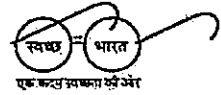




आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH
पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद - 380009
FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD - 380009
ई-मेल/E-Mail: ofad@hq-cgstamdnorth@gov.in, oaahmedabad2@gmail.com
फोन/Phone: 079-27544599 फैक्स/Fax: 079-27544463



निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. **STC/15-223/OA/2020**

आदेश की तारीख/Date of Order:- 19.05.2022

जारी करने की तारीख/Date of Issue :- 19.05.2022

DIN NO: 20220564WT0000418541

द्वारा पारित/Passed by:-

आर गुलजार बेगम **IR. GULZAR BEGUM**

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 12/ADC/GB/2022-23

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

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से) 60 साठ (दिन के अन्दर आयुक्त) अपील, (केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015 को प्रारूप संख्या इ.ए (1-A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

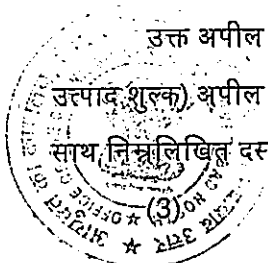
Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 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 Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क) अपील (नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ, निम्नलिखित दस्तावेज संलग्न किए जाएं।

उक्त अपील की प्रति।



(4) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

- (3) Copy of accompanied Appeal.
- (4) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice F. No. **STC/15-223/OA/2020** dated **31.03.2021**
issued to **M/S. HIRAL DHAVAL PATEL**, 2, Poojashruti Apartment, Nr. Ghosha Society, Drive in
Road, Thaltej, Ahmedabad-380054.



Brief Facts of the case :

M/s. HIRAL DHAVAL PATEL 2, / POOJASHRUTI APARTMENT, NR.GHOSHA SOCIETY, DRIVE IN ROAD, THALTEJ, having PAN NO: "CJRPP8591F" (hereinafter referred to as the 'assessee') was engaged in providing taxable services without taking registration.

2. On perusal of the data received from CBDT, it was noticed that the said assessee has earned substantial service income by way of providing taxable services, but has neither obtained Service Tax registration nor paid service tax thereon.

3. In order to seek information in the matter, a letter dated 22.03.2021 was issued to the assessee with a request to produce the documents mentioned therein to the Jurisdiction office within a period of three days from the date of receipt of that letter/reminder. However, the assessee has failed to submit the required details / documents.

4. With effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the negative list are exempted.

5. The nature of activities carried out by the assessee as Service Provider appears to be covered under the definition of service and appears to be not covered under the Negative List as given in the Section 66D of the Finance Act, 1994, as amended from time to time. These services also not be exempted under mega exemption notification No. 25/2012-S.T. dated 20-06-2012, as amended from time to time, and hence the aforesaid services provided by the assessee to be subjected to Service Tax.

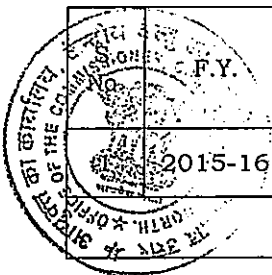
6. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16, the service tax liability of the service tax assessee is ascertained on the basis of income mentioned in the ITR returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.

7. The Service tax payable is calculated on the basis of value of "sales of services under Sales/Gross Receipts From Services (Value from ITR)" or "Total Amount Paid/Credited Under Section 194C, 194I, 194H, 194J" as provided by the Income Tax Department for the financial year 2015-16. By considering the said amount as taxable income, the service tax liability is calculated as detailed below:-

TABLE-A

(Amount in Rs)

	TOTAL VALUE for TDS(including 194C,194Ia,194Ib, 194J,194)	TOTAL SALE OF SERVICES (ITR)	HIGHER VALUE (VALUE OF SALE OF SERVICES) OR (TOTAL VALUE for TDS)	Service Tax rate	Service Tax Payable
2015-16	43632446	43632446	43632446	14.5%	6326705/ -
TOTAL					6326705/ -



8. No data was available with the jurisdiction office, for the period 2016-17 & 2017-18 (upto June 2017) and the assessee has also failed to provide any information regarding rendering of taxable service for this period. Therefore, at the time of issuance of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2016-2017 & 2017-18 (upto June 2017).

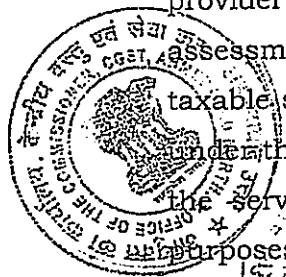
9. **Unquantified demand at the time of issuance of SCN.**

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

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

10. From the facts, it was observed that the "**Total Amount Paid/Credited Under Section 194C,194H, 194I, 194J OR Sales/Gross Receipts From Services (From ITR)**" for the F.Y. 2017-18 (upto June 2017) has not been disclosed thereof by the Income Tax Department. Further, the assessee has also failed to provide the required information even after the issuance of letter/reminders from the Department. Therefore, the assessable value for the year 2016-17 & 2017-18 (upto June 2017) is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action will be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, **in as much as the Service Tax liability arising in future, for the period 2016-17 & 2017-18 (upto June 2017) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.**

11. The government has from the very beginning placed full trust on the service provider so far as service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes, are accepted, practically for all the purposes of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider, no matter how innocently. From the evidence, it appears that the said assessee has not taken registration and

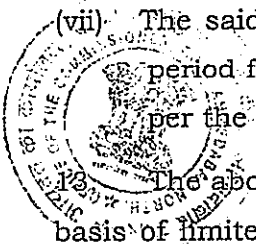


thereafter has not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider appears to have made deliberate efforts to suppress the value of taxable service to the department and appears to have not paid the liable service tax in utter disregard to the requirements of law and breach of trust deposited on them. Such outright act in defiance of law, appear to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

12. In light of the facts discussed here-in-above and the material evidences available on records, it was revealed that the noticee, "HIRAL DHAVAL PATEL", have contravened the following provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004:

- (i) Section 69(1) of the Finance Act, 1994 read with Notification No.33/2012-Service Tax dated 20.06.2012 in as much as they have failed to obtain Service Tax Registration.
- (ii) Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable service provided by them as discussed above;
- (iii) Failed to register with the department and fail 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;
- (iv) 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 have 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 ;
- (v) Section 77 of the Finance Act, 1994, in as much as failed to take registration and did not provide required data/documents as called from them.
- (vi) All the above acts of contravention on the part of the said assessee to have been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid is required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years. All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with Rule 6, and 7 of Service Tax Rules, 1994 appears to be publishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.
- (vii) The said assessee is also 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.

The above said service tax liabilities of the assessee has been worked out on the basis of limited data/ information received from the Income Tax Department for the



financial years 2015-16. Thus, the present notice relates exclusively to the information received from the Income Tax Department.

14. It was observed that the assessee has neither obtained the Service Tax registration from the Department for the services provided by them for the period of F.Y.2015-16 to 2017-18 (Upto June 2017), nor responded to correspondence made by the department in order to ascertain the actual taxable service income. Therefore, it was observed that the assessee had not paid actual service tax by way of willful suppression of facts and in contravention of provision of the Finance Act, 1994 and the Rules made there under relating to levy and collection of service tax, with intent to evade payment of service tax. The service tax amounting to **Rs. 6326705/-** is therefore recoverable from them by invoking extended period of five years as per first proviso to sub-section (1) of Section 73 of Finance Act, 1994 read with Notification dated 30.09.2020 issued vide F.No 450/61/2020-Cus. IV (Part-I).

14.1 For this reason applicable interest under Section 75 of the Finance Act, 1994 is also to be demanded & is recoverable from the assessee and the assessee are also liable to penalty under Section 78 of Finance Act, 1994.

15. Further, the said assessee is liable to penalty under the provisions of Section 77(1)(a), 77(1)(c) & 77(2) of the Finance Act, 1994, for failure to take registration in accordance with the provisions of section 69; and for failure to furnish information / documents called for from them.

16. Therefore, **"HIRAL DHAVAL PATEL"** **"2,/POOJASHRUTI APARTMENT,/NR.GHOSHA SOCIETY, DRIVE IN ROAD,/THALTEJ,"**, called upon to show cause before the Additional/Joint Commissioner, Central Goods and Service Tax, Ahmedabad North having his office situated at 1st Floor, Customs House, Opposite Old High Court, Income Tax Cross Road, Navrangpura, Ahmedabad -380009 as to why:

- (i) Service Tax of **Rs. 6326705/-** which was not paid for the financial year 2015-16 as per **Table-A** mentioned in para-7 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of the Finance Act, 1994 read with Notification dated 30.09.2020 issued vide F.No 450/61/2020-Cus. IV (Part-I).
- (ii) Service Tax liability not paid during the Financial Year 2016-17 & 2017-18 (upto June 2017), **ascertained in future, as per paras no. 9 and 10 above**, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act,1994;
- (iv) Penalty under the provisions of Section 77(1)(a),77(1)(c) & 77(2) of the Finance Act, 1994, as amended, should not be imposed on them.
- (v) Penalty under Section 78 of the Finance Act, 1994, as amended, should not be imposed on them for suppressing the full value of taxable services and material

facts from the department resulting into non-payment of Service Tax as explained herein above.

DEFENCE REPLY :

17. The assessee vide letter dated 15.04.2021 submitted their reply wherein they stated that they are running proprietor firm namely ECO GREEB TECG SIKYTUIBS ("THE FIRM"); that they are holding VAT registration; that they are holding valid GSTIN number 24CJRPP8591F1ZI; that their firm is engaged in the trading activities of Fly Ash Bricks making Machineries and its parts since inception; that their firm have never been involved in providing any kind of services; that their firm has obtained valid GSTIN and VAT numbers and filing returns with due tax from time to time; that during financial year 2015-16, their proprietorship firm achieved turnover of Rs. 43,632,446/- and the same comprises of sales of goods only; that they attach audit report stating the nature of business as trading activity ; that on account of general human tendency, mistake occurred and in the financial year 2015-16, the turnover got reported in sale of services in their ITR; that they attached copy of form 26AS showing no Services have been provided; that they attached copy of VAT returns, Vat Audit report; that they requested to consider the same and drop the demand accordingly.

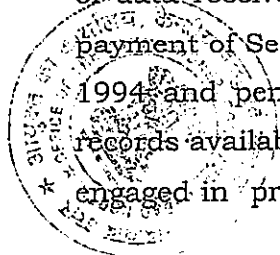
PERSONNEL HEARING :

18. Personnel Hearing was granted to the assessee on 26.04.2022 wherein Shri Punit J. Nathwani, Chartered Accountant, the authorized representative of the assessee appeared before me for personnel hearing. He has submitted written submission and has stated that they are engaged in "Trading Activity" only and hence Service Tax liability does not arise.

DISCUSSION AND FINDINGS

19.1 I have carefully gone through the records of the case, SCN, defence reply, audited Balance sheet, copy of Income Tax Returns for the FY 2015-16 as well as oral submissions made by the said assessee during the proceedings. In the instant case, I find that the said assessee is not registered with Service Tax Department. On going through the third party CBDT data for the Financial Year 2015-16, I find that the assessee is providing taxable services and has not obtained Service Tax Registration thereby not filing Service Tax returns and not paying Service Tax. I have also find that the assessee has defended the demand mentioned in Show Cause vide their submission dated 19.04.2021 and 21.04.2022.

19.2 In the present case, Show Cause Notice was issued to the noticee demanding Service Tax of Rs. 63,26,705/- for the financial year 2015-16 on the basis of data received from Income Tax authorities. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. As per the records available in file and data submitted by the assessee, I find that the assessee is engaged in providing taxable services. Based on the details received from Income tax



department, the show cause notices were issued to recover short paid service tax of Rs. 63,26,705/- with interest and penalty.

19.3 I have gone through their financial submission, form No. 3CD wherein it has been stated the nature of business or profession is "Whole sale and retail sale", sub sector whole sale of other products and Trading of Fly Ash Bricks making plants and parts. I have also gone through the Income Tax returns filed by the assessee for the financial year 2015-16 wherein Nature of Business or profession is mentioned as "204-204 - Trading -others" and Trade name mentioned as "ECO GREEN TECH SOLUTIONS". I have also gone through their Form 26AS wherein I find that assessee has not received any payment for providing of any Services. Therefore, from the financial records available in file and as stated in above, I find that the assessee is engaged in trading of business and therefore, no liability for payment of Service Tax arises. I have also verified some of their invoices which shows their trading of goods.

19.4 Now, I discuss the relevant provision with regard to trading of goods;

Section 66D of Finance Act, 1994 specifies the Negative list of services i.e the Services on which Service Tax is not leviable. Section 66D is been inserted in Finance Act, 1994 by Finance Act, 2012 and been notified to be effective from 1st July 2012 vide Notification No. 19/2012-ST dated 5 June 2012. A negative list of services under service tax implies the services which will not be subject to service tax; As per the extant provisions of Chapter V of the Finance Act, 1994 activity of trading in Goods is not taxable. Levy of Service as per Section 66B is on Services only, said section reads as under:

66B. *There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.*

Term 'Service' as defined in section 2 (44) excludes the activity of transfer title in goods by of sale, which is nothing for Trading.

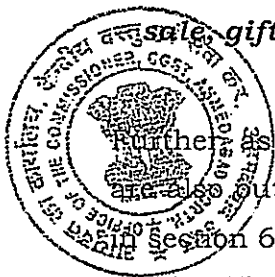
(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

Further, as seen in section 66B, all activities listed as Negative List in section 66D are also out of the ambit of Service tax. Activity of Trading in Goods is mentioned in Section 66D (e), said section reads as under:

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



(a)....

(b)....

(e) *trading of goods;*

19.5 Further, I find from the records available in the file that Sale of goods is taxable under the Gujarat Value Added Tax Act and assessee has paid the requisite VAT on the Sales and submitted VAT returns for the period 2015-16 . Therefore, in view of the above provision, I find that the assessee is not liable to pay Service Tax on the trading of goods as stated above for the year 2014-15 and 2016-17.

19.6 The Balance sheet and profit and loss account of an assessee is vital statutory records. Such records are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for evincing true financial position. Assessee was legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in unorganized method. The statute provides mechanism for supervision and monitoring of financial records. It is mandate upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive fair conclusion in respect of the balance sheet and profit and loss accounts. It is also onus upon auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs. The Chartered Accountant, who audited the accounts of the assessee, being qualified professional has given declaration that the balance sheet and profit and loss accounts of the noticee reflect true and correct picture of the transaction and therefore, I have no option other than to accept the classification of incomes under profit and loss account as true nature of the business and to proceed to conclude instant proceedings accordingly.

19.7 Keeping in view the aforementioned detailed discussions, I find that entire income shown in the Show Cause notice is reflecting in their financial records as trading income received towards the business of fly ash bricks.. Therefore, I find that the Clause VII of Section 66 (d) of the Financial Act, 1994 is rightly applicable to the assessee. I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

19.8 Further, on perusal of para 8 of SCN, I find that the levy of Service Tax for the financial year 2016-17 and 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of subject SCN, if he same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under proviso to Section 73(1) read with master Circular No. 1053/02/2017-CX dated 10.03.2017, the service tax liability was to be recovered from the assessee accordingly, I however, do not find any

charges leveled for the demand for the year 2016-17 and 2017-18 (Up to June 2017), in charging para of the SCN.

19.9 Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. Accordingly, it is my considered view that the assessee has established their case quite unambiguously that the income received towards trading business is covered under Negative List of Services they are not liable to pay Service Tax on the entire receipt and not obtained registration under the Service Tax.

19.20 In view of the facts and circumstances pertaining to the case, the demand is not tenable in law, accordingly I do not consider it necessary to deal in the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise of imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

21 I drop the demand of Rs. Rs. 63,26,705/- and proceedings initiated M/s. SHUBH ENGINEERS, A-203, ANGAT RESIDANCY, NR SUPER SCHOOL, B/H , ALKAPURI SOCIETY, AHMEDBAD,GUJARAT-380061 and and accordingly Show Cause Notice F.No. STC/15-178/OA/2020 dated 07.12.2020 is hereby disposed off .



F.No. STC/15-223/OA/2020

R. Gulzar Begum

(R. Gulzar Begum)
Additional Commissioner
Central Excise & CGST,
Ahmedabad North

Dated- 9/05/2022

By RPAD/By Hand/By Speed Post:

To,

M/s. "HIRAL DHAVAL PATEL"

"2,/POOJASHRUTI

APARTMENT,/NR.GHOSHA SOCIETY,

DRIVE IN ROAD,/THALTEJ

Copy for information to:

1. The Commissioner, CGST & CX, Ahmedabad North.
- 2.. The Dy. /Assistant Commissioner, DIV-VII, CGST & CX, Ahmedabad North.
3. The Superintendent, Range-III, Division-VII, CGST & CX, Ahmedabad North
4. The Superintendent, Systems, CGST & CX, Ahmedabad North
- ✓ 5. Guard File.