
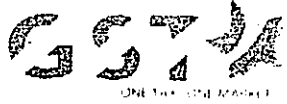


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर./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

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20221064WT0000888D40

फा.सं./F.No. STC/15-180/OA/2021-22

आदेश की तारीख/Date of Order :- 31.10.2022

जारी करने की तारीख/Date of Issue :- 31.10.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

**मूल आदेश संख्या / Order-In-Original No. 56/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) 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।

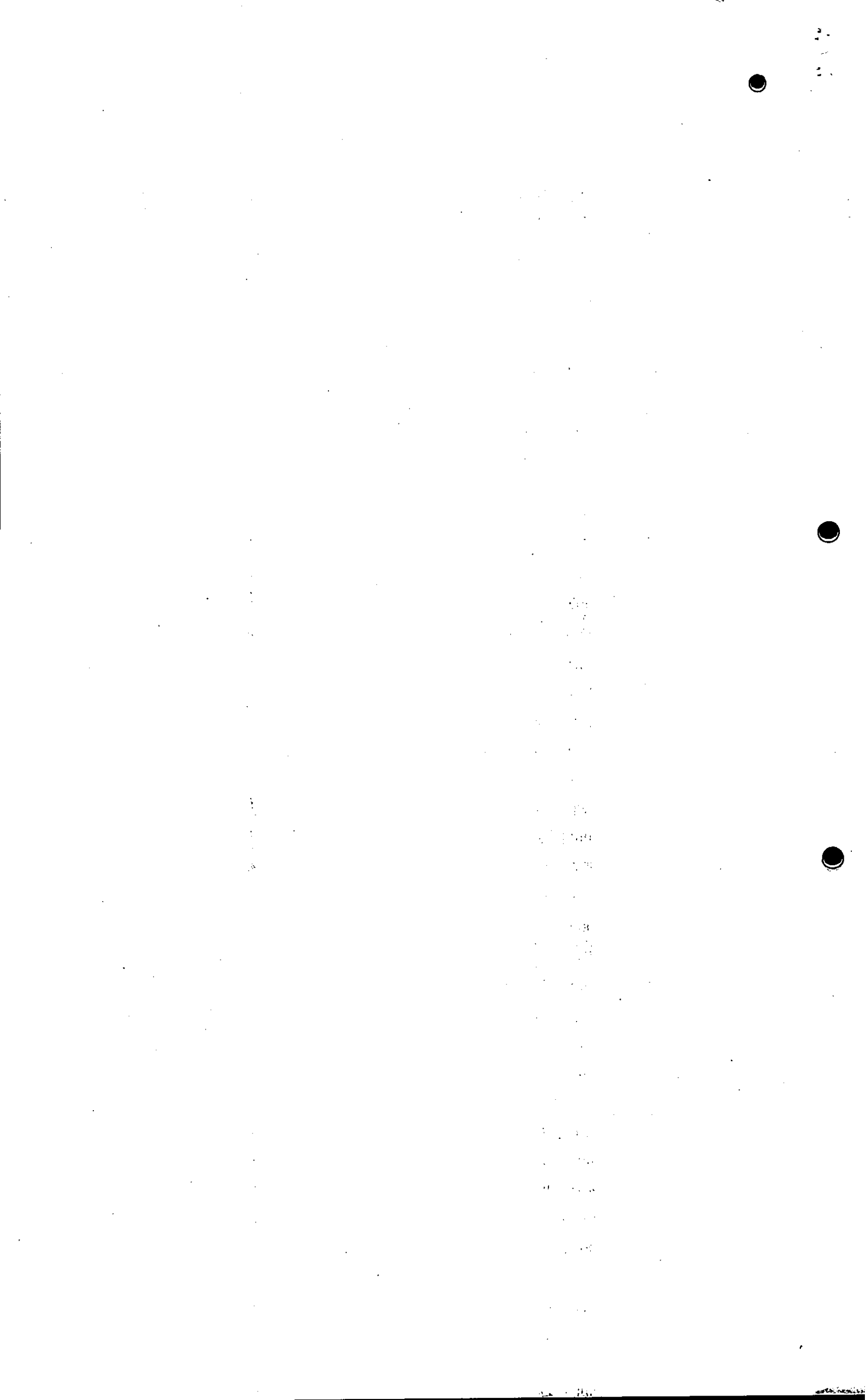
The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(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 vide Show Cause Notice F.No. STC/15-180/OA/2021-22 dated 23.04.2021 issued to M/s. Siddharth Infrastructures, 50, Sangini Bunglows, Near Avsar Party Plot, Sindhu Bhavan Road, Ahmedabad Gujarar-380054.





**BRIEF FACTS OF THE CASE :**

M/s. Siddharth Infrastructures, 50, Sangini Bungalows, Near Avsar Party Plot, Sindhu Bhavan Road, Ahmedabad-Gujarat-380054 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. ACGFS0982FSD001 and was engaged in Taxable Services.

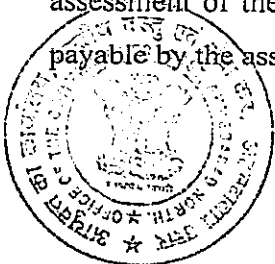
2. An analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount paid/Credited under 194C, 194H, 194I, 194J" and "Gross Value of Services provided" was undertaken by the Central Board of Direct Taxes (CBDT) for the financial year 2015-16 to 2016-17, and details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC)

2.1 On going through the third party data received from CBDT data for the Financial Year 2015-16 and 2016-17, the Sales/Gross receipts from services (Value from ITR) are not tallied with Gross Value of Service provided, as declared in ST-3 returns for the financial year 2015-16 and 2016-17. It appeared that the said 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.	Value difference in ITR and STR /TDS and STR (Whichever is higher) (in Rs.)	Service Tax (in Rs.)
1	2015-16	38966789	54,36,625/-
2	2016-17	27067724	40,37,540/-
		6,60,34,513/-	94,74,165/-

3. The said assessee had less discharged their service tax liability and thus was liable to pay Service Tax including cess [@12.36% for F.Y. 2015-16 and from 01.04.2015 to 31.05.2015], [@14% from 01.06.2015 to 14.11.2015], [@14.50% from 15.11.2015 to 31.05.2016] and [@15% from 01.06.2016 to 31.03.2017] amounting to Rs.94,74,165/- on the differential value of Rs.6,60,34,513/- along with applicable interest and penalty for the financial year 2015-16 and 2016-17.

4. Section 72 of the Finance Act, 1994 provides that, If any person, liable to pay service tax having made a return, fails to assess the tax the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.



5. Section 73(1) of the Finance Act, 1994 provides that, where any service tax has not been levied or paid or has been short-levied or short-paid by the reasons of willful misstatement or suppression of facts with intent to evade payment of service tax, the Central Excise officer may within five years from the relevant date, serve notice on the person chargeable with service tax which has not been levied or short paid requiring him to show cause why he should not pay amount specified in the notice.

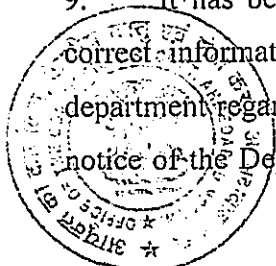
6. Further, as per Rule 6 of the Service Tax Rules, 1994, the service tax shall be paid to the credit of the Central Government by 5<sup>th</sup> day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that assessee shall submit their service tax returns in the form of ST-3 within the prescribed time.

7. From the foregoing paras, it appeared that the said assessee had failed to pay/short paid/deposit service tax to the extent of Rs.94,74,165/- on the difference of taxable value during the period 2015-16 to 2016-17 by declaring less value in their ST-3 returns vis-à-vis their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services received/provided by them with an intent to evade payment of service tax. Thus, it appeared that the said assessee had failed to discharge the service tax liability of Rs.94,74,165/- (inclusive of applicable Cess i.e. EC, SHEC, SBC & KKC) worked out on value of Rs. 6,60,34,513/- and therefore, service tax is required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

8. In view of the above, it appeared that the said assessee had contravened the provisions of :

- (a) Section 66 of the Finance Act, 1994 in as much as they had failed to collect and pay the service tax as detailed above, to the credit of Central Government.
- (b) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they had not paid the service tax as mentioned above to the credit of the Government of India within the stipulated time limit.
- (c) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, as amended, in as much as they had failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994 and failed to declare correct value of taxable services as well as exempted services to the department in the prescribed return in Form ST-3.

9. It has been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them 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

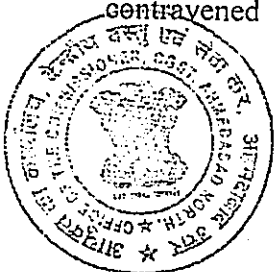


Financial Year 2015-16 and 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it appeared that the said assessee had knowingly suppressed 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. 94,74,165/-. Thus, it appeared that there was a deliberate with holding of essential and material information from the department about service provided and value realized by them. It appeared that all these material information had been concealed from the department, consciously and purposefully to evade payment of service tax.

10. 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 simple interest (at such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appeared that the said assessee had short paid/non payment of service tax of Rs.94,74,165/- on the actual value received towards taxable services provided with appeared to be recoverable under proviso to Section 73(1) of the Finance Act along with interest under Section 75 *ibid* not paid by them under Section 68 of the Finance Act read with Rule 6 of the Service Tax Rules, 1994 in as much as the said assessee had suppressed the facts to the department and contravened the provisions with an intent to evade payment of service tax. The said assessee had not discharged their service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.

11. All the above acts of contravention on the part of the said assessee resulted into non payment of service tax, appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of service tax as discussed in the foregoing paras and therefore, the said amount of service tax amounting to Rs. 94,74,165/- (inclusive of applicable cess i.e. EC, SHEC, SBC & KKC) not paid was required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 along with interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

12. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 and Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it appeared that the said assessee had contravened the provisions of Finance Act, 1994 and the rules made thereunder. All the



contraventions and violations made by the said assessee appeared to have rendered themselves liable to penalty under Section 76 and Section 77 of the Finance Act.

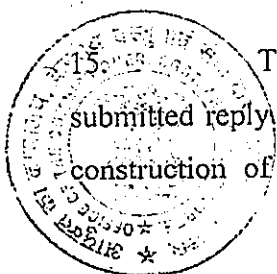
13. Moreover, in addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appeared that the said assessee had willfully suppressed the facts, nature and value of service provided by them with an intent to evade payment of service tax rendering themselves liable for penalty under Section 78 of the Finance Act, 1994.

13.1 The said assessee was given an opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 23.04.2021 but the said assessee did not appear for the same.

14. Therefore, a Show Cause Notice bearing F.No.STC/15-180/OA/2021-22 dated 23.04.2021 was issued to M/s. Siddharth Infrastructures, 50, Sangini Bungalows, Near Avsar Party Plot, Sindhu Bhavan Road, Ahmedabad-Gujarat-380054 to show cause to the Joint Commissioner, CGST & CX, Ahmedabad North having office at 1 Floor, Custom House, Navrangpura, Ahmedabad as to why:

- (i) differential amount of Service tax amounting to Rs.94,74,165/- (Rupees Ninety Four Lakh Seventy Four Thousand One Hundred Sixty Five Only)(inclusive of Edu. Cess and S&H Edu. Cess) short paid /not paid by them , should not be confirmed / demanded under proviso to Section 73(1) of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them as prescribed under Section 75 of the Finance Act, 1994 from the due date on which the service tax was liable to be paid till the date on which the said service tax was paid;
- (iii) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for the failure to make payment of service tax payable by them within the prescribed time limit.
- (iv) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for the failure to assess the correct tax liability
- (iv) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 as amended for suppressing and not disclosing the value of the said taxable service provided by them before the department with an intent to evade payment of service tax.

**DEFENCE REPLY :-**



The said assessee vide their letter dated 31.07.2021 (received on 09.08.2021) submitted reply to the show cause notice wherein they submitted that they are engaged in the construction of infrastructure projects and providing services mainly to Governments and

Government companies and were duly registered under Service Tax Law having service tax registration no: ACGFS0982FSD001; that they undertook the work of construction, Repair maintenance of Road work, Construction of Bridge including its repairs and maintenance, Civil Construction works, Construction of Building and such other works falling under the category of works contract; that they were regularly filing Return of Service tax since long and discharging the Service tax liability on regular basis; that there was no query/inquiry from the service tax department regarding the same so far.

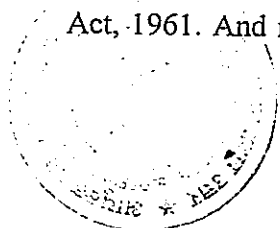
15.1 They further submitted that they were in receipt of letter (ref no: E.No CGST-06/TPD-FY2015-16/ARII/2020-21/3078) from the Office of the Superintendent of Central GST, Range -II Division - VI, Ahmedabad North dated 15/04/2021 which was received by them on 22/04/2021 asking for lists of documents and details within Seven days from the receipt of the letter; that before they could submit the details as asked in the letter, they were in receipt of the show cause cum demand notice dated 23/04/2021 as mentioned above on 26/04/2021 asking them to show cause as to why Service Tax of Rs.94,74,165/- should not be recovered from them along with interest and penalties.

15.2 Further it was mentioned in para 13 of the SCN that opportunity to appear for preshow cause consultation was fixed on 23.04.2021 but they failed to appear for the same. This contention of the department was not valid as hearing was fixed within 7 days from the date of receipt of the letter referred in above paragraph which was received on 22/04/2021. So they had a time up to 29/04/2021 to comply with the letter; that the Department has not even waited to end the day fixed for hearing as contended by Department i.e.23/04/2021 and issued the SCN on the same date. The date and time of generating the DIN for SCN was 23/04/2021 (time: 13:21:49); that Annexure-A to SCN was already signed by the officers on 22/04/2021. From the above it was evident that proper opportunity of being heard was not given to them to produce all the relevant records and documents.

15.3 They stated that propositions made in the SCN were not sustainable on the ground of facts as well as law in this regard; that the service tax of Rs.94,74,165/- was calculated as under from the data obtained from Income Tax Return of respective year i.e. F.Y.2015-16 and F.Y. 2016-17.

Sr. No.	F.Y.	Value difference in ITR and STR /TDS and STR (in Rs.)	Service Tax (in Rs.)
1	2015-16	38966789	54,36,625/-
2	2016-17	27067724	40,37,540/-
		6,60,34,513/-	94,74,165/-

They submitted that the above mentioned liability was calculated on the amount as reflected in Form 26AS for respective year as amount paid or credited under section 194C of the Income Tax Act, 1961. And relying on the same the service tax liability has been arrived at Rs.94,74,165/-.



While quantifying the amount of liability of service tax, Department had not considered the Service tax returns already filed by them in form ST-3; that they had already discharged their service tax liability on all the taxable supply of service rendered by them and filled the Service tax returns for the said period.

15.4 The summary of service tax returns in form ST-3 filed by them was as under wherein they had disclosed fully the total value of services (taxable as well as Exempt) rendered by them in respective financial year.

Particulars	Period	
	2015-16	2016-17
Total Gross Amount	41,575,254	28,326,834
Less: Amount deducted for Exempted service/ service tax paid on advance)	23,972,534	10,475,705
Balance Amount	17,602,720	17,851,129
Less: Abatement amount	10,562,032	10,692,377
Taxable Amount	7,040,688	7,158,752
Total Service tax (incl. EC SHEC SBC KKC)	999,795	1,068,230

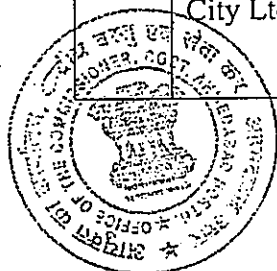
They submitted the copy of ST-3 returns for the period under consideration. Further, they submitted the client wise and nature wise bifurcation of gross amount of service as under :-

#### Bifurcation of Exempt service for 2015-16

Sr. No.	Name of the Customer	Nature of service	Amount of service rendered	Clause of Mega Exemption notification under which service is exempt
1	Nadiyad Municipal Corporation	Construction, repair maintenance of Road for use by general public	9604699	Clause 13(a). Work order attached.
2	Umareth Nagar Seva Sadan	Construction, repair maintenance of Road for use by general public	11778129	Clause 13(a). Work order attached.
3	Ketan construction Ltd.	Construction, repair maintenance of Road for use by general public	1093784	Clause 29(h) read with Clause 13(a). Work Order Attached.
4	Gujarat International Finance Tec. City Ltd.		1547997	Amt. received as advance on which service tax was paid on receipt basis in the FY 2014-15.

#### Bifurcation of Taxable service for 2015-16

Sr. No.	Name of the Customer	Nature of service	Amount of service rendered	Remarks
1	Gujarat International Finance Tec. City Ltd.	Works Contract Service	1,76,02,720	Taxable service on which service tax is paid after applying abatement as per the valuation rules. Work order attached





## Bifurcation of Exempt service for 2016-17

Sr. No.	Name of the Customer	Nature of service	Amount of service rendered	Clause of Mega Exemption notification under which service is exempt
1	Nadiyad Municipal Corporation	Construction, repair maintenance of Road for use by general public	5179980	Clause 13(a). Work order attached.
2	HLS Construction P. Ltd.	Repair, maintenance, renovation of bridge for the use of general public	1578020	Clause 13(a). Work order attached.
3	GIFT SEZ LTD.	Works Contract Service	559172	As per Notification No.12/2013-ST

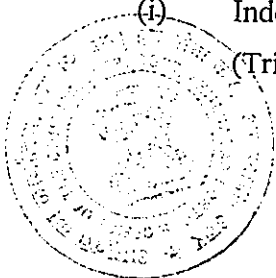
## Bifurcation of Taxable service for 2016-17

Sr. No.	Name of the Customer	Nature of service	Amount of service rendered	Service tax paid by recipient	Amount of which service tax paid
1	Gujarat International Finance Tec. City Ltd.	Works Contract Service	14662602	0	14662602
2	HLS Construction P. Ltd.	Works Contract Service	4746871	2373436	2373436
3	MHS Infratech Pvt. Ltd.	Works Contract Service	1570196	785098	785098
4	SE Transstadia P. Ltd.	Works Contract Service	30000		30000

16. They further submitted that from the above it was evident that SCN was issued without any inquiry or investigation and seems to be issued based on assumption and presumption only. The Department had calculated the Service tax liability without considering the data of actual service tax returns filed by them periodically for the period under consideration. Further, amount reflecting in Form 26AS shows the amount of TDS deducted by the Payer under section 194C, 194H, 194I, 194J etc of the Income Tax Act, 1961; that these sections of the Income Tax Act, 1961 are meant for providing deduction of tax at source on certain payment and not for classifying services. But, it seems that SCN has assumed the figure of Amount paid or credited as mentioned in Form 26AS as Value of Taxable Services. Without crucial information SCN has assumed that service provided by them appeared to be covered under the definition of 'taxable service'. It has also assumed that it does not cover under negative list and mega exemption notification and hence assumed that it was taxable service. This beyond doubt establishes that SCN was issued without inquiry or investigation and seems to be issued based on assumption and presumption only.

17. Accordingly they requested to drop the SCN. They relied upon the following decisions :-

- (i) Indo Nippon Chemicals Co. Ltd vs Commr. Of C.Ex, Vadodara 2009 (16)STR 639 (Tri-Ahmd)



- (ii) Commr. Of Service Tax, Ahmedabad vs Purni Ads Pvt. Ltd: 2010(19) STR 242 (Tri-Ahmd)
- (iii) Canny Detective & Security services vs Commr. Of C.Ex., Ahmedabad 2010 (2) STR 695 (Tri. Ahmd)

18. The said assessee further submitted that the demand of service tax was time barred as the show cause notice was served beyond a normal period of Thirty Months from relevant date despite there being no suppression etc. with an intent to evade payment of service tax on their part. The SCN was issued beyond a normal period of limitation by merely alleging suppression without in any way substantiating the charge of suppression.

18.1 They submitted that they were doing this activity since many years also filing Service Tax Return showing details of services rendered by them; that while issuing this SCN, the details Services rendered, service tax payable on the services rendered and service tax actually paid already submitted in ST -3 returns were completely ignored by the department. Hence, it seems that suppression was alleged suddenly without any positive evidence in this regard.

19. Regarding Interest under section 75 of the Finance Act, 1994 they submitted that since no service tax payable was pending based on facts and also on the ground of limitation and also based on certain legal aspect, there was no question charging and recovering any amount of interest and question of imposition of penalty. They requested for grant of personal hearing in the matter.

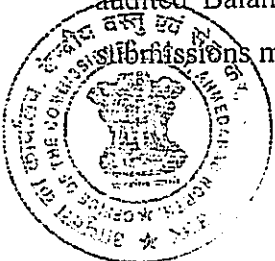
#### PERSONAL HEARING:-

20. Personal Hearing was granted to the assessee on 07.10.2022. Shri Devarsh K. Patel, C.A. and authorised representative of the assessee appeared for personnel hearing. He reiterated their written submission dated 09.08.2021. Further, he submitted income reconciliation dated NIL. He further requested to decide the show cause notice on merit.

#### DISCUSSION AND FINDINGS :-

21. 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.

22. I have carefully gone through the records of the case; SCN, defence replies, audited Balance sheet 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.



23. I find that the issue to be decided is to whether the said assessee is liable to pay service tax amounting to Rs.94,74,165/- 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.

24. I find that the assessee have submitted their written submission dated 31.07.2021 (received on 09.08.2021) along with the following documents:

- ST-3 Returns for FY 2015-16 and 2016-17
- Copies of some work order.

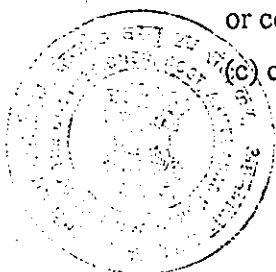
24.1 Further, during the course of personal hearing, the said assessee submitted the following documents :

- Audited P&L statement for FY 2015-16 and 2016-17
- Form 26AS for FY. 2015-16 and 2016-17
- Income Reconciliation

25. 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. ACGFS0982FSD001. They are engaged in providing Works Contract 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 "Works Contract Service". They have supplied taxable as well as exempt services. In respect of taxable service they have discharged service tax liability and in respect of exempt services they have availed the benefit of exemption under Sr. No.13(a) of Notification No.25/2012-ST dated 20.06.2012.

26. 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(105)(zzzza) of the Finance Act 1994, as amended "Works Contract" means a contract wherein –

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) such contract is for the purposes of carrying out,—
  - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or
  - (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
  - (c) construction of a new residential complex or a part thereof; or



- (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
- (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;

26.1 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

26.2. 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 Works Contract 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.

27. Further, I find that the said assessee has availed the benefit of exemption under Sr. No.13(a) of Notification No.25/2012-ST dated 20.06.2012. The assessee in their defence reply had submitted that they were engaged in construction of infrastructure projects and providing services mainly to Government and Government companies. They have submitted that the services of Construction, repair maintenance of road for use by general public is their exempt service as per clause 13(a) of Notification No.25/2012-ST dated 20.06.2012. They have also submitted that some of their Works Contract services are taxable on which service tax is paid by



28. 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:-*

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;*

*“(ba) a civil structure or any other original works pertaining to the ‘In-situ rehabilitation of existing slum dwellers using land as a resource through private participation’ under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers.” Inserted vide Notification 9/2016- Service Tax. To be in effect from 1 March 2016.*

(bb) *a civil structure or any other original works pertaining to the Beneficiary led individual house construction / enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;”; Inserted vide Notification 9/2016- Service Tax to be in effect from 1 March 2016*

(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*

(e) *a structure meant for funeral, burial or cremation of deceased;*

29. I find that the assessee has denied the charges levelled against them and has contested that the department has not considered the service tax returns filed by them in form ST-3; that they have already discharged their service tax liability on all the taxable supply of service rendered by them. 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 31.07.2021 (received on 09.08.2021). 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: Works Contract 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)	25030482	16544772	4,15,75,254/-	
Less Amount charged for Exempted service	19937346	4035188	2,39,72,534/-	

Less	Amount claimed as abatement	3055882	7505750	1,05,61,632/-
	Net Taxable Value	2037254	5003834	70,41,088/-

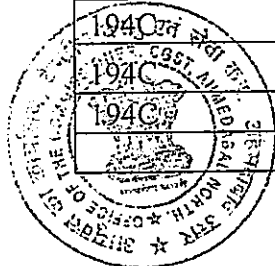
Details as per ST-3 Returns for FY 2016-17				
Description of service Provided: Works Contract Service				
	Period	Apr 2016-Sep 2016	Oct 2016-March 2017	Total
	Gross amount in relation to service provided or to provided (including exempt and export of service)	9559297	18767537	2,83,26,834/-
Less	Amount charged for Exempted service	2684910	7790795	1,04,75,705/-
Less	Amount claimed as abatement	4124636	6568045	1,06,92,681/-
	Net Taxable Value	2749751	4408697	71,58,448/-

30. 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 "Works Contract Service". They have supplied taxable as well as exempt services. In respect of taxable service they have discharged service tax liability and in respect of exempt services they have availed the benefit of exemption under Sr. No.13(a) of Notification No.25/2012-ST dated 20.06.2012. The assessee has provided work orders in support of their claim of exemption.

31. 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 deducted	TDS	Name of TDS Deductor	Amount paid/credited
194C		Gujarat International Finance Tec-City Company Limited	18602515
194C		Nadiad Nagarpalica	7492361
194C		Umreth Municipality	11778129
194C		Ketan Construction Limited	1093784
		TOTAL	3,89,66,789/-

Details of FORM 26AS for FY 2016-17			
Section under which deducted	TDS	Name of TDS Deductor	Amount paid/credited
194C		Gujarat International Finance Tec-City Company Limited	14927229
194C		GIFT SEZ Limited	559172
194C		HLS Construction Pvt. Limited	6324891
194C		Chevrox Construction Pvt. Limited	1617302
194C		SE Transstadia Pvt. Limited	30000
194C		Nadiad Nagarpalica	3609130
		TOTAL	2,70,67,724/-



32. 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 no data from the service tax returns have been taken into consideration by the department 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.

33. The said assessee has provided work orders in support of their claim for exemption under Sr. No.13(a) of Notification No.25/2012-ST dated 20.06.2012. On the basis of work order, I find that the nature of work undertaken by the said assessee is as under :-

Sr. No.	Name of Customer	Nature of work
1	Umreth Nagar Sevasadan, Umreth Nagarpalika	Construction of Tar Road in different areas of Nagarpalika
2	Nadiad Nagarpalika	Semi dense patchwork of road in areas of Nagarpalika
3	Ketan Construction Ltd.	Construction of subgrade and earthen shoulder at Atkot-Gondal Road.
4	HLS Construction Pvt. Ltd.	Strengthening and repairing of bridges at Ahmedabad-Bhavnagar short route section pipli dholera bavaliyari road

34. From the above, it is evident that the said assessee have been awarded various contracts for construction of tar road in different areas of Umreth Nagarpalika, semi dense patchwork of road in areas of Nadiad Nagarpalika, Construction of subgrade and earthen shoulder at Atkot-Gondal Road and Strengthening & repairing of bridges at Ahmedabad-Bhavnagar route. I therefore find that the above activities carried out by the said assessee is covered under Sr. No.13(a) of Notification No.25/2012-ST dated 20.06.2012 and the exemption is quite clearly available to the assessee as claimed by them.

35. 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.3,89,66,789/- whereas the income shown as Sales in the audited books of the said assessee is Rs. 4,14,31,928/- and the Gross amount declared in their ST-3 returns is Rs.4,15,75,254/-. I find that the said assessee has filed Service Tax Returns for the period 2015-16 declaring gross amount of Rs.4,15,75,254/- which is more than the difference detailed in the show cause notice. 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:

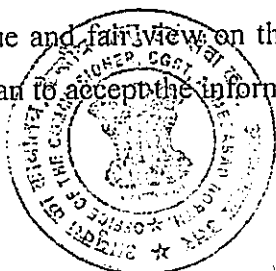
Description	Amount
Difference between value of services from ITR/26 AS and Value as per ST-3 Return	3,89,66,789/-
Sales as per Profit & Loss A/c	4,14,31,928/-
Less : Services provided as declared in their ST-3 returns	4,15,75,254/-
Difference (Excess amount declared in ST-3 return)	1,43,326/-

Financial year : 2016-17 :-

I find that total income as per the SCN and Form No. 26AS is Rs.2,70,67,724/- whereas the income shown as Sales in the audited books of the said assessee is Rs. 2,83,26,841/- and the Gross amount declared in their ST-3 returns is Rs.2,83,26,834/-. I find that the said assessee has filed Service Tax Returns for the period 2016-17 declaring gross amount of Rs.2,83,26,834/- which is more than the difference detailed in the show cause notice. 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	2,70,67,724/-
Sales as per Profit & Loss A/c	2,83,26,841/-
Less : Services provided as declared in their ST-3 returns	2,83,26,834/-
Difference (Less amount declared in ST-3 return)	7/-

36. 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.






37. 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.

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

**ORDER**

I hereby drop the proceedings initiated against M/s. Siddharth Infrastructures, 50, Sangini Bunglows, Near Avsar Party Plot, Sindhu Bhavan Road, Ahmedabad-Gujarat-380054 vide Show Cause Notice, F.No. STC/15-180/OA/2021-22 dated 23.04.2021.

  
 (Lokesh Damor)  
 Joint Commissioner  
 Central GST & Central Excise  
 Ahmedabad North

BY RPAD  
F.No. STC/15-180/OA/2021-22

Dated-31.10.2022

To  
M/s. Siddharth Infrastructures,  
50, Sangini Bunglows,  
Near Avsar Party Plot, Sindhu Bhavan Road,  
Ahmedabad-Gujarat-380054

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Division-VI Ahmedabad North.
3. The Superintendent, Range-II, Division-VI, 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.



