


<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क,अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा ,अहमदाबाद- 380009</p>		<p>OFFICE OF COMMISSIONER CENTRAL GST &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- 20221164WT0000333BA8

फा.सं./F.No. STC/15-174/OA/2021-22

आदेश की तारीख/Date of Order :- 15.11.2022

जारी करने की तारीख/Date of Issue :- 15.11.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

**मूल आदेश संख्या / Order-In-Original No. 61/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।

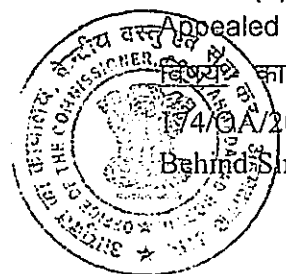
The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(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.

कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-174/OA/2021-22 dated 23.04.2021 issued to M/s Tejraaj Infrastructure, 31, Sahjanand Palace, Behind Sandhu Bhavan, Thaltej, Ahmedabad, Gujarat-380059.





**BRIEF FACTS OF THE CASE :**

M/s. Tejraaj Infrastructure, 31 Sahjanand Palace, Behind Sindhu Bhavan, Thaltej, Ahmedabad-Gujarat 380059 (hereinafter referred to as the "said assessee" for the sake of brevity) are engaged in providing services and for the same were registered with Service Tax Department having Service Tax Registration No.AAJFT4785CSD001.

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	1,02,48,059/-	14,29,803/-
2	2016-17	9,58,96,531/-	1,43,04,346/-
		10,61,44,590/-	1,57,34,150/-

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. 1,57,34,150/- on the differential value of Rs. 10,61,44,590/- 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 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 short paid requiring him to show cause why he should not pay amount specified in the notice.

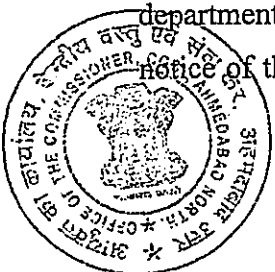
6. Further, as per Rule 6 of the Service Tax Rules, 1994, the service tax shall be paid to the credit of the Central Government by 5<sup>th</sup> day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service 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. 1,57,34,150/- 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. 1,57,34,150/- (inclusive of applicable Cess i.e. EC, SHEC, SBC & KKC) worked out on value of Rs. 10,61,44,590/- 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

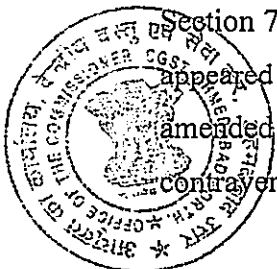


Financial Year 2015-16 and 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it appeared that the said assessee had knowingly suppressed 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 Rs1,57,34,150/- . 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. 1,57,34,150/- 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. 1,57,34,150/- (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.

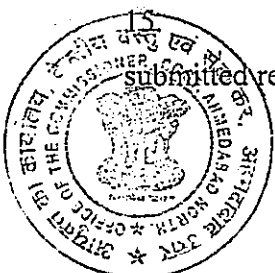
13.1 The said assessee was given an opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 23.04.2021 but the said assessee did not appear for the same.

14. Therefore, a Show Cause Notice bearing F.No.STC/15-174/OA/2021-22 dated 23.04.2021 was issued to M/s. Tejraaj Infrastructure, 31 Sahjanand Palace, Behind Sindhu Bhavan, Thaltej, Ahmedabad-Gujarat 380059 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. 1,57,34,150/- (Rupees One Crore Fifty Seven Lakhs Thirty Four Thousand One Hundred Fifty 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 28.04.2021 (received on 03.05.21) submitted reply to the show cause notice wherein they submitted that a notice dated 15.04.2021



from CGST Range-II, Division-VI, Ahmedabad North was received on 22.04.2021 requesting to explain and to furnish certain documents from financial year 2015-16 to 2016-17; that they were in process of preparing these documents but within 2 days SCN was issued; during the pandemic it was very difficult to collect the documents from service tax consultant, vat consultant and income tax consultant.

15.1 They further submitted that their company was mainly involved in the business of works contract services; that as per clause 13(a) of Mega Exemption Notification No.25/2012 dated 20.06.2012 services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a road, bridge, tunnel or terminal for road transportation for use by general public was exempted from service tax.

15.2 They further submitted that as per Circular No.147/16/2011-ST dated 21.10.2011 the works contract service providers in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc was also available to the sub contractors who provide works contract service to these main contractors in relation to those very projects that were exempt from service tax.

15.3 The said assessee further submitted that they were holding service tax registration no.AAJFT4785CSD001 and they have paid service tax on transport service; that during the financial 2015-16, 2016-17 and 2017-18 (upto June-17) turn over of the company was as mentioned below :-

YEAR	TURN OVER
2015-16	1,02,48,059/-
2016-17	9,58,96,531/-
2017-18 (UPTO 30.06.2017)	1,80,51,756/-

15.4 They submitted the following documents :-

- (i) Form 26AS for 2015-16 and 2016-17
- (ii) Balance sheet, P& L A/c for for 2015-16 and 2016-17
- (iii) Income tax returns
- (iv) Vat returns
- (v) Bank statement
- (vi) Copy of contract/agreement, Sales ledger and RA bills
- (vii) ST-3 returns for the period 2015-16 and 2016-17



**PERSONAL HEARING:-**

16. Personal Hearing was granted to the assessee on 06.10.2022. Shri Nitin D. Thakkar, Advocate and authorised representative of the assessee appeared for personnel hearing. He reiterated their written submission dated 03.05.2021. Further, he requested to decide the show cause notice on merit.

**DISCUSSION AND FINDINGS :-**

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

18. 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.

19. I find that the issue to be decided is to whether the said assessee is liable to pay service tax amounting to Rs. 1,57,34,150/- 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.

20. I find that the assessee have submitted their written submission dated 28.04.2021 (received on 03.05.21) along with the following documents:

- (i) Form 26AS for 2015-16 and 2016-17
- (ii) Balance sheet, P&L A/c for 2015-16 and 2016-17
- (iii) Income tax returns
- (iv) Vat returns
- (v) Bank statement
- (vi) Copy of contract/agreement, sales ledger, RA bills
- (vii) ST-3 returns for the period 2015-16 and 2016-17

21. 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. AAJFT4785CSD001. 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" and have availed the benefit of exemption under Sr. No.13(a) of Notification No.25/2012-ST dated

20.06.2012.





22. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified according to the different category of services. Further after introduction of negative list with effect from 01.07.2012, service has been defined as:

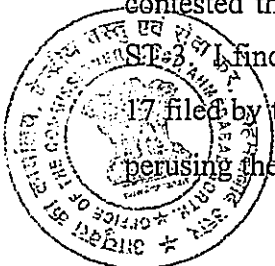
"service" means any activity carried out by a person for another for consideration, and includes a declared service. Services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,

- (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

23. 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.

24. 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.

25. 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. 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 28.04.2021 (received on 03.05.21). 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: Construction services other than residential complex, including commercial/industrial buildings or civil structures				
	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)	3439139	1660842	50,99,981/-
Less	Amount charged for Exempted service	1463594	0	1463594
Less	Amount claimed as abatement	878157	830421	1708578
	Net Taxable Value	1097388	830421	1927809

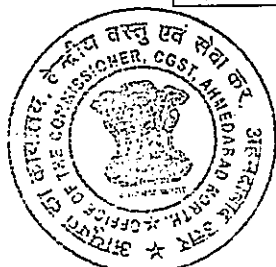
Details as per ST-3 Returns for FY 2016-17				
Description of service Provided: Works Contract Service				
	Period	Apr 2016-Sep 2016	Oct 2016-March 2017	Total
	Gross amount in relation to service provided or to provided (including exempt and export of service)	21030061	75597476	9,66,27,537/-
Less	Amount charged for Exempted service	21030061	75597476	9,66,27,537/-
Less	Amount claimed as abatement	0	0	0
	Net Taxable Value	0	0	0

26. 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" and 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 and RA bills in support of their claim of exemption.

27. 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	under TDS	Name of TDS Deductor	Amount paid/credited
194C		Ranjit Buildcon Limited	1,02,48,059/-
		TOTAL	1,02,48,059/-

Details of FORM 26AS for FY 2016-17			
Section under which deducted	under TDS	Name of TDS Deductor	Amount paid/credited
194C		Ranjit Buildcon Limited	28,81,248/-
194C		Saraswati Construction Company	8,90,64,869/-
194C		Saraswati Buildcon	39,50,414/-
194C		TOTAL	9,58,96,531/-



28. 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.

29. I find that the said assessee has received the following amounts during 2015-16 and they have submitted its corresponding ledger, copy of contract and R.A. bills. The details are as under :-

2015-16					
Sr. No.	Date	Name of the party	Amount (in Rs.)	Remarks	Nature of work
1	30.05.15	Ranjit Buildcon Ltd	2966428	R..A bill No.2 dtd. 30.05.15	Construction of E-Type Staff Quarter (6 unit) @ Himmatnagar.
2	23.09.15	Ranjit Buildcon Ltd	3009150	R..A bill No.3 dtd. 23.09.15	
3	18.11.15	Ranjit Buildcon Ltd	1230384	R..A bill No.4 dtd. 18.11.15	
4	17.03.16	Ranjit Buildcon Ltd	2463031	R..A bill No.5 dtd. 17.03.16	
5	17.03.16	Ranjit Buildcon Ltd	579066	R..A bill No.1 dtd. 17.03.16	
		Total	1,02,48,059/-		

30. I have gone through the work orders submitted by the said assessee. I find that the Office of the Executive Engineer, Road and Building Division, Opp. Sub Jail, Himmatnagar have vide Work Order No.AB/TC/B-2/8/6718 of 2014 dated 02.09.2014 given work of "Construction of E-Type Staff Quarter (6 units) @ Himmatnagar Dist" to M/s Ranjit Buildcon Ltd., Ahmedabad. I find that the said work was further sub contracted by M/s Ranjit Buildcon Ltd, Ahmedabad to M/s Tejraaj Infrastructure vide sub contract agreement dated 15.10.2014.

31. I find that the original work order given to M/s Ranjit Buildcon Ltd. is for Construction of staff Quarters at Himmatnagar for the office of the Executive Engineer, Road and Building Division, Opp. Sub Jail, Himmatnagar which falls under the category of State Government. I find that the work undertaken is in the nature of Civil Works – Buildings and is for use as Staff Quarters. In this connection, I would like to discuss the applicability of service tax on the services provided by M/s Ranjit Buildcon Ltd. to State Government.

Entry 12 of Notification No.25/2012-Service Tax dated 20.06.2012 exempts the following taxable services from the whole of the service tax leviable thereon under Section 66B of the Finance Act, 1994, which reads as follows :-



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) *a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*

(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) *a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;*

(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) *a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act.*

Thereafter notification No.25/2012-Service Tax dated 20.06.2012 was amended vide Notification No.06/2015 dated 01.03.2015 wherein entry 12, items (a), (c) and (f) were omitted with effect from 01.04.2015.

Then again notification No.25/2012-Service Tax dated 20.06.2012 was further amended vide Notification No.9/2016-Service Tax dated 01.03.2016 wherein after entry 12, with effect from 1<sup>st</sup> March, 2016, the following was inserted, namely –

*“12A. 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) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*

*(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or*

*(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;*

*under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:*

*provided that nothing contained in this entry shall apply on or after the 1st April, 2020;”*

33. In view of the above, I find that the services provided to the Government, a local authority or a governmental authority by way of construction of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession is taxable with effect from 01.04.2015. However, if the services provided to the Government, a local authority or a governmental authority is under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date, then such services are exempted.



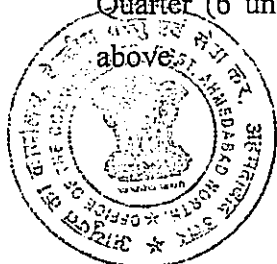
34. In the instant case, I find that the work order for "Construction of E-Type Staff Quarter (6 units) @ Himmatnagar Dist" has been given by the Office of the Executive Engineer, Himmatnagar to M/s Ranjit Buildcon Ltd on 02.09.2014 which is prior to 01.03.2015 and hence exemption under Entry 12A as inserted vide Notification No.9/2016-Service Tax dated 01.03.2016 is quite clearly available to M/s Ranjit Buildcon Ltd. Further as per Sr. No.29 (h) of Notification No. 25/2012-Service Tax dated 20.06.2012 exemption is available to a sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt. Since, the services provided by M/s Ranjit Buildcon Ltd is exempted, the services provided by the said assessee to M/s Ranjit Buildcon Ltd is also exempted.

35. I further find that the said assessee has received the following amounts during 2016-17 and they have submitted its corresponding ledger, copy of contract and R.A. bills. The details are as under :-

2016-17

Sr. No.	Date	Name of the party	Amount (in Rs.)	Remarks	Nature of work
1	31.08.16	Saraswati Construction Co.	11959230	R..A bill No.1	Execution of gauge conversion of meter gauge track between Sabarmati and Kothgangad station (77 km) in Bhavnagar Division of Western Railway, Gujarat, India
2	30.09.16	Saraswati Construction Co.	9070831	R..A bill No.2	
3	31.10.16	Saraswati Construction Co.	11807048	R..A bill No.3	
4	30.11.16	Saraswati Construction Co.	12842413	R..A bill No.4	
5	13.12.16	Saraswati Construction Co.	17167690	R..A bill No.5	
6	01.02.17	Saraswati Construction Co.	13572816	R..A bill No.6	
70	25.03.17	Saraswati Construction Co.	12644841	R..A bill No.7	
8	19.10.16	Ranjit Buildcon Ltd.	2454224	R..A bill No.6	Construction of E-Type Staff Quarter (6 unit) @ Himmatnagar.
9	25.10.16	Ranjit Buildcon Ltd.	427074	R..A bill No.2	
10	22.03.17	Saraswati Buildcon	2096207	R..A bill No.1	Widening and strengthening of Bavla-Dholka road SH No.74 km- Pro New minor Bridge at ch.14/4 to 16/6
11	31.03.17	Saraswati Buildcon	1854207	R..A bill No.2	
		Total	9,58,96,581/-		

36. During the year 2016-17, I find that the said assessee have received payment from (1) M/s Ranjit Buildcon Ltd., (2) M/s Saraswati Construction Co. and (3) M/s Saraswati Buildcon. The payment received from M/s Ranjit Buildcon is for "Construction of E-Type Staff Quarter (6 units) @ Himmatnagar Dist" and the same has already been discussed in Para 34



37. I have gone through the work orders submitted by the said assessee. I find that the Chief Project Manager, Rail Vikas Nigam Limited, Ahmedabad (A Government of India Enterprise) have vide Work Order No.RVNL/ADI/ADI-BTD/2/3(Pkg.I) dated 01.09.2015 given work of "Execution of gauge conversion of existing meter gauge track between Sabarmati and Kothgangad stations (77 kms) – Construction of roadbed, bridges, supply of ballast, dismantling of existing MG track, Installation of track, Electrical works between Sabarmati and Kothgangad in Ahmedabad and Bhavnagar Divisions of Western Railway, Gujarat, India" to M/s Ranjit - NSP-Kiran (Joint Venture), Ahmedabad. The Joint Venture had in turn distributed certain works to M/s Ranjit Buildcon who in turn further sub contracted the work to M/s Saraswati Construction Co. vide agreement dated 30.11.2015. I find that the said work was further sub contracted by M/s Saraswati Construction Co, Ahmedabad to M/s Tejraaj Infrastructure vide sub contract agreement dated 10.12.2015. Further, from the RA bill submitted by the said assessee, I find they have carried out work of "Widening and strengthening of Bavla-Dholka road SH No. 74 km- Pro New minor Bridge at ch.14/4 to 16/6" of M/s Saraswati Buildcon. Now, I would like to discuss the applicability of service tax on the services provided by the said assessee.

38. 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;*

*14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-*

*"(a) railways, excluding monorail and metro;*

39. In the instant case, I find that the said assessee has carried out the work relating to construction of conversion of existing meter gauge track between Sabarmati and Kothgangad stations (77 kms) of Western Railway and new bridge on Bavla-Dholka road SH No.74 and hence exemption under Entry 13(a)/14 of Notification No.25/2012-ST dated 20.06.2012 is quite clearly available for the said activity. Further as per Sr. No.29 (h) of Notification No. 25/2012-Service Tax dated 20.06.2012 exemption is available to a sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt. Since, the services provided by the main contractor is exempted, the services provided by the said assessee to the main contractor is also exempted.

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.

41. 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.

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

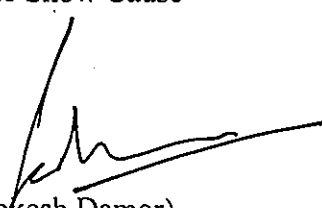
**ORDER**

I hereby drop the proceedings initiated against M/s. Tejraaj Infrastructure, 31, Sahjanand Palace, Behind Sindhu Bhavan, Thaltej, Ahmedabad Gujarat 380059 vide Show Cause Notice F.No. STC/15-174/OA/2021-22 dated 23.04.2021.



BY RPAD  
F.No. STC/15-174/OA/2021-22

To  
M/s. Tejraaj Infrastructure,  
31, Sahjanand Palace,  
Behind Sindhu Bhavan,  
Thaltej,  
Ahmedabad Gujarat 380059

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

Dated-15.11.2022

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.

