



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

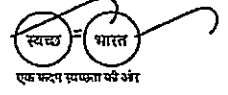
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर  
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद – 380009

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निवन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-60/OA/2021

आदेश की तारीख/Date of Order:-31.03.2022

STC/15-94/OA/2020

जारी करने की तारीख/Date of Issue :- 31.03.2022

DIN NO: 20220364WT0000444B4E

द्वारा पारित/Passed by:-

आर गुलजार बेगम /R. GULZAR BEGUM

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 126-127/ADC/GB/2021-22

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

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से) 60 साठ (दिन के अन्दर आयुक्त) अपील, (केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केंद्रीय 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 केंद्रीय उत्पाद शुल्क) अपील (नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1)

उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 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:

(1) Copy of accompanied Appeal.

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

विषय:- कारण बताओ सूचना/ Show Cause Notice No. STC/15-94/OA/2020 dated 29.09.2020,& STC/15-60/OA/2021 dated 23.04.2021 issued to M/s Rahil Construction, Vasukanan U/12, Nr. Nirnay Nagar Garnala, Ghatlodia, Ahmedabad.

## BRIEF FACTS OF THE CASE

M/s Rahil Construction, situated at Vasukanan U/12 Nr. Nirnay Nagar Garnala, Ghatlodia, Ahmedabad (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. AALFR9464LSD002.

2. Ongoing through the third party CBDT data for the Financial Year 2014-2015 to 2016-17, it has been observed that the Assessee has declared less/ not declared any taxable value in their Service Tax Return (ST-3) for the F.Y. 2014-2015 to 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/ Form 26AS, the details of difference as per CBDT data for the Financial Year 2014-2015 to 2016-17 are as under:

(Amount in Rs.)

F.Y.	Value As per B/S, P&L, Form 26AS of ITR	Value declared in ST-3 Returns	Differential amount	Service tax payable (including cess)
2014-15	6,61,403/-	0/-	6,61,403/-	81,749/-
2015-16	0/-	0/-	0/-	0/-
2016-17	100436807/-	6038053	94398754/-	14159813/-
<b>TOTAL</b>				<b>14241562/-</b>

3. The clarification along with documents were called for from the assessee for assessment purpose, vide letter F.No. STC/Prev/Gr-I/TPD-/2017-18 dated 12.02.2018 followed by Reminders dated 12.02.2018, 03.05.2018, 17.06.2019 and 09.07.2020. The assessee neither submitted the documents nor extended the co-operation in the matter although sufficient time was provided. This act of non-cooperation of assessee has contravened the provision of Section 72 of the Finance Act, 1994 has rendered themselves liable for penal action under Section 77 of Finance Act, 1994.

4. In view of above, the Assessee has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of Rs.1,42,41,562/- by declaring less value in their ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

5. It has been noticed that at no point of time, the Assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2014-2015 to 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it appears that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs.1,42,41,562/-. Hence

the above act of omission on the part of the assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same is recoverable from them under the provisions of Section 73 of the Finance Act, 1994 along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appears that the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

6. Accordingly Show Cause Notice dated 29.09.2021 was issued to Rahil Construction, Ahmedabad asking them to show cause as to why :

- (i) The demand for Service tax to the extent of Rs.1,42,41,562/- (Rupees One Crore Forty Two Lakhs Forty One Thousand Five Hundred and Sixty Two Only) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty of Rs.10,000/- (Rupees Ten thousand only) should not be imposed under Section 77 of the Finance Act, 1994.

7. Further, ongoing through the third party CBDT data for the Financial Year 2015-2016 & 2016-17, it has been observed that the Assessee has declared less/ not declared any taxable value in their Service Tax Return (ST-3) for the F.Y.2015-2016 & 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/ Form 26AS, the details of difference as per CBDT data for the Financial Year 2015-2016 & 2016-17 are as under:

(Amount in Rs.)				
F.Y.	Taxable value as per in ST-3 Returns	Gross receipts from services (Value from ITR/26AS)	Differential amount	Service tax payable (including cess)
2015-16	21288624	60700039	39411415	5714655
2016-17	70408230	100534955	30126725	4519009
TOTAL				10233664

Accordingly Show Cause Notice dated 23.04.2021 was issued to Rahil Construction, Ahmedabad asking them to show cause as to why :

- (i) The demand for Service tax to the extent of Rs.1,02,33,664/- (Rupees One Crore Two Lakhs Thirty Three Thousand Six Hundred and Sixty Four Only) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

- (iv) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed for failure to assess their correct service tax liability and failed to file correct service tax returns, as required under section 70 of Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1944.

As the duty demanded vide above two SCNs were covered the entire period of 2014-15, 2015-16 and 2016-17 and also to avoid repetition of orders, I would like to adjudicate both the SCNs simultaneously.

#### DEFENCE REPLY

8. The assessee vide their letter dated 25.11.2020 submitted their defence reply wherein they submitted that they are registered with service tax under works contract service. They are engaged in providing service of construction of road as main service and sub contract basis with Government and other local authorities. They are also providing works contract service for road construction.

In respect of their services they claimed that the following mega exemption notification are relevant.

1. Sr.No.13(a) of Notification No.12/2012-ST. service of construction of road is exempt service.
2. Sr.No.26 of Noti.No.25/2012-ST, sub contract service of works contract for construction of road is also exempt from service tax.
3. Sr.No.29(h) of Noti.No.25/2012 sub contractor providing services by way of works contract to another contract providing works contract service is excepted.

Further as per Noti.No.24/2012 ST dated 06.06.2012, in case of works contract entered into for execution of original works, service tax shall be payable on forty percent of the total amount charged for the works contract

Copy of following documents are also attached by them along with the reply.

1. A reconciliation working sheet showing calculation of service tax payable for the service provided.
2. A comparison sheet showing comparison of Form 26AS, Income tax and service tax
3. Form 26 AS
4. Copy of Income tax return
5. Copy of vat return
6. Service tax returns

They further submitted that as per above computations it is clear that they have already paid their service tax and no amount remains to be paid. Vide letter dated 11.03.2022 they have also submitted copies of work orders and related sample invoices.

#### PERSONNEL HEARING

10. A personal hearing was granted to the said assessee on 29.09.2021 & 25.03.2022 which was attended on his behalf by the duly authorised representative Shri Mehul G Shah CA & Ms.Ripple Christian, CA. They had stated that they have given written reply. When it was pointed out that the ST return does not reflect the abatement amount, they acknowledged that it is "mistake" and requested to drop all further proceedings.

## DISCUSSION AND FINDINGS

11. I have carefully gone through the case records, SCN, submission in reply to SCN, Audited Balance sheet, ITR, Form 26 AS and the arguments put forth at the time of personal hearing. In the instant case, Show Cause Notices were issued to the assessee demanding Service Tax of Rs.2,44,75,226/- (Rs.1,42,41,562/- + Rs.1,02,33,664/-) for the financial year 2014-15 to 2016-17 on the basis of data received from Income Tax authorities. The SCN also proposed 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.

12. In reply to the show cause notice, the noticee has stated that registered with service tax under works contract service. They are engaged in providing service of construction of road as main service and sub contract basis with Government and other local authorities. They are also providing works contract service for road construction. During the period under reference, their firm were awarded contract for construction of roads under works contract by M/s. Ahmedabad Ring Road Infrastructure Ltd, Ahmedabad Urban Development Authority, Executive Engineer National Highways Division, Ahmedabad, Fortune Builders, main contractor of T P Road, Sanand, Executive Engineer Drilling division, R & B, Ahmedabad. They submitted copy of work order for the said works allotted to them. For the sake of clarity I would like to discuss the matter financial year wise.

13. Before going into the merits of the case, I would like to after introduction of negative list with effect from 01.07.2012 "*service*" means any activity carried out by a person for another for consideration, and includes a declared service. Services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,

- (a) Service by the Government/Local Authority
- (b) Service by RBI
- (c) Service by Foreign Diplomatic Mission located in India
- (d) Service in relation to agriculture
- (e) Trading of goods
- (f) Manufacture of goods
- (g) Selling of space/time for advertisement
- (h) Services by access to road or bridge on a payment of Toll charges
- (i) Betting, gambling or lottery
- (j) Admission to Entertainment Events & Amusement Facilities
- (k) Transmission or distribution of electricity
- (l) Educational Services
- (m) Renting of Residential dwelling for use as residence
- (n) Financial services by way of extending deposits, loans or advances and inter se sale or purchase of foreign currency
- (o) Transportation of Passenger with or without accompanied belongings
- (p) Transportation of goods.
- (q) Mortuary/Funeral services

14. In view of the above legal provisions, I find that the activity carried out by the assessee i.e. Works Contract Service falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List the security service provided by the assessee does not fall under category of negative list of services under the provisions of Section 66D of the Finance Act. Therefore, I find that the said service provider is liable to pay

Service Tax on income earned from provision of security services for the period 2014-15 to 2016-17.

15. The said assessee in their reply to SCN claimed that vide mega exemption notification No.12/2012 and No.25/2012-ST, services provided by way of erection, construction, maintenance, repair, alteration, renovation or restoration of road, bridge, tunnel, or terminal for road transportation for use by general public is exempted for payment of service tax. In this connection, I have perused the Sr.No.13(a) of exemption notification No. 12/2012 of the said Notification reads as under:-

*G.S.R.....(E).*- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17<sup>th</sup> 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 17<sup>th</sup> March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services leviable thereon under section 66B of the said Act, namely:-

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

- (a) **a road, bridge, tunnel, or terminal for road transportation for use by general public;**
- (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
- (c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
- (d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;

16. Further they have also provided services of construction of Road to their main contractors i.e.M/s.Fortune Builders and M/s.DNP Infrastructure P.Ltd. which was also exempted from payment of service tax by them in view of Sl.No.29(h) of Noti.No.25/2012 which reads as under:

*G.S.R.....(E).*- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17<sup>th</sup> 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 17<sup>th</sup> March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services leviable thereon under section 66B of the said Act, namely:

29. Services by the following persons in respective capacities -

- (a) sub-broker or an authorised person to a stock broker;
- (b) authorised person to a member of a commodity exchange;
- (c) mutual fund agent to a mutual fund or asset management company;
- (d) distributor to a mutual fund or asset management company;
- (e) selling or marketing agent of lottery tickets to a distributor or a selling agent;
- (f) selling agent or a distributor of SIM cards or recharge coupon vouchers;
- (g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or

**(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;**

17. On perusal of the copies of works contract, invoices and other documents submitted by the party assessee, I find that the claim of the assessee that they have carried the works contract services which are exempted from payment of service tax in view of above referred Notifications. For clarity, I would like to discuss the taxability of the income of the assessee financial year wise.

#### FINANCIAL YEAR 2014-15

18. On perusal of SCN, I find that the total income of noticee credited under Section 194C, 194H, 194I and 194J to Rs. 6,61,403/- and the assessee declared NIL income in ST-3 returns and thereby the SCN proposed demand of service tax on differential income of Rs. 6,61,403/- for the year 2014-15. However on perusal of 26 AS, I find that the actual amount is Rs.6,61,40,255/- The noticee in reply to SCN submitted reconciliation of incomes indicated in Form No. 26AS along with copy of Balance Sheet/ Profit and Loss account for financial year 2014-15. The TDS as per Form No. 26AS has been deducted during financial year 2014-15 on an income of Rs. 6,61,402,255/-.

19. On perusal of reply to SCN and other documents, I find that assessee provided services to M/s. Ahmedabad Ring Road Infrastructure Ltd, Ahmedabad Urban Development Authority, Executive Engineer National Highways Division, Ahmedabad, Fortune Builders, main contractor of T P Road, Sanand, Executive Engineer Drilling division, R & B, Ahmedabad for construction of public roads. They have also provided copies of agreement with the main contractor and also produced the copies of work allotted to the main contractors. As per Sr.No.13(a) of the Notification No.25/2012-ST, i.e. a road, bridge, tunnel, or terminal for road transportation for use by general public; for which services rendered are exempted from payment of Service Tax. From the documents submitted by the noticee viz, bills, contract agreement between the various service receivers and the assessee, it is seen that the work executed by the noticee are Road construction for general public which falls under the Mega Exemption Notification No.25/2012-ST. The total amount matched with the figures (value) mentioned in the show cause notice as well as 26AS. They have also produced copies of balance sheet for the financial year 2014-15 and as per the P/L account the figures tallied with the total bill amount. In the instant case, I am of the view that the Service rendered by the noticee is works contract service for construction of road for general public the Service Tax is exempted for the service rendered in terms of Sr.No.13(a) of Noti.12/2012 and Sl.No.13(a) of Mega Exemption Notification No.25/2012-ST dated 20.06.2012.

20. In the instant case, I am of the view that the Service rendered by the assessee is works contract service for main contractor and for construction of road for general public the Service Tax which is exempted from the service rendered in terms of Sr.No.13(a) of Noti.12/2012 and Sl.No.13(a) and 29(h) of Mega Exemption Notification No.25/2012-ST dated 20.06.2012 and therefore the service tax demand of Rs.81,749/- is not sustainable and therefore liable to be dropped.



## FINANCIAL YEAR 2015-16

21. On perusal of the details of works done by the assessee on allotment of the works Contract by the above referred various service receivers. The total turnover received from the above agencies was Rs.6,07,00,039/-. They claimed that the said services are exempted from levy of Service Tax vide the mega exemption notification No.12/2012 and No.25/2012-ST. As per the above Notification services provided by way of erection, construction, maintenance, repair, alteration, renovation or restoration of road, bridge, tunnel, or terminal for road transportation for use by general public is exempted for payment of service tax.

23. On perusal of reply to SCN and other documents, I find that assessee provided services to M/s. Ahmedabad Ring Road Infrastructure Ltd, Ahmedabad Urban Development Authority, Executive Engineer National Highways Division, Ahmedabad, Fortune Builders, main contractor of T P Road, Sanand, Executive Engineer Drilling division, R & B, Ahmedabad for construction of public roads. They have also provided copies of agreement with the main contractor and also produced the copies of work allotted to the main contractors. As per Sr.No.13(a) of the Notification No.25/2012-ST, i.e. a road, bridge, tunnel, or terminal for road transportation for use by general public; for which services rendered are exempted from payment of Service Tax. From the documents submitted by the noticee viz, bills, contract agreement between the various service receivers and the assessee, it is seen that the work executed by the noticee are Road construction for general public which falls under the Mega Exemption Notification No.25/2012-ST. The total amount matched with the figures (value) mentioned in the show cause notice as well as 26AS. They have also produced copies of balance sheet for the financial year 2014-15 and as per the P/L account the figures tallied with the total bill amount. In the instant case, I am of the view that the Service rendered by the noticee is works contract service for construction of road for general public the Service Tax is exempted for the service rendered in terms of Sr.No.13(a) of Noti.12/2012 and Sl.No.13(a) of Mega Exemption Notification No.25/2012-ST dated 20.06.2012.

20. In the instant case, I am of the view that the Service rendered by the assessee is works contract service for main contractor and for construction of road for general public the Service Tax which is exempted from the service rendered in terms of Sr.No.13(a) of Noti.12/2012 and Sl.No.13(a) and 29(h) of Mega Exemption Notification No.25/2012-ST dated 20.06.2012 and therefore the service tax demand of Rs. 57,14,655/- is not sustainable and therefore liable to be dropped.

24. The assessee has provided copies of agreement with the main contractor and also produced the copies of work allotted to the main contractors. On perusal of the said submissions, I find that the services provided to main contractor is also exempted from payment of service tax by the said assessee. In the instant case, I am of the view that the Service rendered by the noticee is works contract service for main contractor and for construction of road for general public the Service Tax is exempted from the service rendered in terms of Sr.No.13(a) of Noti.12/2012 and Sl.No.13(a) and 29(h) of Mega Exemption Notification No.25/2012-ST dated 20.06.2012 and therefore the service tax demand of Rs.57,14,655/- is not sustainable and therefore liable to be dropped.

## FINANCIAL YEAR 2016-17

25. On perusal of reply to SCN and other documents, I find that the gross receipt from services as per 26AS/ITR is Rs.10,05,34,955/- . They have provided services to Ahmedabad Urban Development Authority, Executive Engineer National Highways Division, Ahmedabad, Relcon Infra projects Limited, Fortune Builders, main contractor of T P Road, Sanand, Executive Engineer Drilling division, R & B, Ahmedabad for construction of public roads. They have also produced copies of agreement with the main contractor and also produced the copies of work allotted to the main contractors. The total turnover received from the above agencies was Rs.9,13,43,010/- during the year 2016-17. They claimed that the said services are exempted from levy of Service Tax vide the mega exemption notification No.12/2012 and No.25/2012-ST. AS per the above Notification services provided by way of erection, construction, maintenance, repair, alteration, renovation or restoration of road, bridge, tunnel, or terminal for road transportation for use by general public is exempted for payment of service tax.
26. From the above, it is clear that Sr.No.13(a) of the Notification No.25/2012-ST, i.e. a road, bridge, tunnel, or terminal for road transportation for use by general public; for which services rendered are exempted from payment of Service Tax. it is seen that the work executed by the noticee are Road construction for general public which falls under the Mega Exemption Notification No.25/2012-ST. They have produced copies of bills raised to The total amount matched with the figures (value) mentioned in the show cause notice as well as 26AS. They have also produced copies of balance sheet for the financial year 2014-15 and as per the P/L account the figures tallied with the total bill amount. In the instant case, I am of the view that the Service rendered by the noticee is works contract service for construction of road for general public the Service Tax is exempted for the service rendered in terms of Sr.No.13(a) of Noti.12/2012 and Sl.No.13(a) of Mega Exemption Notification No.25/2012-ST dated 20.06.2012.
27. The assessee has provided copies of agreement with the main contractor and also produced the copies of work allotted to the main contractors. In the instant case, I am of the view that the Service rendered by the noticee is works contract service for main contractor and for construction of road for general public the Service Tax is exempted from the service rendered in terms of Sr.No.13(a) of Noti.12/2012 and Sl.No.13(a) and 29(h) of Mega Exemption Notification No.25/2012-ST dated 20.06.2012. Further the assessee also provided works contract services to other entities amounting to Rs.91,91,945/- on which they have paid appropriate service tax and filed STR also. In view of the facts, service tax demand of Rs.45,19,009/- is not sustainable and therefore liable to be dropped.
28. The noticee has submitted a lengthy written submission, produced copies of the balance sheet to prove the value of their service provided and relied a large number of case laws in their favour to show that the show cause notice is not sustainable, extended period is not invocable, interest and penalty is not applicable in the present case. I am not discussing those issues separately as I am of the view that the Service rendered by the noticee is of works contract for construction of roads used by general public and the Service

Tax is exempted for the service rendered of Sl.No.13(a) of Noti No.12/2012 and 29(h) of Mega Exemption Notification No.25/2012-ST dated 20.06.2012.

29. In view of the above facts, I find that the services rendered by the noticee are eligible for exemption under Notification No.12/2012 and No.25/2012-ST. As such, the assessee is not liable to pay Service Tax for the notice issued and the Service Tax demanded in the present show cause notices are not sustainable in law and liable to be dropped. As the show cause notice is not sustainable, interest and penalty proposed in the show cause notices are also not sustainable and liable to be dropped.

30. I find that the financial and other records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company/ individual during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated 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 at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the 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 of the company/ individual. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

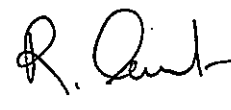
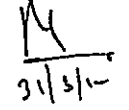
31. On perusal of para 6 & 7 of the SCN, I find that the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. I however, do not find any charges levelled for demand for FY 2017-18 (upto June 2017) in charging part of the SCN. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income from sale of services. I therefore refrain from discussing the taxability on other income other than the sale of service.

32. In view of the above I pass the following order;

#### ORDER

- (i) I hereby order to drop the proceedings initiated for recovery of service tax of Rs.1,42,41,562/- along with interest and penalties vide SCN No. STC/15-94/OA/2020 dated 29.09.2020.

- (ii) I hereby order to drop the proceedings initiated for recovery of service tax of Rs.1,02,33,664/- along with interest and penalties vide SCN No. STC/15-60/OA/2021 dated 23.04.2021.

(R.GULZAR BEGUM)  
Additional Commissioner  
Central GST & Central Excise  
Ahmedabad North

F.No. STC/15-60/OA/2021

Dated- 31/5/21

To  
M/s Rahil Construction,  
Vasukanan U/12 Nr. Nirnay Nagar Garnala,  
Ghatlodia, Ahmedabad

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Deputy Commissioner Division-VII, Central Excise & CGST, Ahmedabad North.
3. The Superintendent, Range-II, Division-VII, Central Excise & CGST, Ahmedabad North
4. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
5. Guard File