
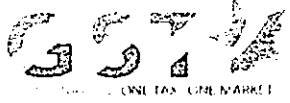


<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20220564WT000081818D

फा.सं./F.No. STC/15-32/OA/2020

आदेश की तारीख/Date of Order :- 31.05-2022

जारी करने की तारीख/Date of Issue :- 31.05-2022

द्वारा पारित/Passed by:-

आर गुलजार बेगम /R Gulzar Begum

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 16/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 एस टी -4 (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच 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. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -4 (ST-4) 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।

(1) उक्त अपील की प्रति।

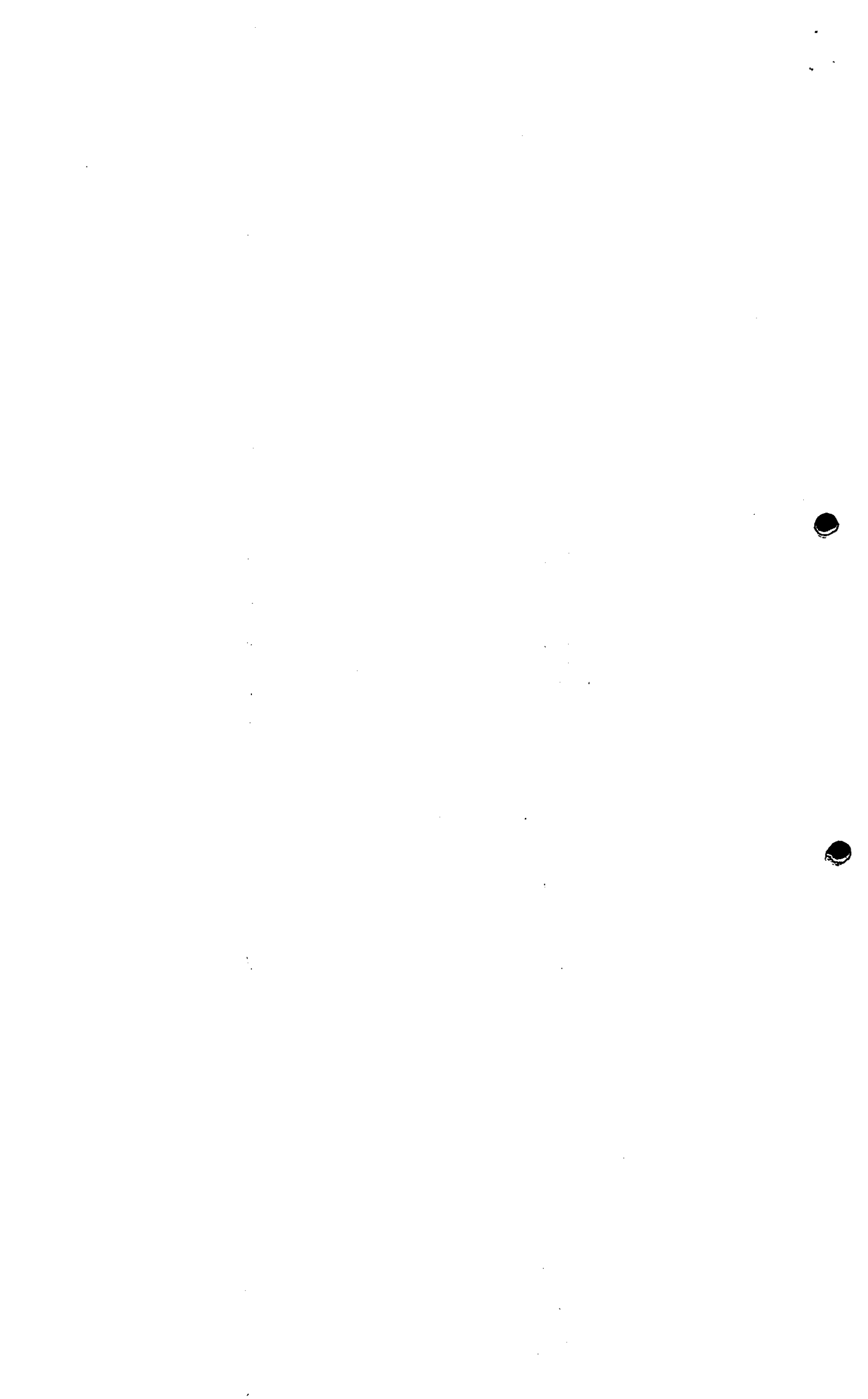
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु.5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -4 (ST-4) 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.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notices F.No.STC/15-32/OA/2020 dated 28.09.2020 issued to M/s Ketan Narsinhbhai Patel, E-1, Tarun Nagar Vibhag 3, Subhash Chaowk, Gurukul Road, Memnagar, Ahmedabad.



BRIEF FACTS OF THE CASE

M/s Ketan Narsinhbhai Patel, E-1, Tarun Nagar Vibhag 3, Subhash Chaowk, Gurukul Road, Memnagar, Ahmedabad having PAN NO: AMLPP3607K (hereinafter referred to as the 'assessee') and was engaged with providing taxable services without taking Service Tax Registration.

2. As per the information received of the third party CBDT data for the Financial Year 2014-15 & 2015-16 wherein it was observed that the said assessee had earned substantial by way of providing taxable services but has neither obtained service tax registration, nor paid service tax thereon.

3. A letter dated 25.07.2020 & Summons dated 14.08.2020 were issued by JRO to party with a request to produce the documents or clarification mentioned therein to this office within a week time from the date of receipt of that letter/Summons. However, the party has failed to submit the required the 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 party as Service Provider observed to be covered under the definition of service and 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 observed to be not 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 party appears to be subjected to Service Tax.

6. Since the party has not submitted the required details of services provided during the Financial Year 2014-15 & 2015-16, the service tax liability of the service tax party was required to be ascertained on the basis of income mentioned in the ITR returns and Form 26AS filed by the party 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 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 2014-15 & 2015-16. By considering the said amount as taxable income, the service tax liability is calculated as detailed below:-

Year/Period	2014-15	2015-16	Total
Taxable Value as per Income Tax Data i.e. Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)	Rs. 28661779	Rs.31076702	Rs.59738481
Service Tax Rate	12.36%	14.50%	
Service Tax	Rs.3542596/-	Rs.4506121	Rs.8048717

8. It is observed that the party has neither obtained the Service Tax registration from the Department for the services provided by them for the period of F.Y. 2014-15 & 2015-16, nor responded to correspondence made by the department in order to ascertain the actual taxable service income. Therefore, it was observed that the party had not paid actual service tax by way of willful suppression of facts and in contravention of provision of the Finance Act, 1994 relating to levy and collection of service tax and the rules made there under, with intent to evade payment of service tax. The service tax amounting to Rs. 80,48,717/- 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 along with interest under Section 75 of the Finance Act, 1994 and penalty under Section 78 of Finance Act, 1994

9. Further, the said party (a) failed to take registration in accordance with the provisions of section 69; (b) failed to keep, maintain or retain books of account and other documents as required in accordance with the provisions of Finance Act, 1994 & (c) failed to furnish information / documents called for from them (d) failed to pay the tax electronically, accordingly the said party is liable to penalty under the provisions of Section 77(1) & 77(2) of Finance Act, 1994.

10. Therefore Show Cause Notice was issued to M/s.Ketan Narsinbhai Patel called upon to show cause as to why:

- (i) Service Tax of Rs. 8048717/- which was not paid for the financial year 2014-15 & 2015-16 as per above Table, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (ii) 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;
- (iii) Penalty under the provisions of Section 77(1) & 77(2) of the Finance Act, 1994, as amended, should not be imposed on them.
- (iv) 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 :

11. The assessee vide letter dated 21.04.2022 submitted their reply to SCN wherein they submitted that they are doing business of supplying goods like bricks, sand, pipes hardware, pumps and some miscellaneous articles of submersible pump. He is doing only trading of these articles. There is negligible part of supplying labour service.

12. As per Section 65B under the Finance Act, 2012 (as amended) taxable service is " any service on which service tax is leviable under section 66B. Section 66 B of Finance Act, 1994 provides that there shall be levy of service tax on all services exempt those mentioned in the negative list (Negative List has been defined under Section 65B(34) as services listed in Section 66 D of finance Act, 1994) and provided or agreed to be provided by one person to another in the taxable territory and collected in the manner prescribed.

13. Thus by specifying the activity of trading of goods under the negative list of services, it became and exempted service. However, an activity of trading of goods is under the negative list of services, it became an exempted service . However an activity of trading of goods, which constitutes merely a transfer of title in goods by way of sale, is specifically excluded from the definition of service.

14. Section 66D of Finance Act, 194 specifies the negative list of services, viz the service on which tax is not leviable. Section 66 D is inserted in Finance Act, 1994 by Finance Act, 2012 and been notified to be effective from 1st July 2012. There is very negligible part of supplying of labour service in his business, which even did not cross the basis threshold limit required for service tax registration. So, he was not liable for service tax registration in F.Y 2014-15 and 2015-16 and he was also not supposed to collect and pay service tax , as he is out of purview of service tax. He has attached Profit and Loss account, balance sheet and VAT documents of F.Y.2014-15 and 2015-16 for the clarification of the query raised and requested to abate the proceedings.

PERSONEL HEARING

15. Personnel Hearing in the case was granted on 26.04.2022 and Shri Malay Thakkar, CA, duly authorised representative, attended on behalf of the assessee. He has submitted VAT returns to prove that they have supplied goods and hence there is no liability service tax on them.

DISCUSSION AND FINDINGS

17. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding to adjudicate the SCN.

18. I have carefully gone through the Show Cause Notice, submission made by the noticee, Balance Sheet, VAT Returns, and copies of invoices for the year 2014-15 and 2015-16. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs. 80,48,717/- for the financial year 2014-15 and 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. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs.80,48,717/- for the financial year 2014-15 and 2015-16 under proviso to section 73(1) of Finance Act, 1944 or not.

19. On perusal of the reply to the SCN, Balance sheet, VAT returns, copy of invoices and other documents submitted by the assessee, I find that they are engaged in the business of trading of bricks, sand, pipes hardware, pumps and some miscellaneous articles of submersible pump. There is negligible part of supplying labour service is also provided by them. On perusal of the copies of invoices provided by the assessee, I find that they have traded the goods like M.G.Round Pipe, Industrial 11 KV Cable, Pipe -MTR, Pump Set, steel pipe, column pipe, Mild Steel Pipe etc to their various customers. In this connection, the assessee is contended that they are engaged in trading of goods and their income shown in their accounts as well as SCN is of income of traded goods, they are not liable to pay service tax under as the activity of trading is covered under the Negative List of services under Section 66D of Finance Act, 2012.

20. In view of the above, now I discuss the relevant provisions with regard to trading of goods. As per the extant provisions of Chapter V of the Finance Act, 1994 activity of trading in Goods is not taxable. Levy of Service tax 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.*

The term 'Service' as defined in Section 66B (44) of Finance Act, 2012 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*
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the constitution or*
 - (iii) a transaction in money or actionable claim.*

(b) A provision of service by an employee to the employer in the course of or in relation to his employment.

(c) fees taken in any court or tribunal established under any law for the time being in force.

21. Further 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

22. On perusal of the relevant Sections and definitions, I find that trading of goods falls under the negative list of services specified in Section 66D of Finance Act, 1994 and therefore the said activity is out of purview of taxable service.

23. Further, on perusal of various documents available on record, I find that Sale/trading 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 2014-15 & 2015-16. Accordingly while considering the above provisions, I find that the assessee is not liable to pay Service Tax on the trading of goods as stated above for the period 2014-15 and 2015-16 as the same is falls under the services covered under Negative List as specified under Section 66 D of Finance Act, 2012. For the sake of clarity, I would like to discuss the issue year wise.

FINANCIAL YEAR 2014-15

24. On perusal of SCN, audited balance sheet, ledger account and other related documents of F.Y.2014-15, I find that the value shown in SCN is Rs.2,86,61,779/- as gross receipt from services (value from ITR/26AS (in Rs.)). However on perusal of audited Balance sheet, I find that total sale/income is Rs.2,93,95,039/- as per balance sheet. As the income shown in the audited Balance sheet is on higher side, I consider Rs.2,93,95,039/- as the income for the year 2014-15 for adjudication purpose also. I have gone through the VAT return filed by the assessee for the year under consideration as well as the reconciliation statement and copies of invoices, I find that Sale/ trading of goods is taxable under the Gujarat Value Added Tax Act and assessee has paid the requisite VAT on the Sales of goods amounting to Rs.2,87,20,189/-and submitted VAT returns for the period 2014-15 on the total sale. Therefore, in view of the above provisions, I find that the assessee is not liable to pay Service Tax on the trading of goods amounting to Rs. 2,87,20,189/- as stated above for the year 2014-15. As the trading activity is covered under the negative list of

services specified in Section 66D of Finance Act,1994, the income derived from the activity of trading amounting to Rs. 2,87,20,189/- is also not taxable under the Service tax.

25. Further on reconciliation of financial accounts and balance sheet, I find that an amount of Rs.6,74,850/- is shown as labour charges and the assessee has claimed that this amount is not taxable as the said income is less than the threshold limit of Rs. 10 lac. I have gone through the Balance sheet and find that there is an income of Rs.6,74,850/- shown against labour charges. As the income is below Rs.10 lakhs, the same is exempted from the purview of Service tax in view of Notification No.33/2012-ST dated 20.06.2012 and therefore, I find that the contention of the assessee that the labour income of Rs.6,74,850/- during the year 2014-15 is exempted from service tax in view of No.33/2012-ST dated 20.06.2012 is correct. Accordingly, I find that the service tax demand of Rs.35,42,596/- for the year 2014-15 is not sustainable and therefore required to be dropped.

FINANCIAL YEAR 2015-16.

26. On perusal of SCN, audited balance sheet, ledger account and other related documents of F.Y.2015-16, I find that the value shown in SCN is Rs.3,10,76,702/- as gross receipt from services (value from ITR/26AS (in Rs.)). On perusal of audited Balance sheet, I find that total sale/income is also Rs.3,10,76,702/-. I have gone through the VAT return filed by the assessee for the year under consideration as well as the reconciliation statement and copies of invoices, I find that Sale of goods is taxable under the Gujarat Value Added Tax Act and assessee has paid the requisite VAT on the Sales/trading of goods amounting to Rs.3,02,90,252/- and submitted VAT returns for the period 2015-16 on the total sale. Therefore, in view of the above provisions, I find that the assessee is not liable to pay Service Tax on the income derived from the trading of goods amounting to Rs. 3,02,902,252/- as stated above for the year 2015-16. As the trading activity is covered under the negative list of services specified in Section 66D of Finance Act,1994, the income derived from the activity of trading amounting to Rs. 3,02,90,252/- is also not taxable under Service tax.

27. Further on reconciliation of financial accounts and balance sheet, I find that an amount of Rs.7,86,450/- is shown as labour charges and the assessee has claimed that this amount is not taxable as the said income is less than the threshold limit of Rs. 10 lac. I have gone through the Balance sheet and find that there is an income of Rs. 7,86,450/- shown against labour charges. As the income is below Rs.10 lacs, the same is exempted from the purview of Service tax in view of Notification No.33/2012-ST dated 20.06.2012 and therefore, I find that the contention of the assessee that the labour income of Rs. 7,86,450/- during the year 2015-16 is exempted from service tax in view of No.33/2012-ST dated 20.06.2012 is correct. Accordingly, I find that the service tax demand of Rs.45,06,121/- for the year 2015-16 is also not sustainable and therefore required to be dropped.

28. 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.

29. Having considered above facts and discussion, I am of the view that the assessee was engaged in trading of M.G.Round Pipe, Industrial 11 KV Cable, Pipe – MTR, Pump Set, steel pipe, column pipe,, Mild Steel Pipe etc to customers during the FY 2014-15 & 2015-16. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. I am, therefore, of the view that the assessee has established their case quite clearly and therefore I hold that no service tax is payable by the assessee as demanded in the subject SCN.

30. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, ITR , reconciliation statement, I find that the service tax demand of Rs.80,48,717/- for the period 2014-15 to 2015-16 is not sustainable and accordingly Show Cause Notice No.STC/15-32/OA/2020 dated 28.09.2020 is not sustainable and liable to be dropped. Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty upon assessee on this count.

31. Accordingly, I pass the following order;

: ORDER :

32. I drop the demand of Rs. 80,48,717/- and proceedings initiated against M/s. Ketan Narsinhbhai Patel and accordingly Show Cause Notice F.No. STC/15-32/OA/2020 dated 28.09.2020 is hereby disposed off.

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

F.No. STC/15-32/OA/2020

Dated

To
M/s Ketan Narsinhbhai Patel,
E-1, Tarun Nagar Vibhag 3,
Subhash Chaowk, Gurukul Road,
Memnagar, Ahmedabad

Copy to:

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