



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

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

पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद - 380009

FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD - 380009

ई-मेल/E-Mail : ofadjhq-cgslamdnorth@gov.in, oaahmedabad2@gmail.com

फ़ोन/Phone : 079-27544599 फैक्स/Fax : 079-27544463



निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-104/OA/2020

आदेश की तारीख/Date of Order:- 03.02.2022

जारी करने की तारीख/Date of Issue :- 03.02.2022

DIN NO: 20220264WT000008E3C

द्वारा पारित/Passed by:- आर गुलजार बेगम *IR. GULZAR BEGUM*

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 58/ADC/GB/2021-22

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

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से) 60 साठ (दिन के अन्दर आयुक्त) अपील, (केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015) को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-में दो प्रतियों में दाखिल की जानी चाहिए। उस पर 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 रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

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

विषय:- कारण बताओ सूचना/ Show Cause Notice No. STC/15-104/OA/2020 dated 30.09.2020 and issued to M/s. Prakashkumar Ganeshbhai Patel Prop. Prakashkumar G Patel situated at Suncity S P Ring Road, Bopal, Ahmedabad, Gujarat



BRIEF FACTS OF THE CASE :

M/s. PRAKASHKUMAR GANESHBHAI PATEL (hereinafter referred to as "the said service provider") situated at "PROPPRAKASHKUMAR G PATEL SUNCITY S P RING ROAD BOPAL AHMEDABAD GUJARAT", having PAN No. **AWLPP1781G** being engaged in the business of providing services was found not registered with the Service Tax department.

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 **F.Y. 2014-15 to 2016-17**, and details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the information received from the Income Tax Department, the said service provider had earned substantial service income, however, they did not obtain service tax registration and did not pay service tax thereon.

4. Therefore, a letter/email by the jurisdiction office dated 31.07.2020 and followed by reminder dated 24.09.2020 was written to the said Service Provider with a request to submit the documentary evidence in respect to their income within a week time from the date of receipt of above referred letter. However, the said Service Provider failed to submit the required details / documents or offer any explanation / clarification regarding income earned by them.

5. Since the said Service Provider had failed to submit the required details of services provided during the **Financial Year 2014-15 to 2016-17**, the service tax liability of the Service Provider was required to be ascertained on the basis of income mentioned in the ITR returns and Form 26-AS filed by the said Service Provider with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the service tax liability under Section 67A of the Finance Act, 1994 as the said Service Provider failed to determine the correct taxable value.

The Service tax payable is calculated on the basis of value of "sales of services under Sales/Gross Receipts from Services (Value from ITR)" as provided by the Income Tax Department for the **Financial Year 2014-15 to 2016-17**. By considering the said amount as taxable income, and as the said Service Provider failed to submit the required details as per above referred letter, the service tax liability is calculated as under:-

Sr. No.	Financial Year	Sales/Gross Receipts from Services (ITR) (in Rs.)	Service Tax (in Rs.)
01	2014-15	13417299/-	1658378/-
02	2015-16	14934032/-	2083587/-
03	2016-17	17887407/-	2668164/-
	TOTAL	46238738/-	6410130/-

7. Unquantified demand at the time of issuance of SCN

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified 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 would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the notice are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI, 1982 (OIO) 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.'

8. From the facts, it appears that the "Total Amount Paid/Credited Under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts from Services (From ITR)" for the F.Y. 2014-15 to 2016-17 has not been disclosed thereof by the Income Tax Department, nor the reason for the non-disclosure was made known to this department. Further, the said service provider has also failed to provide the required information even after the issuance of letters from the Department. Therefore, the assessable value for the year F.Y. 2014-15 to 2016-17 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 service provider, action will be initiated against the said service provider 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 future, for the period F.Y. 2014-15 to 2015-16 covered under this Show Cause Notice, will be recoverable from the said service provider accordingly.

9. With effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the Negative list are exempted. The nature of activities carried out by the said Service Provider appears to be covered under the definition of service and appears that not covered under the Negative List as given in the Section 66D of the Finance Act, 1994 and also declared services given in Section 66E of the Finance Act, 1994, as amended from time to time. These services also appears to be not exempted under Mega exemption Notification No. 25/2012-S.T. dated 20-06-2012, as amended from time to time, and hence the aforesaid services provided by the said Service Provider appears to be subjected to Service Tax under the provisions Section 66B of Finance Act, 1994.

10. As per Section 69(1) of the Act, *every person liable to pay the Service Tax under this Chapter or the rules made there under shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.*

11. As per Section 69(2) of the Act 1994, *any service provider, whose aggregate value of taxable service in a financial year exceeds Rs. 9 lakh is required to take Registration.* Further, according to Notification No. 33/2012-(Service Tax) dated 20.06.2012, Central Government has exempted taxable services of aggregate value not exceeding ten lakh rupees in preceding year from the whole of the Service Tax leviable thereon under Section 66B of the Finance Act, 1994. Therefore, it appears that the said Service Provider was required to obtain Service Tax Registration and comply the Service Tax laws accordingly.

12. As per provision of Section 68 of Finance Act, 1994 read with Rule 6 of Service Tax Rule 1994 as amended, *every person providing taxable service to any person is liable to pay Service Tax at the rate prescribed in Section 66B to Central Government by the 5th of the month/ quarter immediately following the calendar month/ quarter in which the taxable service is deemed to be provided (except for the month of March which is required to be paid on 31st March).*

13. According to Section 70 of the Finance Act, 1994 read with Rule 7(1) of the Service Tax Rules, 1994, *every person liable to pay Service Tax shall himself assess the tax due on the services provided by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all materials facts in ST-3 returns.*

14. It was observed that the said Service Provider had neither obtained a Service Tax registration for the services provided by them for the period of **F.Y. 2014-15 to F.Y. 2016-17**, nor responded to correspondence made with them regarding actual services provided by them, concealed the value from the department, declared to the income tax department. Therefore, it appears that the said Service Provider had not paid correct service tax by way of willful suppression of facts to the department in contravention of provision of the Finance Act, 1994 relating to levy and collection of service tax and the Rules made there under, with intent to evade payment of service tax. Therefore, the service tax amounting to **Rs. 6410130/-** is recoverable from them by invoking extended period of five years under first proviso to sub-section (1) of Section 73 of Finance Act, 1994 along with interest at the prescribed rate under Section 75 of the Finance Act, 1994 and also rendered himself liable for penal action under Section 78 of Finance Act, 1994.

15. It was further observed that the said the said service provider has neither submitted the documents nor extended the cooperation in the matter although sufficient time was provided. This act of non-cooperation of the said the said service provider has contravened the provisions of Section 72 of the Finance Act, 1994 and thus rendered themselves liable for penal action under Section 77 of Finance Act, 1994.

16. As per the provisions of **Section 72** of the Finance Act, 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 on the basis of such assessment.

17. As per the provisions of **Section 73(1)** of the Finance Act where any service tax has not been levied or paid or has been short levied or short paid by the reasons of willful mis-statement 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 paid of which has been short levied or short paid requiring him to show cause why he should not pay amount specified in the notice.

18. As per **Rule 6** of the Service tax Rules, 1994, the service tax shall be paid to the credit of the Central Government by 5th 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.

19. In view of above, it was observed that the said service provider have contravened the provisions of **Section 66, 68 and 70** of the Finance Act, 1994 in as much as they have failed to collect and pay the service tax as detailed above, to the credit of Central Government.

20. It was also observed that on account of all the above narrated acts of commission and omissions on the part of the said service provider, they have rendered themselves liable to penalty under Section 70, 77 and 78 of the Finance Act, 1994 and Rules framed there under:-

23. In the instant case, the said service provider has failed to properly assess the Service Tax liability. Thus, they have resorted to suppression of material facts by not reflecting the correct taxable income incurred in respect of the services liable to Service Tax in their ST-3 returns. Accordingly, it appeared that the Service Tax as quantified herein above is liable to be recovered by invoking the extended period of limitation as provided for under Sec. 73 of the Finance Act, 1994 along with interest in terms of the provisions of Sec. 75 of the Finance Act, 1994. The said Service Provider has not disclosed full, true and correct information about the value of the service provided by them, and thus, it appears that there was a deliberate withholding of essential and material information from the department about service provided and value realized by them. It appears that all these material information had been concealed from the department deliberately, consciously and purposefully to evade payment of Service Tax. Therefore, in this case all essential ingredients exist to invoke the extended period in terms of proviso to Section 73(1) of Finance Act, 1994 to demand the Service Tax short not paid.

24. In view of discussion in the fore going paras, it was observed that all the above acts of suppression of facts, misstatement and contravention, omissions and commissions are on the part of said service provider that they have willfully suppressed the facts, nature and value of service provided by them by not assessing and paying due Service Tax liability, therefore, the above said amounts of Service Tax of **Rs. 6410130/- (Sixty Four Lakh Ten Thousand One Hundred Thirty Only)** (Non-payment of Service Tax for the period **2014-15 to 2016-2017** on Income from taxable service provided by them), and Late fee (Non filing of Service Tax returns) for the above period is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years for the reasons stated herein foregoing paras. In view of the facts discussed in foregoing paras and material evidence available on record, it appears that the said service provider have contravened the provisions of Section 66B of the Finance Act, 1994, Section 68 of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules, 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as that they failed to determine; collect and pay Service Tax amounting to **Rs. 6410130/-** (including applicable EC, SHEC, SBC & KKC) for the period **F.Y. 2014-15 to 2016-17** as detailed above and they have failed to declare value of taxable service to the department and thus suppressed the amount of charges received by them for providing taxable services as detailed above.

26. 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 & Rule 7 of the Service Tax Rules, 1994 appear 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 appears that the said the said service provider have contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said the said service provider appear to have rendered themselves liable to penalty under **Section 76 & Section 77** of the Finance Act.

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

28. Accordingly Show Cause Notice was issued to **M/s PRAKASHKUMAR GANESHBHAI PATEL**, called upon to show cause as to why :-

➤ The services rendered by them should not be considered as "taxable services" under Section 65 of the Finance Act, 1994, as amended, and the total/gross amount of **Rs.46238738** received towards rendering such services should not be considered as taxable value of the said taxable services charged by them for the **F.Y. 2014-15 to 2016-17** ;

- **Service Tax of Rs. 6410130/- (Sixty Four Lakh Ten Thousand One Hundred Thirty Only)** which was not paid for the F.Y.2014-15 to 2016-17 as per Table-A in para-11 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994; read with relaxation provisions of Section 6 of Chapter V of the Taxation and Other Laws(Relaxation of Certain Provisions) Ordinance, 2020(No. 2 of 2020) promulgated on 30.03.2020 by invoking extended period of time limit ;
- **Interest** at the prescribed rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act,1994 ;
- **Prescribed late fee**, should not be recovered from them for each S.T.-3 return filed late, for the relevant period, under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 ;
- **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 prescribed time-limit ;
- **Penalty** should not be imposed upon them under Section 77(1) of the Finance Act, 1994 for failure to take Service Tax registration as per the provisions of Section 69 of the Finance Act, 1994 ;
- **Penalty** should not be imposed upon them under Section 78 of the Finance Act, 1994, for non-payment of Service Tax by willfully suppressing the facts from the department with intent to evade the payment of Service Tax as explained herein above.

DEFENCE REPLY :

29. The Service Provider vide letter dated 30.12.2020 has submitted their reply wherein he stated that his nature of business is Exporting Software Services; that Export of software Services are exempt from levy of Service Tax; that he submitted the supporting documents in respect of statement of amount receipt in Foreign Currency i.e in Pay Pal and O'Desk;

PERSONNEL HEARING ;

30. Personnel Hearing was granted to the Service Provider on 23.11.2021 wherein Shri Prakash Patel, MD appeared for personnel Hearing. He stated that he has submitted his written reply on 30.12.2020 and has further stated that the services done by them falls under Export of Services and not liable for Service Tax. He requested to drop all further proceedings and requested 15 days time to submit the reconciliation statement. The Service Provider vide letter dated 18.01.2022 has submitted reconciliation data for the year 2014-15 to 2016-17; he stated that during hearing on 23.11.2021, I had requested for 15 days time for submission of data, however, due to marriage function in family and his CA could not provide require data, now he is providing reconciliation data for the entire 3 years alongwith the sample invoices and remittance.

DISCUSSION AND FINDINGS:

31 I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 30.12.2020, documents submitted by the noticee vide letter dated 18.01.2022.

31.1 On going through the SCN, I find that data of Sales /Gross receipt from services was shared by the CBDT with CBIC for FY 2014-15 to 2016-17. The difference in value of service to the extent of Rs. 4,62,38,738/- for the year 2014-15 to 2016-17 was noticed and therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the basis of ITR filed for the period 2014-15 to 2016-17 on value of Rs. 4,62,38,738/- under proviso to section 73(1) of Finance Act, 1944 or not.

31.2 I find that the Service Provider is the proprietor of the firm percept Infotech. I find that the assessee in their reply dated 30.12.2020 has stated that the value of service of sales/ gross receipts shown in their ITR filed for 2014-15 to 2016-17 is on account of export of service for the year 2014-15 to 2016-17. I find that as per Rule 4 of Export of Service Rules, 2005 any service, which is taxable under clause (105) of section 65 of the Act, may be exported without payment of service tax. The Services provided to their clients are other than given in negative list of Section 66D, for the sake of gravity, I reproduce herewith relevant portion of Service Tax Rules;

“Rule 4 of export of service tax rules, 2005 provides that any service, which is taxable under any clause (105) of section 65 of the act, may be exported without payment of service tax. This means that the service provider is not required to pay service tax on the service which is exported. This implies that the exported services remain taxable services, but attract nil rate of service tax.”

Export of services

As per rule 6A of service tax rules, the six essential requisites are to be fulfilled in respect to a service so as to be considered as export service:

- a) It must be a service under sub-section 44 of section 65B. in other words, service shall not be covered under negative list of service provided under 66 D of the act.
- b) The service provider must be located in taxable territory i.e. India
- c) The service receiver is located outside India
- d) The payment for such service is received by the service provider in convertible foreign exchange
- e) The place of provision of the service is outside India as per the place of provision of service rules.2012
- f) The service provider and the service receiver are not merely establishment of a distinct person i.e. branches of assessee in two different tax jurisdictions.

31.3 Further I also find that in support of their reply, the assessee have submitted the copy of Balance Sheet, P&L account, for FY 2014-15 to 2016-17, Bank statement for 2014-15 to 2016-17 in respect of receipt of amount, the total amount received in foreign currency from their clients, random issue of invoices and receipt advice received through mail against the alongwith the reconciliation statement for the year 2014-15 to 2016-17.

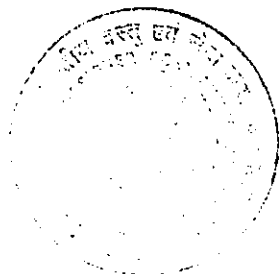
31.4 I find that the Service Provider has submitted reconciliation statement for the year 2014-15 to 2016-17 as detailed below;

Sr. No.	Financial Year	Sales/Gross Receipts from Services (ITR) (in Rs.)	Amount receipt in convertible currency in US \$.
01	2014-15	13417299/-	13417299/-
02	2015-16	14934032/-	14934032/-
03	2016-17	17887407/-	17887407/-
	TOTAL	46238738/-	46238738/-

31.5 The Service Provider has also furnished the receipt of amount in foreign currency of their client for the financial year 2014-15 to 2016-17 as detailed below;

	Sum of Amount
Percept Infotech 2014-15	
FREELANCER ONLINE INDIA	247791.1
MMT	91600
ODESK CORPORATION	2353767.37
PAUL MERCHANTS LTD	23437
PAYPAL	4041358.06
PAYPAL OPGSP	1935124.71
REMITTANCE	641248
SRS	1366368.03
WELLS FARGO AND CO	1781586.21
WESTERN UNION INTERNATIONAL BANKG	935018.78
Grand Total	13417299.26

Percept Infotech 2015-16	
8569500126FS	157688
BRN	1312.25
FREELANCER ONLINE INDIA	70000
MUTHOOT FINCORP LTD	12945
ODESK CORPORATION	3729173.79
PAUL MERCHANTS	33778
PAYPAL OPGSP	7657054.62
REMITTANCE	1877984.83
SRS	957848.8
WESTERN UNION INTERNATIONAL BANKG	436246.66
Grand Total	14934031.95



Percept Infotech 2016-17	Sum of Amount
GRS	1693485.08
IRM ENERGY	38500
MMT	18163.77
ODESK CORPORATION	679455.58
PAYPAL OPGSP	8298006.28
REMITTANCE	3151614.81
ROI Web Marketing	202308.86
shawn prendergast	36433.82
SHREE SARASWATI	41250
TRANSFERWISE LIMITED	296267.97
UPWORK ESCROW	1028154.01
UPWORK GLOBAL	2138440.19
Web Marketing	265326.99
Grand Total	17887407.36

31.5 I have gone through their Balance sheet, Profit and loss account, their client list, the details of bank statement in which the amount of sale of such services in foreign convertible currency furnished by the assessee for the year 2014-15 to 2016-17, wherein I observe that the assessee provided Services to their foreign clients and the entire amount as shown in Profit and Loss account of the respective year has been received in foreign convertible currency i.e US \$ in their ICICI bank account. The assessee has furnished the copies of sample invoices alongwith the BRC received and the date wise remittance received in their ICICI bank.

31.6 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.

32 From the above discussions and document available on records, I find that all the ingredients which formalize/ qualify the activity to be "export of service" for the purpose of Rule 6A of Service Tax Rules 1994, are satisfied by the assessee in as much as (a) the provider is located in the taxable territory (b) the recipient of service is located outside India (c) the service is not in a negative list (d) the place of provision is outside India in the instant case as per the Rule 3 of Place of Provision of Service Rules, 2012 (e) the payment has been received by the provider of service in convertible foreign exchange (f) the provider of service and the recipient of service are different legal entities established under

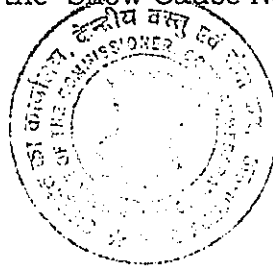
different laws, hence, they are not merely distinct establishment of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the act.

33 Having considered these factual and documentary evidences available on records, I find no reason to disagree the assessee's contentions. I am, therefore, of the view that the assessee has established their case quite clearly that the amount shown in Show Cause Notices i.e. Sales of Service under Sales/Gross Receipt from ITR is the value of service is on account of export of service. I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

34 In view of the facts and circumstances pertaining to the case as aforementioned, the demand is not tenable in law, accordingly I do not consider it necessary to delve in the merits of invoking extended period of limitation which has been discussed in the SCNs at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

35 I drop the demand of Rs. 64,10,130/- initiated against **M/s PRAKASHKUMAR GANESHBHAI PATEL PROP. PRAKASHKUMAR G PATEL SUNCITY S P RING ROAD BOPAL AHMEDABAD GUJARAT** vide Show Cause Notice F.No. STC/15-104/OA/2020 dated 30.09.2020 and accordingly the Show Cause Notices is hereby disposed off .



R. Gulzar Begum

(R. Gulzar Begum)
Additional Commissioner
Central Excise &CGST,
Ahmedabad North

By Regd. Post AD./Hand Delivery

File No: STC/15-104/O&A/2020

Dated: 3/02/2022

BY REGD. POST A.D./SPEED POST/Hand Delivery

To,
M/s. PRAKASHKUMAR GANESHBHAI PATEL
PROP PRAKASHKUMAR G PATEL
SUNCITY S P RING ROAD BOPAL,
AHMEDABAD GUJARAT

Copy for information to:

1. The Commissioner, CGST & CX, Ahmedabad North.
- 2.. The Dy. /Assistant Commissioner, DIV-VI, CGST & CX, Ahmedabad North.
3. The Superintendent, Range-I, Division-VI, CGST & CX, Ahmedabad North
4. The Superintendent, Systems, CGST & CX, Ahmedabad North
- ✓ 5. Guard File.