assessee were of works contract service for construction of civil and electrical works, compound wall and godown at Deesa, Dist. Banaskantha, hence, I find that the same falls under ambit of the Mega Exemption Notification No.25/2012-ST dated 20.06.2012, Sr.No.14 and the



same are exempted from levy of service tax, the same is reproduced for ease of reference;

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:-

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes;

26.3 It is rather surprising that no data from the service tax returns have been taken into consideration by the department in computing the tax liability of the assessee, as is evident from the table at para 3 (for computation of service tax) provided in the subject SCN though the returns for 2015-16 and 2016-17 had been filed by the assessee. Therefore, it is evident that the entire amount of ITR has been considered as differential value of taxable service provided by the assessee, without taking cognizance of taxable value disclosed in the ST-3 Returns filed by the assessee.

26.4 I therefore find that it is an unfortunate fact that the Assessee's contentions of department not taking cognizance of ST-3 Returns filed by them for FY 2015-16 and 2016-17 for demanding service tax from them, is quite correct.

27. From the above factual matrix, 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 taxable value of service disclosed in ST-3 returns filed by the assessee being not taken into consideration while computing the service tax liability for FY 2015-16 and 2016-17 by the department. Therefore, I find that the entire demand has been raised on the presumption that the amount credited to the assessee as per Form 26AS/ITR was the differential value of taxable service. I also find that the assessee in response to the letter dated 19.10.2020 of Superintendent, AR-II, Div-VI, Ahmedabad North had submitted their reply vide letter dated 28.10.2020 to Jurisdictional Range Superintendent alongwith the copy of intimation letter of conducting audit, order of Service Tax audit & DRC-03, however, the SCN has not brought these facts on records and has not given any reason for not accepting the reply of the assessee. I also find that no primary verification has been carried out by the department on the basis of reply submitted by the assessee to the Range Office. I also find that apart from the differences noticed in the figures

reported in ST-3 returns and in Form 26AS, that too based on wrong set of facts, the department has not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non payment of such high quantum of service tax. I find that the SCN is basic and crucial foundation of adjudication process. If the allegations in SCN are not specific and on the contrary vague, lack details and /or unintelligible, then the SCN is not tenable and sustainable in eyes of law. In this regard, I rely on the decision of the Hon'ble Supreme Court in the case of BRINDAVAN BEVERAGES (P) LTD [2007 (213) E.L.T. 487 (S.C.)], wherein it was held that "*SCN is foundation on which the Department has to build up its case - If allegations in show cause notice not specific and on the contrary vague, lack details and/or unintelligible, sufficient to hold that noticee not given proper opportunity to meet allegations indicated in show cause notice*". I also rely on the decision of the Hon'ble Supreme Court in the case of GARWARE NYLONS LTD [1996 (87) E.L.T. 12 (S.C.)] wherein it was held that "*The burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority*". Having considered these factual and documentary evidences available on records and legal precedents, 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.

Further, I find that the assessee had been audited by the department for the period October,2014 to June,2017, and Final Audit Report dated 24.01.2020 had been issued by the Assistant Commissioner, Audit, Circle-III, CGST Audit, Ahmedabad. I also find that the Copy of the said audit report had been also forwarded to the concern Division & Range i.e. Division-VI & Range-II. However, the subject SCN was proposed by the Division-VI on 22.04.2021 for the period 2015-16 & 2016-17, without verification of facts available to the Divisional & Range office that the assessee had been audited by the department for the period 2015-16 & 2016-17, which had been covered in the subject SCN.

28. In view of the aforementioned detailed discussion and in view of the facts and circumstances pertaining to the subject case, the demand is also not tenable in law as there is no suppression of facts whatsoever as alleged in the SCN, as it was based on wrong set of facts. It is also pertinent that the department had undertaken audit of the assessee for the period Oct,2014 to June,2017 and issued Final Audit Report No. 1030/Service Tax/2019-20 dated 24.01.2020 and had not come with



any para apart from penalty of Rs.20,500/- for late filing of ST3- returns for the period Oct,14 to March,15 & April,15 to Sept.,15. I find that the audit report was issued on 24.02.2020 and the subject SCN was issued on 23.04.2021 i.e. after the issuance/completion of audit by the department. Therefore, invocation of extended period of five years is not sustainable at all in the given circumstances.

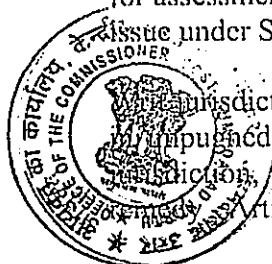
I find that the financial statement alone do not constitute the specified records containing true and complete details of the transactions. On going through the letter issued to the assessee by the Superintendent, Circle-III/AP-20, Central Tax Audit, Ahmedabad, I find that the assessee was asked to submit relevant documents for the period 2014-2015 to 2017-18 (upto June). The assessee have also intimated to the Superintendent, CGST Range-II, Division-VI, Ahmedabad North vide letter dated 28.10.2020 that service tax audit for the period October,2014 to June,2017 had been completed by the department, and they have received the order dated 24.01.2020 from the audit party. The said fact has not been not brought up in the subject SCN. The Department has not brought on record any list of documents/ records not maintained by the assessee. The entire demand of service tax was based on the figures available in the financial records after the completion of the department audit, it cannot be said that the assessee has not made appropriate disclosures.

I rely on the case of HINDALCO INDUSTRIES LTD. VS. COMMISSIONER OF C. EX.,ALLAHABAD reported at 2003 (161) E.L.T. 346 (Tri. - Del.), wherein it was held by the Hon'ble Tribunal that suppression of the fact can not be alleged when the demand is raised on the basis of information appearing in Balance sheet.

28.1 I rely on the order passed by the Hon'ble High Court of Calcutta in the case of M/s. SREI Equipment Finance Limited Vs. UOI in W.P.No.2095(W) of 2017, reported in 2018(17)GSTL 598 (Cal.), where in it was held that ;

Demand - Limitation - Assessee disclosed all materials for verification under Service Tax Audit, and these were available to Department under several previous proceedings against assessee - Period in impugned show cause notice overlapped with periods for which proceedings were pending or concluded - *HIELD* : Assessee was not guilty of omission/failure to disclose materials for assessment - Show cause notice was without jurisdiction - Department could not revisit same issue under Section 73 of Finance Act, 1994. [para 12].

Jurisdiction - Exercise of - Jurisdiction issue is pure question of law - To deal with it, facts impugned, show cause notice have to be assumed as correct, and if found insufficient for jurisdiction, writ jurisdiction can be exercised notwithstanding existence of statutory alternative Article 226 of Constitution of India. [para 12].



Writ jurisdiction - Facts for assuming jurisdiction found to be non-existent after taking statements in show cause notice to be true and correct - In such case, writ jurisdiction can be exercised notwithstanding existence of statutory alternative remedy - Article 226 of Constitution of India. [para 12]. (Emphasis supplied)

28.2 I rely on the order passed by the Hon'ble High Court of Gujarat in the case of M/s. Sahitya Mudranalaya Pvt. Ltd., Vs. Additional Director General in Special Civil Application NO.20748 of 2018 with SCA No.7414 of 2019 reported in 2021(46)GSTL 245(Guj), where in it was held that ;

Demand (Service Tax) - Limitation - Extended period - Department itself being of the view that services provided by petitioner to the Boards/Universities covered by Exemption Notification No. 25/2012-S.T. and therefore, exempt, the petitioners equally entitled to hold such a view - Consequently, it cannot be said that petitioners had, with an intention to evade payment of Service Tax, misstated that the organisations to which they had provided services are "educational institutions" to claim incorrect and ineligible exemption - Larger period of limitation not invocable - Section 73(1) of Finance Act, 1994 read with Sections 142(8)(a) and 174 of Central Goods and Services Tax Act, 2017. [para 16.1] (emphasis supplied).

An appeal was filed before the Hon'ble Supreme Court by the additional Director General of GST Intelligence against the Hon'ble High Court order dated 29.01.2020 vide Special Leave to Appeal (C) NO.13320/2020. The Hon'ble Supreme Court vide order dated 06.01.2021 have dismissed the Special Leave Petition filed by the the additional Director General of GST Intelligence.

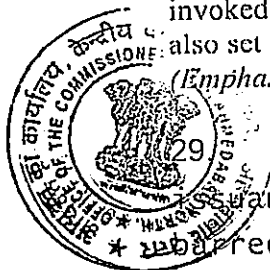
28.3 I rely on the order passed by the Hon'ble CESTAT, New Delhi in the case of M/s. SOTC Travels Services Pvt. Ltd., Vs. Pr. Commissioner of C.Ex., Delhi-I, reported in 2021(55)GSTL 332 (Tri.-Del.), where in it was held that;

Demand (Service Tax) - Limitation - ST-3 returns mentioned availing of exemption - In such case, department cannot contend that assessee suppressed any fact, much less with intent to evade Service Tax - Extended period of limitation not invoked - Section 73 of Finance Act, 1994. [paras 35, 36, 41] (Emphasis Supplied)

28.4 I rely on the order passed by the Hon'ble CESTAT, Mumbai in the case of M/s. Trans Engineers India Pvt. Ltd., Vs. Commissioner of C.Ex., Pune, reported in 2015(40)STR 490 (Tri.-Mumbai), where in it was held that;

Demand - Limitation - Extended period, invocation of - Demand based on second audit report for period in question - HELD : Revenue authority not to invoke extended period of limitation, when records of assessee audited by officers once and short-payment not found - Second audit party, doing audit of same period or overlapping period, not to allege misstatement or suppression of facts - In view of authoritative judicial pronouncements in MTR Foods Ltd. [2012 (282) E.L.T. 196 (Kar.)] and Rajkumar Forge Ltd. [2010 (262) E.L.T. 155 (Bom.)], extended period cannot be invoked - Demand being beyond period of limitation, set aside - Interest and penalties imposed also set aside - Impugned order set aside - Section 73 of Finance Act, 1994. [paras 9, 10, 11, 12] (Emphasis Supplied)

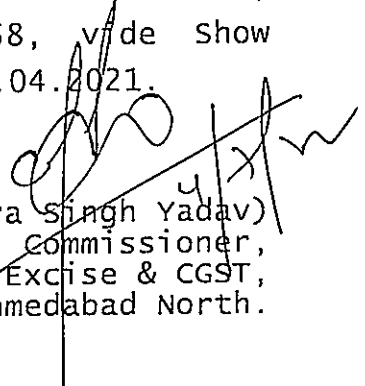
Accordingly, the SCN fails on this count as well and the period of limitation of SCN beyond 30 months from the relevant date is barred by limitation.



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

ORDER

I drop the proceedings initiated against M/s. Vijay Shewaram Suhandani, 19, Golden Home, B/h. Gurudwara, S.G.Highway, Thaltej, Ahmedabad, Gujarat-380 058, vide Show Cause Notice F.No. STC/15-181/OA/2021-22 dated 23.04.2021.


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

By Regd. Post AD./Hand Delivery

F.No. STC/15-181/OA/2021-22

Date: 04.07.2022.

To

M/s.Vijay Shewaram Suhandani
19, Golden Home, B/h. Gurudwara,
S.G. Highway,
Thaltej,
Ahmedabad -380058.

Copy to:-

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

