


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>3574</p> <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-61/OA/2021

आदेश की तारीख/Date of Order :21.10.2022

DIN- 20221064WT0000520545

जारी करने की तारीख/Date of Issue :- 21.10.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 53/JC/ LD /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) दिनों 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।

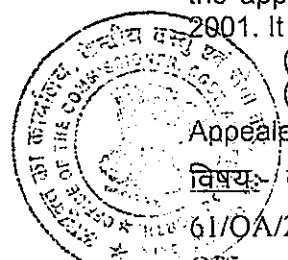
The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

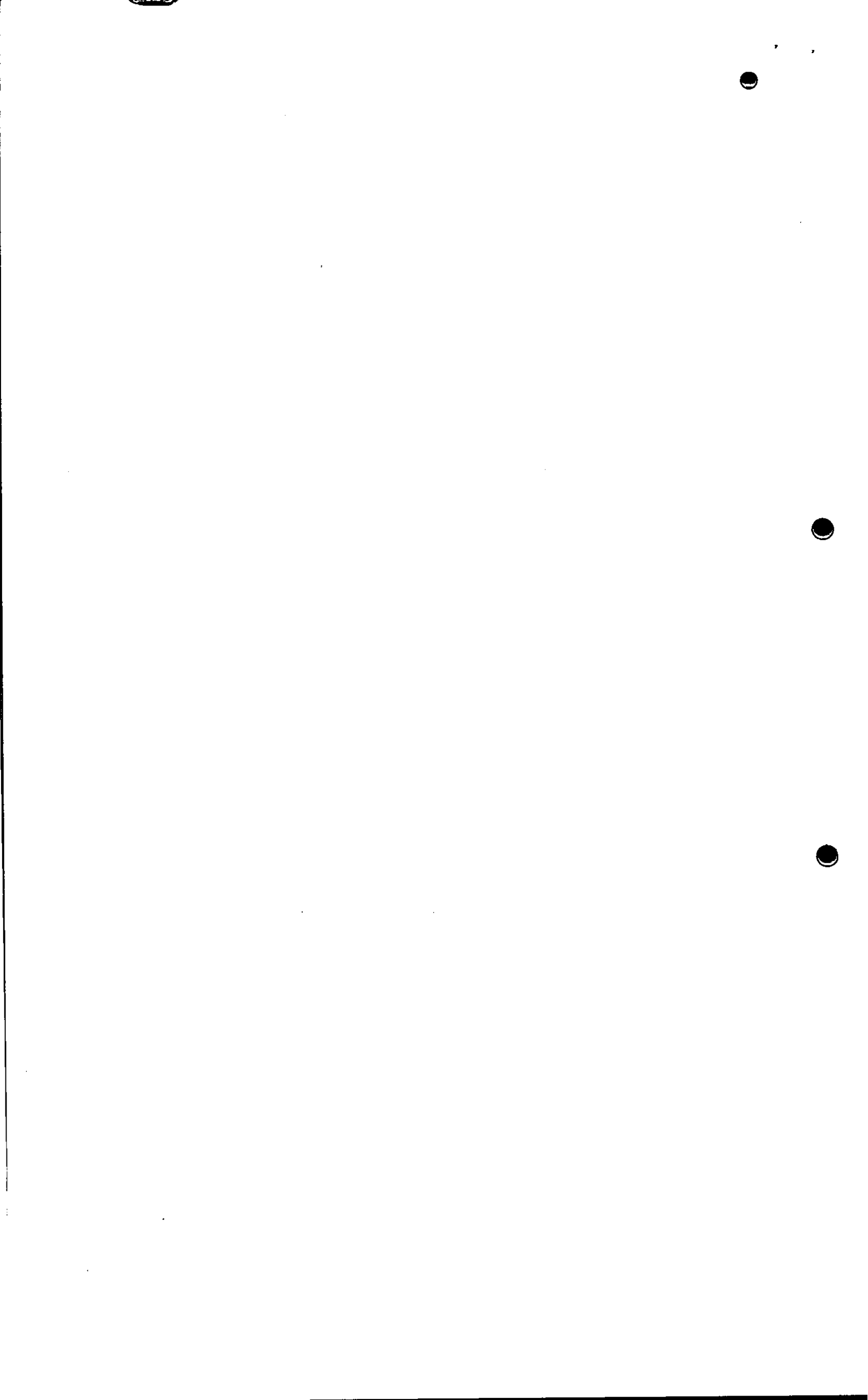
(1) Copy of accompanied Appeal.

(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 Notice F.No. STC/15-61/OA/2021 dated 23.04.2021 issued to M/s Shree Umiya Aqua Engineers, 25, Gazetted Officers Society, Opp. CP Nagar, Ghatlodia, Ahmedabad, Gujarat-380061.





BRIEF FACTS OF THE CASE :

M/s. SHREE UMIYA AQUA ENGINEERS, 25, Gazetted Officers, Society, Opp., C.P. Nagar, Ghatlodia, Ahmedabad-Gujarat-380061 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. AAOFSl655DST00I and was engaged in Taxable Services.

2. On going through the third party CBDT data for the Financial Year 2015-16 and 2016-17, it was observed that the Assessee had declared less taxable value in their Service Tax Return (ST- 3) for the F.Y. 2015-16 and 2016-17 as compared to the Service related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

Sr. No.	F. Y.	Taxable Value as per ST-3 returns (In Rs.)	Gross Receipts Services (Value from ITR/26AS) (In Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax short paid (in Rs.)
1	2015-16	0	83013952	83013952	12037023
2	2016-17	0	48703937	48703937	7305591
TOTAL					1,93,42,614

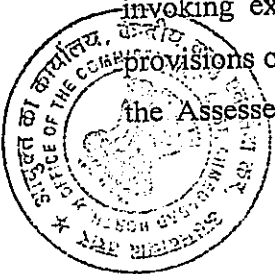
3. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said assessee had not paid service tax as worked out as above in Table for Financial Year 2015-16 and 2016-17.

4. No data was forwarded by CBDT, for the period 2017-18 (upto June-2017) and the assessee had also failed to provide any information regarding rendering of taxable service for this period. Therefore, at the time of issue of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

With respect to issuance of 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."

5. As per Section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appeared that the said service provider had not assessed the tax dues properly, on the services provided by him, as discussed above, and failed to file correct ST-3 Returns thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.
6. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider had failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.
7. In view of above, it appeared that the Assessee had 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. 1,93,42,614/-, 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(l)(d) of Service Tax Rules, 1994.
8. It has been noticed that at no point of time, the Assessee had 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 2015-16 and 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 appeared that the said assessee had 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. 1,93,42,614/-. It appeared that the above act of omission on the part of the Assessee resulted into nonpayment 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 appeared to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, 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 appeared that the Assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

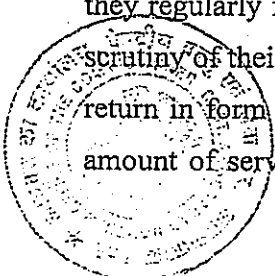
9. The said assessee was given an opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 22.04.2021 but the said assessee did not appear for the same.

10. Therefore, a Show Cause Notice bearing F.No.STC/15-61/OA/2021 dated 23.04.2021 was issued to M/s SHREE UMIYA AQUA ENGINEERS, 25, Gazetted Officers, Society, Opp., C.P. Nagar, Ghatlodia, Ahmedbad-Gujarat-380061 to show cause to the Additional/Joint Commissioner, CGST & CX, Ahmedabad North having office at 1 Floor, Custom House,, Navrangpura, Ahmedabad as to why:

- (i) The demand for Service tax to the extent of Rs 1,93,42,614/- short paid /not paid by them in F.Y. 2015-16 and 2016-17, should not be confirmed 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 on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

DEFENCE REPLY :-

11. The said assessee vide their letter dated 17.05.2021 submitted their defence reply to the Show Cause Notice wherein they submitted that they are registered Government approved contractor; that they participate only in e-tenders of Government department, Government authority and local body; that their business was to supply various types and capacity of pumps, Motors, Control Panel, Transformer, Cable Valve, Switch gears, Pipes etc. on turnkey basis; that they also provide Services of repairs and maintenance and repair of pumping plant for Rural Regional Water Supply scheme under Gujarat Water Supply & Sewerage Board (GWSSB) which is undertaking of Gujarat Government ; that they also provide maintenance and repairing service to GWSSB only; that their books and accounts are audited by Chartered Accountant; that they regularly files IT, VAT, Sales Tax and ST-3 returns etc.; that all the department conducted scrutiny of their returns and nothing was found adverse; that they have submitted all Service Tax return in form ST-3 regularly in time; that in all these returns they had shown details of gross amount of services provided for which service tax was claimed for exemption; that they have



claimed exemption of Service Tax as per Government Notification No. 25/2012-ST dated 20.06.2012 as per clause No. 12(e).

11.1 Further, as regards to difference in value of taxable service shown in ST-3 returns and form 26AS, they clarified that payments received from various division of GWSSB were shown in 26AS which were for combined supply of material and services provided by them; that they prepare bills for supply of material and services provided to various divisions; that payments are made in 3 to 4 parts by preparing running bills by the department; that sometimes they receive payment in next year as such outstanding payment was shown as sundry debtor in balance sheet; that they filed returns as per bill prepared by them and not as per running bills of GWSSB; that total material sale and labour sales were shown in Profit & Loss a/c of the year

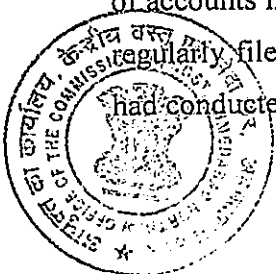
11.2 The assessee further submitted that the comparison of value shown in ST-3 return and form 26AS was not possible as form 26AS showed the total payment of (1) Material sale (2) Labour sale and (3) Outstanding payment of previous year; that they had shown correct figures in form ST-3 which can be checked with figures shown in statement-1.

Statement-1

(Statement showing reconciliation of service income shown in ST-3 with P&L A/c, IT return and VAT return)

Year	Sales as per P&L A/C	Sales as per I.T. RETURN	Taxable Sales as per VAT-FORM- 205	Labour Sales as per ST-3	TOTAL
1	2	3	4	5	(4+5)
2015-16	88765711	88765711	75292821	13472890	88765711
2016-17	37019897	37019897	21586377	14968147	36554524

12. The assessee vide their further letter dated 07.06.2022 submitted that they have already furnished reply on 17-05-2021 against show cause notice issued dated 23-04-2021; that the business activity of their firm is to provide services towards repairs of pumping plant for rural region water supply scheme under the Gujarat Water Supply and Sewerage Board which is Gujarat Government undertaking; that their services falls under entry no. 12(e) of Notification No. 25/2012-Service Tax dated- 20th June, 2012, which is exempted under service tax; that they have also obtained service tax registration number and have filed ST return by mentioning the reference of said notification during filing of service tax return; that they are registered dealer under Gujarat VAT having TIN: 24074201561; that they have also filed VAT return for the above mentioned period regularly and submitted VAT Audit report under Gujarat VAT Act; that they have submitted Annual VAT return 205 for the F.Y.2015-16 and 2016-17; that their books of accounts have been audited by Chartered Accountant since more than 10 years; that they had regularly filed Income tax return, VAT Return, Service Tax Return etc; that all this department had conducted scrutiny of books of accounts with filing various return in various department, but



no department had found any adverse remark or mistake in the return filed by them for the above mentioned period; that the reason for difference on account of comparison of profit and loss account with 26 AS was on account of ;

- A. Payments received from various Divisions of GWSSB were shown in 26 AS which are for combine of supply of materials and services provided by them.
- B. They prepare bills every month for supply of material and services provided to the various Divisions. But payments were made in 3 to 4 parts by preparing running bills by the department. Hence due to this, they receive payment in next year. As such outstanding payment is shown as sundry Debtor in Audited Financial Statement.
- C. The Comparison statement between 26AS and Books of Accounts was as under :

Year	Sales as per Books of Accounts	Contract Receipt as per 26AS	Differences
2015-16	8,87,65,711	8,30,13,952	57,51,759
2016-17	3,70,19,897	4,87,03,937	-1,16,84,040

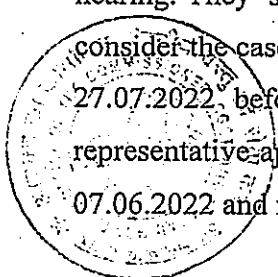
They were also filing VAT return, service tax return, Income Tax return with government departments. The turnover of their business submitted in various departments were as under:

Year	Sales as per P&L A/C	Sales as per I.T. RETURN	Taxable Sales as per VAT-FORM- 205	Sale of Services as per ST-3	TOTAL
1	2	3	4	5	(4+5)
2015-16	88765711	88765711	75292821	13472890	88765711
2016-17	37019897	37019897	21586377	14968147	36554524

They submitted that they had not violated any of the provisions as alleged in the show cause notice and requested to drop the proceedings initiated vide impugned show cause notice

PERSONAL HEARING:-

13. Personal Hearing was granted to the assessee on 21.06.2022. Shri Ajaybhai K. Patel, Partner and Shri Yogesh Patel, C.A. and authorised representative appeared for personnel hearing. They stated that they had submitted written submission on 07.06.2022 and requested to consider the case on merit. Thereafter, another Personal Hearing was granted to the assessee on 27.07.2022 before the new adjudicating authority. Shri Yogesh Patel, CA and authorized representative appeared for personal hearing wherein he reiterated their above submission dated 07.06.2022 and requested to decide the case on merit.



DISCUSSION AND FINDINGS :-

14. 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.

15. I have carefully gone through the records of the case, SCN, defence replies, audited Balance sheet, copies of Income Tax Returns, VAT returns and form 26AS for the FY 2015-16 and 2016-17, as well as oral submissions made by the said assessee during the course of personal hearing.

16. I find that the issue to be decided is to whether the said assessee is liable to pay service tax amounting to Rs.1,93,42,614/- for the financial year 2015-16 and 2016-17 on account of difference between taxable value shown in ST-3 returns vis-à-vis value they had declared in their Income Tax Return (ITR)/ Form 26AS or not.

16.1. I find that the assessee have submitted their written submission dated 07.06.2022 along with the following documents.

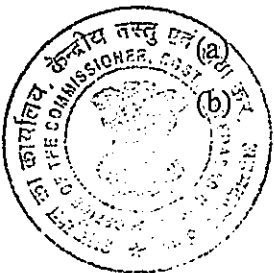
- Audited P&L statement for FY 2015-16 and 2016-17
- ST-3 Returns for FY 2015-16 and 2016-17
- Form 26AS for FY 2015-16 and 2016-17
- VAT return for FY 2015-16 and 2016-17
- Income tax return for FY 2015-16 and 2016-17

17. On the basis of records available, I find that the said assessee is registered with Service Tax Department and holding Service Tax Registration bearing No. AAOFS1655DST001. They are engaged in providing Maintenance and Repair service. I find that they have filed ST-3 returns for the period from April-2015 to March-2016 and from April-2016 to March-2017, respectively. I further find that the said assessee have filed ST-3 returns under "Maintenance or Repair Service" and has availed the benefit of exemption under Sr. No.12(e) of Notification No.25/2012-ST dated 20.06.2012.

18. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified according to the different category of services. As per Section 65(64) of the Finance Act 1994, as amended "Management, Maintenance or Repair" means any service provided by –

- i) any person under a contract or an agreement; or
- (ii) a manufacturer or any person authorised by him, in relation to,—

management of properties, whether immovable or not;
maintenance or repair of properties, whether immovable or not; or



- (c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle;

Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this clause,-

(a) "goods" includes computer software;

(b) "properties" includes information technology software;

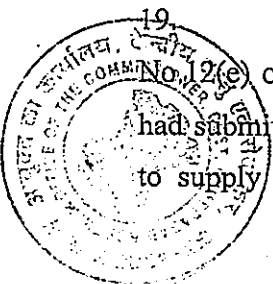
18.1 Further after introduction of negative list with effect from 01.07.2012, service has been defined as:

"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

18.2. In view of the above, I find that the activities carried out by the assessee falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List. The Maintenance or Repair service provided by the assessee does not fall under the 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 various taxable services provided for the period 2015-16 & 2016-17.

Further, I find that the said assessee has availed the benefit of exemption under Sr. No. 12(e) of Notification No.25/2012-ST dated 20.06.2012. The assessee in their defence reply had submitted that they are registered Government approved contractor; that their business was to supply various types and capacity of pumps, Motors, Control Panel, Transformer, Cable



Valve, Switch gears, Pipes etc. on turnkey basis; that they also provide Services of repairs and maintenance and repair of pumping plant for Rural Regional Water Supply scheme under Gujarat Water Supply & Sewerage Board (GWSSB) which is undertaking of Gujarat Government. The assessee has provided the some work orders in support of their claim. I find that the nature of work mentioned in the work order of GWSSB are Supply, installation, testing, Commissioning of submerged centrifugal pumping machinery at Different Water Supply Scheme and Comprehensive Operation and maintenance of pumping machinery.

20. The relevant portion of Notification No.25/2012-ST dated 20.06.2012, as amended vide Notification No.6/2015-ST dated 01.03.2015 reads as follows :-

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-

(a) ***

(b) *a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);*

(c) ***

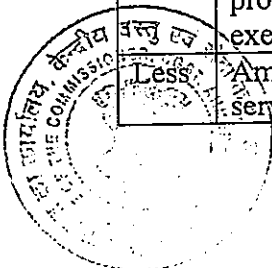
(d) *canal, dam or other irrigation works;*

(e) *pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or*

(f) ***

21. I find that the assessee has denied the charges levelled against them and has contested that they have obtained service tax registration and have filed ST-3 returns by mentioning the notification during filing of the said return. I find that the assessee has produced the copy of ST-3 Returns for FY 2015-16 and 2016-17 filed by them alongwith their written submission dated 07.06.2022. On perusing the said ST-3 Returns filed by the assessee, the following details are forthcoming:

Details as per ST-3 Returns for FY 2015-16				
Description of service Provided: Maintenance or Repair Service				
Period	Apr 2015-Sep 2015	Oct 2015-March 2016	Total	
Gross amount in relation to service provided or to provided (including exempt and export of service)	5974958	7497932	13472890	
Less: Amount charged for Exempted service	5974958	7497932	13472890	



	Net Taxable Value	0	0	0
Details as per ST-3 Returns for FY 2016-17				
Description of service Provided: Maintenance or Repair Service				
	Period	Apr 2016-Sep 2016	Oct 2016-March 2017	Total
	Gross amount in relation to service provided or to provided (including exempt and export of service)	7846175	7121972	14968147
Less	Amount charged for Exempted service	7846175	7121972	14968147
	Net Taxable Value	0	0	0

22 I find that the assessee had filed the service tax returns for the period 2015-16 and 2016-17. Further, it is noticed from the said service tax returns that the assessee has provided the service under category of "Maintenance or Repair Service" and has availed the benefit of exemption from payment of tax under Sr.No. 12(e) of Notification No.25/2012-ST dated 20.06.2012. The assessee has provided the ledger, work orders and invoices, in support of their claim of exemption.

23 On perusing Form 26AS for FY 2015-16 and 2016-17, the following details of Amount Paid/ Credited and the name of TDS deductor are noticed.

Details of FORM 26AS for FY 2015-16			
Section under which TDS deducted	Name of TDS Deductor	Amount paid/credited	
194C	AHMEDABAD MUNICIPAL CORPORATION	4282643	
194C	GUJARAT WATER SUPPLY & SEWAGE BOARD	5572310	
194C	GUJARAT WATER SUPPLY & SEWAGE BOARD	363263	
194C	GUJARAT WATER SUPPLY & SEWAGE BOARD, PUBLIC HEALTH WORKS DIV, SURENDRANAGAR	1049833	
194C	PUBLIC HEALTH WORKS DIVISION	320000	
194C	PUBLIC HEALTH WORKS DIVISION, HIMATNAGAR	30637869	
194C	EXECUTIVE ENGINEER PUBLIC HEALTH WORKS DIVISION ANAND	1685399	
194C	EXECUTIVE ENGINEER PUBLIC HEALTH WORKS	10647942	
194C	EXECUTIVE ENGINEER	867032	
194C	OFFICE OF SUPERINTENDING ENGINEER PUBLIC HEALTH CIRCLE	24543661	
194C	SUPERINTENDING ENGINEER	1803025	
194C	GUJARAT GOVT. SUPERINTENDING ENGINEER	131738	
194C	GUJARAT WATER SUPPLY & SEWAGE BOARD	881403	
194C	S E PUBLIC HEALTH CIRCLE	227834	
	TOTAL	83013952	

Details of FORM 26AS for FY 2016-17			
Section which deducted	under TDS	Name of TDS Deductor	Amount paid/credited
194C		AHMEDABAD MUNICIPAL CORPORATION	9050700
194C		GUJARAT WATER SUPPLY & SEWARAGE BOARD	969922
194C		GUJARAT WATER SUPPLY & SEWARAGE BOARD, PUBLIC HEALTH WORKS DIV., SURENDRANAGAR	1336151
194C		PUBLIC HEALTH CIRCLE HIMATNAGAR	4879184
194C		EXECUTIVE ENGINEER PUBLIC HEALTH WORKS DIVISION ANAND	883259
194C		EXECUTIVE ENGINEER PUBLIC HEALTH WORKS	22457548
194C		EXECUTIVE ENGINEER	400219
		KHAMBHAT NAGARPALIKA	2500880
194C		OFFICE OF SUPERINTENDING ENGINEER PUBLIC HEALTH CIRCLE	2423975
194C		SUPERINTENDING ENGINEER	1473388
194C		GUJARAT GOVT. SUPERINTENDING ENGINEER	181139
194C		GUJARAT WATER SUPPLY & SEWARAGE BOARD	205219
		P H W DN GWSSB NAVSARI	896126
194C		S E PUBLIC HEALTH CIRCLE	1046227
		TOTAL	48703937

24 As per the 26AS, the income has been shown under Section 194C of Income Tax Act 1961 which is for Contract Income. Further, the value difference as worked out in the SCN for FY 2015-16 and 2016-17 is found to be tallying with the total amount credited/paid as per Form 26AS. I find that the data from the service tax returns have not been taken into consideration in computing the tax liability of the assessee, as is evident from the table (for computation of service tax) provided in the subject SCN though the returns for 2015-16 and 2016-17 had been filed by the assessee. Therefore, it is evident that the entire amount credited/paid as per Form 26AS has been considered as differential value of taxable service provided by the assessee, without taking cognizance of taxable value disclosed in the ST-3 Returns filed by the assessee.

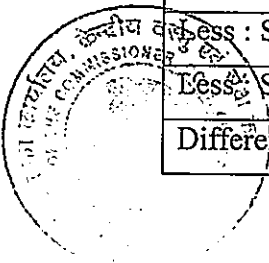
25. I have gone through the balance sheet, Audit report duly audited by Chartered Accountant, copies of ITR, copies of VAT returns, ST-3 returns, Form 26AS, copies of sales ledger pertaining to the period 2015-16 and 2016-17. I find that the sales shown in the Profit & Loss A/c for the period 2015-16 and 2016-17 are Rs.8,87,65,711/- and Rs.3,70,19,897/-, respectively. I would like to discuss the issue year wise.



Financial year : 2015-16 :-

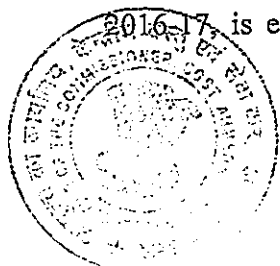
I find that total income as per the SCN and Form No. 26AS is Rs.8,30,13,952/- whereas the income shown in the audited books of the said assessee is Rs. 8,87,65,711/-. As the income shown in their audited books is on the higher side, I take Rs.8,87,65,711/- as their income for the year 2015-16 for determining the taxability of the income. I find that the Profit and Loss Accounts for FY 2015-16 recognize revenue as "Sales". However, while going through their ledger, there are sales as well as service receipt. As per the ledger, I find that the income from sales is Rs.7,52,92,821/- and the income from service is Rs.1,34,72,890/-. I have gone through the VAT return filed by the assessee for the year under consideration as well as the 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. 7,52,92,821/- and submitted VAT returns for the period 2015-16 on the total sale. I find that the assessee is not liable to pay Service Tax on the trading of goods as the same falls under the services covered under Negative List as specified under Section 66D (e) of Finance Act, 2012. 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. 7,52,92,821/- as stated above for the year 2015-16. Further, with regard to the income of Rs. 1,34,72,890/-, I find that the same is their service income as per the ledger. I find that the said assessee has filed ST 3 returns during the period 2015-16 and have declared Rs. 1,34,72,890/- as taxable value under Maintenance and Repair Service and have claimed exemption under Sr. No. Sr. No.12(e) of Notification No.25/2012-ST dated 20.06.2012. I find that the said assessee is providing services to Gujarat Water Supply & Sewerage Board (GWSSB) and to Ahmedabad Municipal Corporation I find that Gujarat Water Supply & Sewerage Board (GWSSB) is established under Gujarat Act No.18 of 1979, for rapid development and proper regulation of water supply and sewerage services in the State of Gujarat and Ahmedabad Municipal Corporation is a local authority. Hence, I find that benefit of exemption from payment of tax under Sr.No. 12(e) of Notification No.25/2012-ST dated 20.06.2012 was available to the assessee. From the above comparison of taxable value of service, the taxable value of service disclosed in ST-3 returns filed by the assessee for FY 2015-16, is equal to the taxable value of services as reflected in corresponding Form 26AS. Hence, I find that there is no difference in taxable value of service as alleged in SCN for the financial year 2015-16. For the sake of clarity, I reconcile the figures as under:

Description	Amount
Difference between value of services from ITR/26 AS and Value as per ST-3 Return	8,30,13,952/-
Sales as per Profit & Loss A/c	8,87,65,711/-
Less : Sales shown as per VAT return	7,52,92,821/-
Less: Services provided as declared in their ST-3 returns	1,34,72,890/-
Difference	0



Financial year : 2016-17 :-

I find that total income as per the SCN and Form No. 26AS is Rs. 4,87,03,937/- whereas the income shown in the audited books of the said assessee is Rs. 3,70,19,897/-. I find that receipt of Rs.1,16,84,040/- has been reflected more in the form 26AS as compared to the audited books. The said assessee has contended that the difference of Rs.1,16,84,040/- was due to reporting of payment received in financial year 2016-17 of invoices issued for earlier years; that they had bills receivable of Rs.3,27,66,001/- outstanding from the government undertaking as on 01.04.2016. I find that the opening balance of Sundry debtors as on 1.4.2016 was Rs.3,35,43,627/-. I find that the auditor in his audit report has mentioned that the method of accounting followed by the said assessee is Mercantile system. In their reply, they have also stated that they file returns as per bills prepared by them and not as per running bills of GWSSB. The said assessee has provided sample RA bills for which payment has been received in financial year 2016-17. I have gone through the RA bill and find that the same are in respect of invoices raised in the previous years. Hence, I take Rs.3,65,54,524/- (Rs.3,70,19,897/- - Rs.4,65,373/- Labour cess) as their income for the year 2016-17 for determining the taxability of the income. I find that the Profit and Loss Accounts for FY 2016-17 recognize revenue as "Sales". However, while going through their ledger, there are sales as well as service receipt. As per the ledger, I find that the income from sales is Rs.2,15,86,377/- and the income from service is Rs.1,49,68,147/-. I have gone through the VAT return filed by the assessee for the year under consideration as well as the 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. 2,15,86,377/- and submitted VAT returns for the period 2016-17 on the total sale. I find that the assessee is not liable to pay Service Tax on the trading of goods as the same falls under the services covered under Negative List as specified under Section 66D (e) of Finance Act, 2012. 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.2,15,86,377/- as stated above for the year 2016-17. Further, with regard to the income of Rs. 1,49,68,147/-, I find that the same is their service income as per the ledger. I find that the said assessee has filed ST 3 returns during the period 2016-17 and have declared Rs. 1,49,68,147/-, as taxable value under Maintenance and Repair Service and have claimed exemption under Sr. No. Sr. No.12(e) of Notification No.25/2012-ST dated 20.06.2012. I find that the said assessee is providing services to Gujarat Water Supply & Sewerage Board (GWSSB) and to Ahmedabad Municipal Corporation I find that Gujarat Water Supply & Sewerage Board (GWSSB) is established under Gujarat Act No.18 of 1979, for rapid development and proper regulation of water supply and sewerage services in the State of Gujarat and Ahmedabad Municipal Corporation is a local authority. Hence, I find that benefit of exemption from payment of tax under Sr.No. 12(e) of Notification No.25/2012-ST dated 20.06.2012 was available to the assessee. From the above comparison of taxable value of service, the taxable value of service disclosed in ST-3 returns filed by the assessee for FY 2016-17, is equal to the taxable value of services as reflected in corresponding Form 26AS.



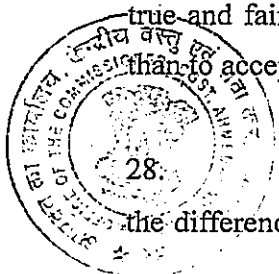
Hence, I find that there is no difference in taxable value of service as alleged in SCN for the financial year 2016-17. For the sake of clarity, I reconcile the figures as under:

Description	Amount
Difference between value of services from ITR/26 AS and Value as per ST-3 Return	4,87,03,937/-
Sales as per Profit & Loss A/c	3,70,19,897/-
Less : Labour cess	4,65,373/-
Total Sales	3,65,54,524/-
Less : Sales shown as per VAT return	2,15,86,377/-
Less : Services provided as declared in their ST-3 returns	1,49,68,147/-
Difference	0

26. Further, as per Para 4 and 5 of the show cause notice, I find that the levy of service tax for Financial Year 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 noticee 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 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 shown in Form 26AS. I, therefore, refrain from discussing the taxability on other income other than the income shown in Form 26AS.

27. 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.

28. From the above factual matrix, and documents submitted by the assessee, I find the difference in the value of service as alleged in the subject SCN is on account of the taxable



value of service disclosed in ST-3 returns filed by the assessee being not taken into consideration while computing the service tax liability for FY 2015-16 and 2016-17 by the department. Therefore, I find that the entire demand has been raised on the presumption that the amount credited to the assessee as per Form 26AS was the differential value of taxable service. Having considered these factual and documentary evidences available on records, I find that there is no short payment of service tax by the assessee. Thus, the subject SCN is liable to be dropped on merits being incorrect and legally not sustainable. Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty upon the said assessee on this count.

29. In view of the above, I pass the following order;

ORDER

30. I hereby drop the proceedings initiated against M/s. Shree Umiya Aqua Engineers, Ahmedabad vide Show Cause Notice F.No. STC/15-61/OA/2021 dated 23.04.2020.



(Lokesh Darnor)

Joint Commissioner
Central GST & Central Excise
Ahmedabad North

BY RPAD

F.No. STC/15-61/OA/2021

Dated-21.10.2022

To

M/s. SHREE UMIYA AQUA ENGINEERS,
25, Gazetted Officers, Society,
Opp., C.P. Nagar, Ghatlodia, Ahmedabad-Gujarat-380061

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Division-VII Ahmedabad North.
3. The Superintendent, Range-V, Division-VII, Central GST & Central Excise, Ahmedabad North
4. The Superintendent (System), Central GST & Central Excise Ahmedabad North for uploading the order on website.
- ✓ 5. Guard File.