



<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क,अहमदाबाद - उत्तर, कस्टम हाउस, 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:- aaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20220664WT000000F9FF

फा.सं./F.No. STC/15-229/OA/2020-21

आदेश की तारीख/Date of Order :- 27.06-2022

जारी करने की तारीख/Date of Issue :- 27.06-2022

द्वारा पारित/Passed by:-

आर गुलजार बेगम /R Gulzar Begum

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 31/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 -४ (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 -४ (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।

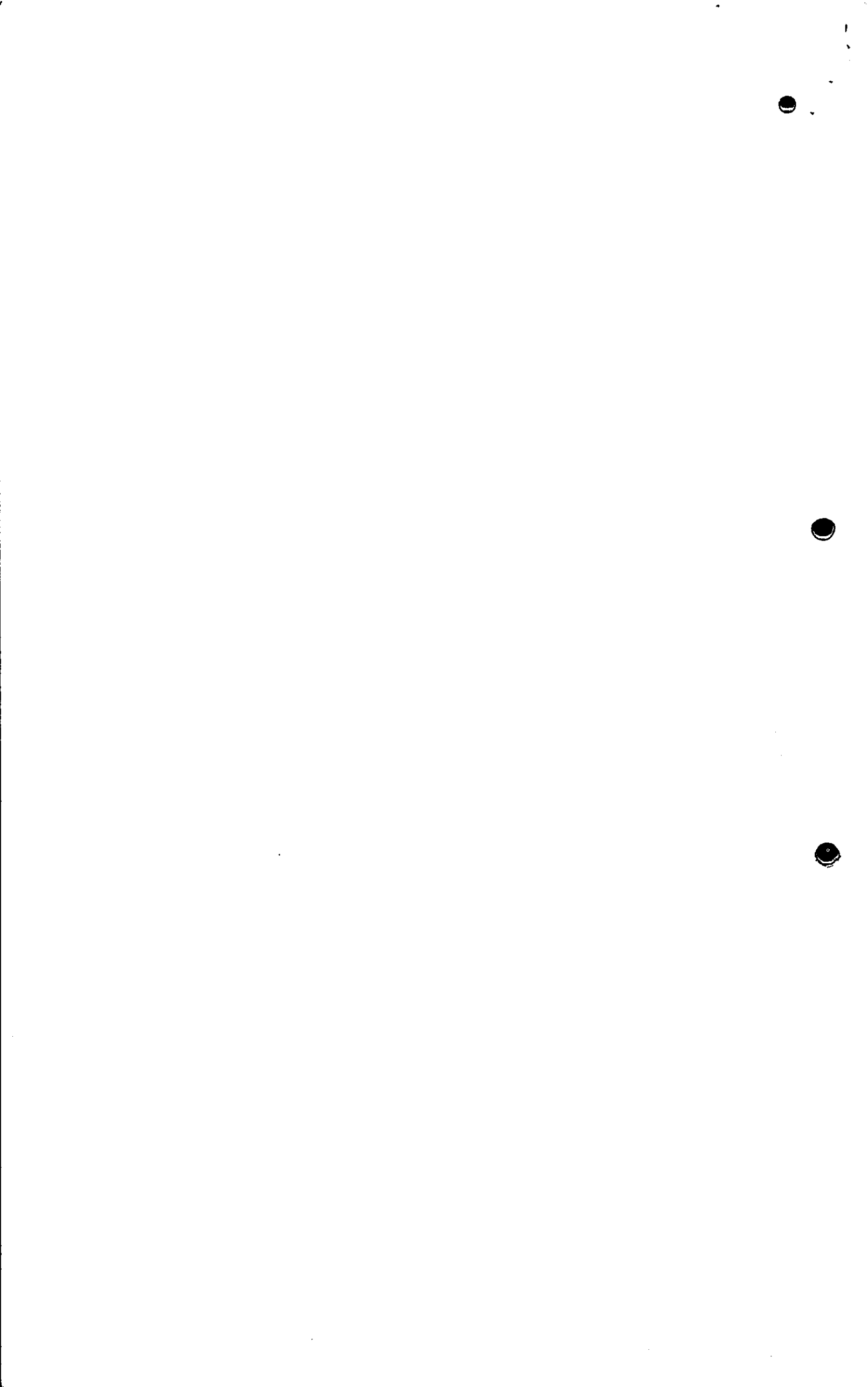
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -४ (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/15-229/OA/2021-22 dated dated 23.04.2021 issued to M/s Naynaben Rajkinant Patel, 112, Sahyog Co-op H Soc. Ltd., Shree Kunj, Nr. Ranna Park, Ghatlodia, Ahmedabad-380061.



BRIEF FACSTS OF THE CASE

M/s. NAYNABEN RAJNIKANT PATEL, 112 SAHYOG CO OP H SOC LTD, SHRI KUNJ NR RANNA PARK, GHATLODIA, AHMEDABAD-380061 (hereinafter referred to as the assessee) was engaged in providing taxable services without taking registration.

2. On going through the third party CBDT data for the Financial Year 2015-16 and 2016-17, it has been observed that the Assessee has earned substantial service income by way of providing taxable services but has neither obtained service tax registration nor paid service tax thereon. With effect from 01.07.2012, the negative list regime came into existence under which all the services are taxable and only those services that are mentioned in the negative list are exempted.

3. 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 appear to not be exempted under mega exemption notification No.25/2012-ST dated 20.06.2012, as amended from time to time, and hence the aforesaid service provided by the assessee appears to be subjected to service tax.

4. The service tax liability of the service tax assessee is ascertained on the basis of income mentioned in their ITR returns and Form 26AS filed by the assessee with the IT Department. The figures/data provided by the IT Department is considered as total taxable value in order to ascertain the service tax liability under section 67 of the Finance act, 1994. By considering the said amount as taxable income, the service tax liability is calculated as detailed below.:

Sr. No.	F.Y.	Total Value for TDS (including 194C, 194Ia, 194Ib, 194) (In Rs.)	Service Tax Rate	Resultant Service Tax short paid (in Rs.)
1	2015-16	40489470	14.5%	5870973
2	2016-17	34195711	15%	5129357
	Total			11000330/-

5. No data was forwarded by CBDT, for the period 2017-18 (upto June-2017) therefore at the time of issue of SCN, it is not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

Unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies 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."

6. From the facts, it is observed that the "Total Amount Paid/Credited under Section 194C, 194H, 194I, 194J" for the FY 2017-18 (upto June 2017) is not disclosed thereof by the Income Tax Department. Therefore, the assessable value for the year 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 the future, for the period 2017-18 (upto June 2017) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

7. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the assessee, M/s. Naynaben Rajnikant Patel, have contraventions of the 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 Noti.No.33/2012 dated 20.06.2012 as much as they failed to obtain service tax registration.
- (ii) Section 67 of the Finance Act, 1994 as much as they 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 Finance Act, 1994 read with Rule 6 & 7 of the service Tax Rules, 1994.
- (iv) Section 66B and Section 68 of Finance Act, 1994 and Rule 2&6 of Service Tax Rules, 1994 in as much as they failed to pay service tax correctly at the appropriate rate within the prescribed time in the manner and a the rate as provided under the said provision.
- (v) Section 77 of Finance Act, 1994, in as much as failed to take registration.
- (vi) All the above acts of contravention on the part of the said assessee appear 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.

8. 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 & 2016-17. Thus, the present notice relates exclusively to the information received from the Income Tax Department.

9. It was observed that the assessee has not obtained the ST registration from the Department for the services provided by them for the period FY 2015-16 to 2017-18 (upto June 17). Therefore, it was noticed that the assessee had not paid actual service tax by way of willful suppression of facts and in contravention of provisions of Finance Act, 1994 an rules made thereunder relating to levy and collection of service tax with intent to evade payment of service tax. The service tax amounting to Rs.11000330/- is therefore recoverable from them by invoking extended period of five years as per first proviso to sub section (1) of Section 73(1) of Finance Act, 1994 along with interest u/s.75 of Finance Act, 1994. and penalty u/s.78 of Finance act, 1994. Further they are also liable for penalty u/s.77(1)(a) , 77(1)(c) & 77(2) of 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.

10. Therefore the assessee was called upon to show cause as to why:

- (i) Service Tax of Rs. 11000330/-- which was not paid for the financial year 2015-16 & 2016-17 as mentioned above, should not be demanded and recovered from them under proviso to sub section (1) of Section 73 of the Finance Act, 1994.
- (ii) Service Tax liability not paid during the financial year 2017-18 (upto June- 2017), ascertained in future, 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 under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty under the provisions of Section 77(1)(a), 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.
- (iv) Penalty under Section 78 of the Finance Act, 1994. should not be imposed upon them for suppressing the full value of taxable services and material facts from the department resulting into non payment of service tax as explained hereinabove.

DEFENCE REPLY :

11. The assessee vide his letter dated 23.06.2021 stated that they are proprietary concern namely M/s. Jeel Field Services and engaged in the activity of solid waste management services providing to Ahmedabad Municipal Corporation. The copy of work order and resolution attached by them. Further vide letter dated 24.06.2022, they furnished their written reply during the personnel hearing wherein they stated that M/s. Jeel Field Services is engaged in providing services of collection of solid waste Management to Ahmedabad Municipal Corporation by way of solid waste management to Government, a local authority. The same is exempted vide Sr. No. 25(a). of Notification No. 25/2012, They submitted copy of work orders with Ahmedabad Municipal Corporation; that Ahmedabad Municipal Corporation is a local authority and therefore service tax is not applicable on services provided to them. The assessee has also provided services of transportation of goods by road except services of goods transport agency or a courier agency which are also not liable to service tax as per Section 66D of the Finance Act, 1994 mentioning the negative list services; that they attached invoices issued by them; that they have not suppressed any facts relating to the activity carried out by them and therefore they are not liable to pay any penalty under Section 77, 78 and interest under Section 75 of the Finance Act, 1994.

PERSONNEL HEARING :

12. Personnel hearing was granted to the assessee on 24.06.2022 wherein Shri Bhavesh Jhariwadia, authorized representative appeared before me. He reiterated the written reply submitted on 23.06.2021 and additional reply during personnel hearing. He requested to take the case on merits as they have done only services which fall under exempted category.

DISCUSSIONS AND FINDINGS

13. 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 further.

13.1. I have carefully gone through the records of the case, submission made by the noticee in reply to the show cause notice, Form 26AS, Balance sheet for the year 2015-16 and 2016-17, work orders and invoices. In the present case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs. 1,10,00,330/- for the financial year 2015-16 & 2016-17 on the basis of data received from Income Tax authorities. I find that the assessee is not registered under Service Tax. I find that the SCN has been issued on the basis of data provided in 26AS for the respective years. 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(1), 77(2) and 78 of the Finance Act, 1994. I find that the assessee is proprietary concern namely M/s. Jeel Field Services.

13.2 I find that the said assessee claimed that that they are providing solid waste management services to Ahmedabad Municipal Corporation and availed the benefit of exemption of Sr. No. 25(a) of Notification No.25/2012 dated 20.06.2012. The assessee has also provided services of transportation of goods by road except services of goods transport agency or a courier agency which are also not liable to pay service tax as provided under Section 66D of finance act, 1994. I produce herewith the said Notification :

MEGA EXEMPTION Notification No. 25/2012-Service Tax dated 20th June, 2012 Incorporating the following Notifications indicated suitably Notification number Date of issue Date of effect 7/2016-Service Tax 18 February 2016 1 April 2016 9/2016-Service Tax 1 March 2016 1 April 2016 22/2016-Service Tax 13 April 2016 13 April 2016 26/2016-Service tax 20 May 2016 20 May 2016 32/2016-Service Tax 6 June 2016 6 June 2016 39/2016-Service Tax 2 September 2016 2 September 2016 40/2016-Service Tax 6 September 2016 6 September 2016 47/2016 -Service Tax 9 November 2016 1 December 2016 52/2016-Service Tax 8 December 2016 8 December 2016 1/2017-Service tax 12 January 2017 12 January 2017 5/2017-Service Tax 30 January 2017 30 January 2017 7/2017-service Tax 2 February 2017 2 February 2017 10/2017-service Tax 8 March 2017 1 April 2017 17/2017-Service Tax 04 May 2017 04 May 2017 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 No. 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:-

25. Services provided to Government, a local authority or a governmental authority by way of - [(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or] substituted by Notification No.6/2014- ST, dated 11.7.2014 (b) repair or maintenance of [a vessel];

13.3 I have gone through the work order of Ahmedabad Municipal Corporation granting work to the assessee. I find from the work order that the Ahmedabad Municipal corporation has granted work order for providing waste management services from the assessee. I have also gone through the invoices issued by the assessee and I find that the assessee has provided the waste management services to local authority i.e. Ahmedabad Municipal Corporation. I have also gone through the notification Sr. No. 25(a) of notification No. 25/2012-ST wherein I find that the assessee has rightly claimed the benefit of the said notification and therefore the assessee is not liable to pay Service Tax.

13.4 Further, with regard to Services provided in respect of transportation of goods by road except services of goods transport agency or a courier agency, the assessee has submitted the invoices issued with regard to provided the transport

services. I find that Section 66D of the finance Act, 1994 is specifically exempt the services

I produce below the said Section 66 D of finance Act, 1994;

- (p) services by way of transportation of goods— (i) by road except the services of—
 (A) a goods transportation agency; or
 (B) a courier agency;
 (ii) [* * *]
 (iii) by inland waterways;

13.5 I find from the invoices provided by the assessee that the assessee has provided of transportation of goods by road except services of goods transport agency to various customers and therefore the assessee has rightly claimed the benefit of negative services provided under Section 66D of Finance Act, 1994 as the services of provided by road except the services of a goods transport agency specifically exempts from payment of Service Tax.

13.6 Further, as mentioned in the SCN, I find that the levy of Service Tax for the financial year 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 2017-18 (Up to June 2017), in charging para 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 GTA . I therefore refrain from discussing the taxability on other income other than GTA income. For the ease of reference, I Produce herewith the reconciliation statement;

Sr. No.	Period	Nature of Income	As per 26 AS	Remarks
	2015-16	Carting Income (AMC)	3,96,45,992	Exempt vide Mega Exemption Notification No. 25/2012 Sr. No. 25 (a)
		Carting Income-Omkar Enterprises	4,31,357	Transportation of Goods by Road-Negative list Section 66D of Service Tax Act, 1994.
		Carting Income-Tejas M Patel	4,12,121	
		Total	4,04,89,470	
		2	2016-17	Carting Income (AMC)
Carting Income-GKSML	3,26,674			Transportation of Goods by Road-Negative list Section 66D of Service Tax Act, 1994.
Carting Income-Omkar Enterprises	25,79,922			
Carting Income-Tejas M Patel	10,94,268			
Carting Income-Sweety Mukesh Patel	33,30,271			
Total	3,41,95,711			

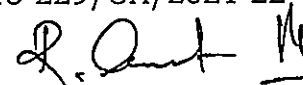
13.7 The Balance sheet and profit and loss account of an assessee is vital statutory records. Such records are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before 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.

13.8 In view of the above discussion and findings and also on perusal of SCN, form 26AS, reconciliation statement as well as submissions made by the said assessee, I find that the assessee is rightly eligible for benefit of notification No. 25/2012-ST dated 20.06.2012 and Section 66D of the Finance Act, 1994 and therefore the assessee is not liable to pay demand as reflected in the Show Cause Notice. In view of the above, assessee is not liable to pay Penalty under Section 77 and 78 and interest under Section 75 of Finance Act, 1994.

14. In view of the above discussion and findings, I pass the following orders:-

ORDER

- (i) I hereby order to drop proceedings initiated for recovery of service tax of Rs. 1,10,00,330/- along with interest and penalties initiated against M/s. NAYNABEN RAJNIKANT PATEL, 112 SAHYOG CO OP H SOC LTD, SHRI KUNJ NR RANNA PARK, GHATLODIA, AHMEDABAD-380061
- (ii) Accordingly the Show Cause Notice from No.STC/15-229/OA/2021-22, dt. 23.04.2021 is disposed off.



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

Date: 27/6/22

F.No. STC/15-94/OA/2021
To,
M/s. NAYNABEN RAJNIKANT PATEL,
112 SAHYOG CO OP H SOC LTD,
SHRI KUNJ NR RANNA PARK,
GHATLODIA, AHMEDABAD-380061

Copy to:

- 1) The Commissioner Central GST & Central Excise, Ahmedabad North.
- 2) The Assistant Commissioner, Central GST & Central Excise, Division-VII, Ahmedabad North.
- 3) The Superintendent, Central GST & Central Excise, Range-III, Division-VII, Ahmedabad North
- 4) The Superintendent Systems, CGST & CX, Ahmedabad North for uploading the order
- 5) Guard File.