



<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. STC/15-55/OA/2020

DIN- 20221164WT000000F37F
आदेश की तारीख/Date of Order :- 23.11.2022
जारी करने की तारीख/Date of Issue :- 23.11.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor
सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 70-71/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।

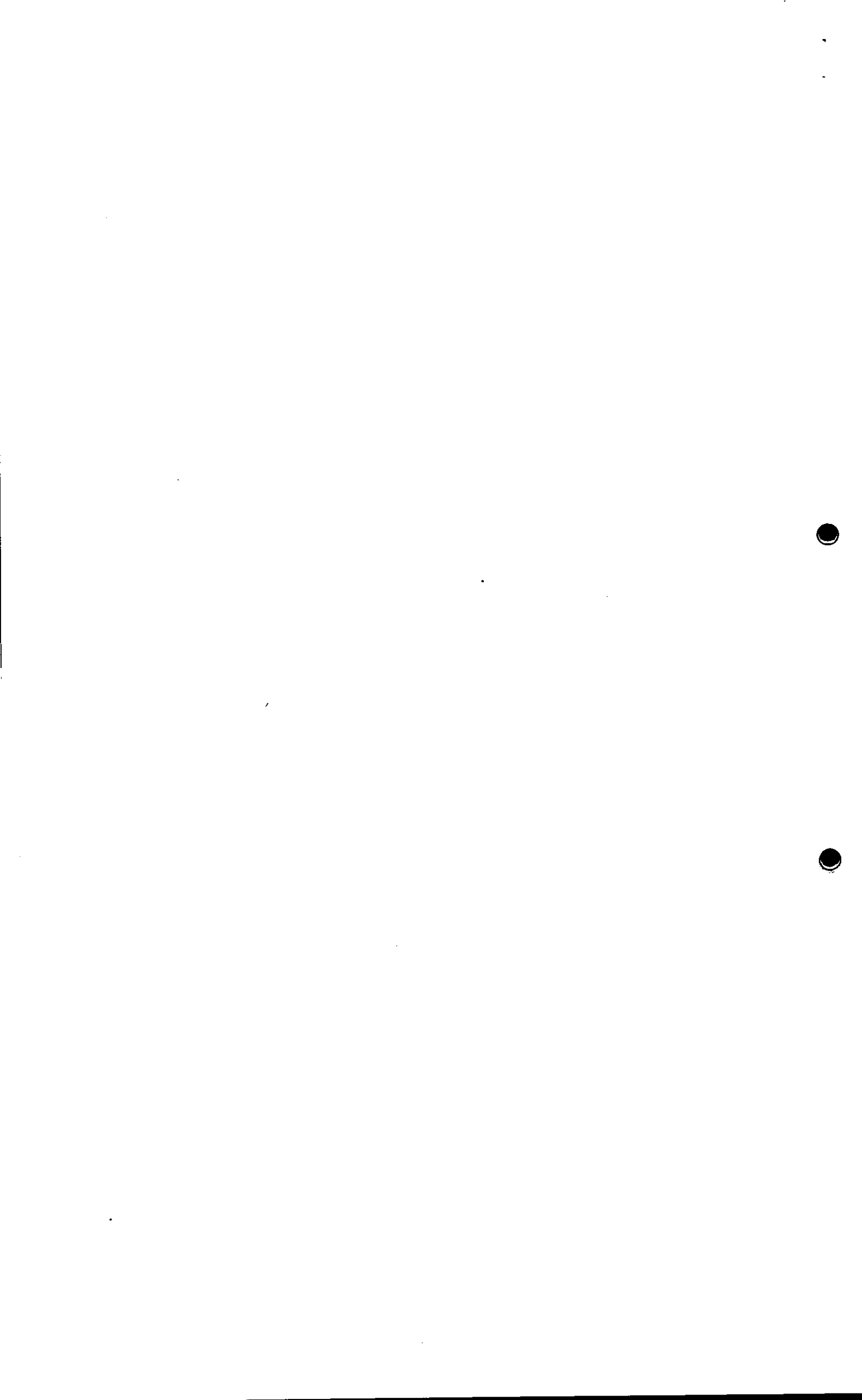
- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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 वताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-55/OA/2020 dated 29.09.2020 & STC/15-209/OA/2021-22 dated 23.04.2021 issued to M/s Parshotambhai Dahyabhai Patel, 1, Village Jadhavpura, Viramgam, Ahmedabad, Gujarat-





BRIEF FACTS OF THE CASE

M/s. Purshottambhai Dahyabhai Patel, (PAN: ALWPP0689B), 1, Village Jadhavpura, Viramgam, Ahmedabad - 382150 (at present having GSTN: 24ALWPP0689B1ZS and operating from 247, Shukan Mall, Science City, Road, Sola, Ahmedabad - 380060), (hereinafter referred to as the 'said service provider' for the sake of brevity) is un-registered in Service Tax despite being providing service during the year 2014-15 to 2016-17

2. On going through the data received from Income Tax department (CBDT data) for the Financial Year 2014-15 to 2016-17 for un-registered service provider, it has been observed that the said service provider has shown 'Gross receipt from Service' in their Income Tax Return, however, the said service provider has neither obtained valid service tax registration nor paid Service Tax. The details of the value shown in Income Tax return for F.Y 2014-15 to 2016-17 is as per table mentioned below: -

F.Y.	Basic value as per ITR/P&L account (Rs)	Resultant Service tax not paid (Rs.)
2014-15	Rs. 2,25,35,733/-	S.T- Rs. 27,04,288/- E.C- Rs. 54,086/- SHEC- Rs. 27,043/- Total- Rs. 27,85,417/-
2015-16	Rs. 2,16,41,132/-	S.T- Rs. 30,29,758/- SBC- Rs. 1,08,206/- Total- Rs. 31,37,964/-
2016-17	Rs. 3,50,70,949/-	S.T- Rs. 49,09,933/- SBC- Rs. 1,75,355/- KKC- Rs. 1,75,355/- Total- Rs. 52,60,642/-
	Grant Total	Total-Rs. 1,11,84,023/-

3. In the instant case, letters/e-mail 25.09.2020 were issued requesting clarification regarding the service turnover as mentioned in the above table with certified documentary evidences, but the said service provider has not replied the observations raised by Range office with supporting documents till the issuance of this notice.

4. 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, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is*



5. Form the above facts, it was noticed that the "Total Amount Paid / Credited under Section 194C, 194H, 194I, 194J OR Sales / Gross Receipts from Services (From ITR)" for the period April, 2017 to June, 2017 has not been disclosed by the Income Tax Department and the service provider has also, even after the issuance of letters and reminders from the Department, not submitted the same. Therefore, the assessable value for the period from April, 2017 to June, 2017 is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by any other sources / agencies, against the same 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 from April, 2017 to June, 2017 will be recoverable from the said service provider accordingly.

6. As per Section 69 of the Finance Act, 1994 .— *"(1) Every person liable to pay the service tax under this Chapter or the rules made thereunder 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.*

(2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed

In the instant case, it was noticed that the said service provider has failed to obtain Service Tax registration and thereby violated the provisions of Section 69 of the Finance Act, 1994.

7. Further, as per Section 68 of the Finance Act, 1994 *(1) Every person providing taxable service to any person shall pay service tax at the rate specified in Section [66B] in such manner and within such period as may be prescribed.*

(2) Notwithstanding anything contained in sub-section (1), in respect of [such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section [66B] and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service. 14 Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider. "

In the instant case, the said service provider has failed to pay the service tax on the taxable services provided by them and thereby contravened the provisions of Section 68 of the Finance Act, 1994.

8. In view of above, it was noticed that said service provider has contravened the provisions of; (1) Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 and (2) Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994 in as much as they failed to take service tax registration and pay Service Tax to the extent of Rs. 1,11,84,023/- as per their Income Tax Return/ Form 26AS/P&L account.

9. It was also noticed that at no point of time, the said service provider has disclosed or intimated to the Department regarding receipt/providing of Service, which has come to the notice of the Department only after going through the CBDT Data generated for the Financial Year 2014-15 to 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 appears that the said service provider have knowingly suppressed the facts regarding receipt of/providing of services by them. It appears that the above act of omission on the part of the said service provider resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appears to be recoverable from them under the provisions of Section 73 of the Finance Act, 1994 by invoking proviso under sub-section (1) of Section 73 read with the Notification issued on 27.06.2020 under Section 6 of The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 dated 31.03.2020, along with Interest thereof, at appropriate rate, under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the said service provider constitute offence of the nature specified under Section 68 & Section 69 of the Finance Act, 1994, the said service provider has rendered themselves liable for penalty under Section 77 (1) (a) & Section 78 of the Finance Act, 1994.

10. In this regard, an opportunity to give explain/clarification was offered to the noticee as pre SCN consultation on 28.09.2020. They have not availed the opportunity and no reply has been received from them.

11. Therefore, Show Cause Notice No.STC/15-55/OA/2020 dated 29.09.2020 was issued to M/s. Purshottambhai Dahyabhai Patel, called upon to show cause as to why:

- a) The demand for Service Tax to the extent of Rs. 1,11,84,023/- (Rupees One Crore Eleven Lakhs Eighty Four Thousand and Twenty Three only) not paid by them, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- b) Service Tax liability not paid for the period from April, 2017 to June, 2017, ascertained in future, as per para no. 4 and 5 above, should not be demanded and recovered from them under proviso to Sub-section (1) of the Section 73 of the Finance Act, 1994;
- c) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- d) Penalty should not be imposed upon them under the provisions of Section 77 (1) (a) of the Finance Act 1994, for failure to take Service Tax Registration;

Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994, for non-payment of service tax by knowingly suppressing the facts from the department with intent to evade the payment of service tax.



Meanwhile another Show Cause Notice No.STC/15-209/OA/2021-22 dated 23.04.2021 was issued to the assessee demanding service tax of Rs.77,57,693/- for the FY 2015-16 & 2016-17. As this period is already covered under the instant SCN No.STC/15-55/OA/2020 dated 29.09.2020, I proceed with the adjudication of both the SCNs together.

DEFENCE REPLY

12. The service provider vide letter dated 20.12.2021 submitted their reply to SCN wherein it was stated that the service provider Shri Purshottambhai Dahyabhai Patel, proprietor of M/s.Shital Construcstion, are engaged in the business of civil construction works for Govt, laying pipe line used for irrigation and water supply purposes. They are providing services to state/Central Govt. only. During the FY 2014-15, 2015-16 & 2016-17 they have provided services to the state government department and other departments as detailed as under:

2014-15

Sr. No.	Party Name	Contract income as per books
1	Gujarat State Land Dev. Corporation	4,73,534
2	Virangam Nagarpalika	65,80,713
3	Gujarat High Court Division R & B	70,25,221
4	The Agriculture Produce Market Committee	75,17,186
5	State Bank of India	9,02,001
6	The Mehsana Urban Co-Op Bank	37,078
	Total	2,25,35,733

2015-16

Sr.No.	Party Name	Contract income as per books
1	Gujarat State Land Dev. Corporation	1,50,996
2	Virangam Nagarpalika	34,35,735
3	Gujarat High Court Division R& B	3,23,073
4	Kiran N Patel	3,50,000
5	Dhara Costruction & Earthmovers	1,62,78,434
6	The Mehsana Urban Co-Op Bank	10,000
7	Security Deposits	1,92,894
	Paumil M Patel HUF	9,00,000
	Total	2,16,41,132

2016-17

Sr.No.	Party Name	Contract income as per books
1	Ex. Engineer Ahmedabad Irrigation Div	51,06,169
2	Virangam Nagarpalika	66,30,836
3	The Agriculture Produce Market	33,45,919
4	Ex. Engineer Ahmedabad Irrigation Div	49,520
5	Patdi Nagarpalika	14,31,205
6	Dhara Costruction & Earthmovers	1,85,07,300
	Total	3,50,70,949

13. The service provider further stated that the same can be find out from 26AS in which the above mentioned Government department has deducted the TDS. Further as per Notification No.25/2012, the above mentioned services

provided to the central or state government is not liable for service tax, so they were also not liable to pay service tax for the same and so not got registered under service tax. They were not taking any other work contract other than central or state government. They have also attached the documents such as Audit Report, ITR , Form 26AS of 2014-15, 2015-16 & 2016-17, Computation of income, copy of work orders and ledger of contract income. They also requested to make rectify the amount of demand raised.

PERSONEL HEARING

14. Personal Hearing was granted on 17.10.2022 and Shri Kalpesh Patel, CA and authorised representative, attended the P.H. on behalf of the assessee. He reiterated their written submissions dated 20.12.2021 and other submissions and requested to decide the SCN on merits.

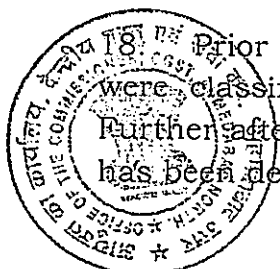
DISCUSSION AND FINDINGS

15. 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.

16. I have carefully gone through SCNs, Reply to the show cause notices, Form 26AS, audited Balance sheet for the year 2014-15, 2015-16 and 2016-17, Ledger copy, copies of work orders, reconciliation statement, copies of invoices for the relevant period. In the instant case, Show Cause Notice dated 29.09.2020 was issued to the assessee demanding Service Tax of Rs. 1,11,84,023/- for the Financial Year 2014-15, 2015-16 & 2016-17 on the basis of ITR/P&L account received from Income Tax authorities. On perusal of the above referred records, I find that the assessee is not registered under Service Tax and also not filed STR for the relevant period. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994.

17. On perusal of the SCN, reply to SCN and other above referred documents available on record, I find that the assessee is engaged in providing civil construction works, laying of pipe line for water used for irrigation purpose in the name of M/s.Shital Construction. They are providing such services to Govt. and Govt. departments like Executive Engineer, Division Gujarat High Court, Agriculture Produce Market committee, Viramgam Nagarpalika, Gujarat State Land Development Corporation, Patadi Nagarpalika Irrigation Division, Execitve Engineer, Irrigation Division, Ahmedabd. They have also provided the said services of clearing of the debries from various drains of Borsad Taluka, petlad Taluka, deepening/construction of pond at Surendranagar, Ahmedabad under various work orders from Govt. of Gujarat, as a sub contractor, to the main contractor M/s.Dhara Construction & Earth movers.

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



(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

- (a) an activity which constitutes merely,—
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the constitution or
 - (iii) a transaction in money or actionable claim.
- (b) A provision of service by an employee to the employer in the course of or in relation to his employment.
- (c) fees taken in any court or tribunal established under any law for the time being in force.

From the definition it is evident that any activity carried out by any person to another person for any consideration is covered under the above definition of service. Further the term "taxable service" is defined under Section 66B(51) of the Finance act, 194 as under:

(51) taxable service means any service on which service tax is leviable under Section 66B.

It is clear that the service tax is levied under Section 66B of the Finance Act, 1994 which reads as under:

Section 66B : Charge of service tax on and after Finance Act, 2012- There shall be levied a tax (hereinafter referred to as the service tax) at the rate fourteen percent on the value of all services other than those services specified in negative list, provided r agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed"

19. According to which service tax is levied on all services other than those specified in negative list (Section 66D of Finance act, 1994) in the taxable territory by one person to another. In this context the 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.,

SECTION 66D: Negative list of services.— The negative list shall comprise of the following services, namely:—

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) transport of goods or passengers; or 9
- (iv) Any service, other than services covered under clauses (i) to (iii) above, provided to business entities;

(b) services by the Reserve Bank of India;

(c) services by a foreign diplomatic mission located in India;

(d) services relating to agriculture or agricultural produce by way of—

- (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or [* * *] testing;
- (ii) supply of farm labour;
- (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
- (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
- (v) loading, unloading, packing, storage or warehousing of agricultural produce;
- (vi) agricultural extension services;
- (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

(e) trading of goods;

(f) [****].;

(g) selling of space for advertisements in print media;

(h) service by way of access to a road or a bridge on payment of toll charges;

(i) betting, gambling or lottery; Explanation. - For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in Explanation2 to clause (44) of section 65B;

(j) [* * * *]

(k) transmission or distribution of electricity by an electricity transmission or distribution utility; 10

(l) [* * * *]

(m) services by way of renting of residential dwelling for use as residence;

(n) services by way of—

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;

(ii) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;

(o) service of transportation of passengers, with or without accompanied belongings, by—

(i) [* * * *]

(ii) railways in a class other than— (A) first class; or (B) an air-conditioned coach;

(iii) metro, monorail or tramway ,

(iv) inland waterways;

(v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

(vi) metered cabs or auto rickshaws

(p) services by way of transportation of goods—

(i) by road except the services of— (A) a goods transportation agency; or (B) a courier agency;

(ii) [* * * *]

(iii) by inland waterways;

(q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

20. Thus 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. It is not disputed that the assessee has provided taxable service and the service provided by them are not mentioned in the negative list given under Section 66D of the Finance Act, 1994. The assessee in their reply to SCN are not contending that the taxable nature of service provided by them however they are contending that the services provided by them are exempted by Mega Notification No.25/2012 dated 20.06.2012 as amended, as they are providing services to departments of state government and other government agencies.



21. In view of the above, I find that the services provided by the assessee falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List as the services provided by the assessee does not fall under category of negative list of services under the provisions of Section 66D of the Finance Act.

22. Further, the assessee vide their submissions stated that during the financial year 2014-15, 2015-16 & 2016-17, their contract income or contract receipt is in respect of services to Govt. and Govt. departments like Executive Engineer, Division Gujarat High Court, Agriculture Produce Market committee, Viramgam Nagarpalika, Gujarat State Land Development Corporation, Patadi Nagarpalika Irrigation Division. They have also provided the said services of clearing of the debries from various drains from irrigation lines of Borsad Taluka, petlad Taluka, deepening/construction of pond at Surendranagar, Ahmedabad under various work orders from Govt. of Gujarat, as a sub contractor. The said service provider claimed that these service are exempted from levy of whole of service tax leviabale thereon under of Notification No. 25/2012-ST, dated 20-06-2012 with effect from 01-07-2012. In this connection, I would like to reproduce herewith the relevant portion of the said Notification :

"Notification 25/2012 ---

.....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 leviabale thereon under section 66B of the said Act, namely:-

- 1.....
- 2.....
- 3.....

.....

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;"

However, the exemption to Entry no. (a), (c) and (f) was withdrawn with effect from 01.04.2015 vide notification 06/2015-ST dated 01.03.2015. hence the assessee is not eligible for exemption under this entry from 01.04.2015.

Further vide notification 09/2016 -ST dated 1.3.2016 a new entry 12 A was inserted in notification 25/2012-ST dated 20.06.2012 which read as under. -

"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;"

vide this entry the exemption was partially restored but the condition specifically stated that the contract to provide the said service should have been entered into before 1.03.2015 and appropriate stamp duty is also to be discharged before 1.3.2015. According to which the services provided to Government, a local authority or a governmental authority by way of erection, construction, maintenance, repair, alteration renovation or restoration of Canal, dam or other irrigation works is exempted from the ambit of service tax.

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

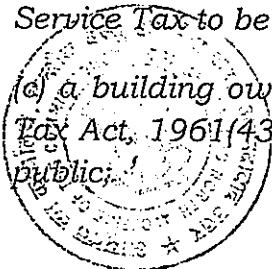
(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

(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;

Further, the assessee being a sub contractor is exempted from payment of service tax under Sl.No.29(h) of the said Notification. The relevant portion of the Notification is also referred as under:

29. Services by the following persons in respective capacities –...

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

According to which the exempted works contract services provided by a sub contractor to another contractor is exempted from payment of service tax.

23. The assessee in their reply to SCN submitted and stated that they have provided services to the government department such as Gujarat High Court, State Bank of India , Agriculture Produce Market committee, Viramgam Nagarpalika, Gujarat State Land Development Corporation, Patadi Nagarpalika Irrigation Division etc. In this connection, I have gone through the work order and other records of various service receivers to examine the claim of the assessee that they have provided services to Govt. and Govt. agencies. For the sake of clarity I would like to gone through the taxability of income year wise.

FINANCIAL YEAR 2014-15

24. I have carefully gone through SCNs, Reply to the show cause notices, Form 26AS, audited balance sheet, Ledger copy, reconciliation statement, copies of invoices for the year 2014-15. On perusal of the same, I find that the assessee have the gross receipt as per ITR/audited Balance sheet of Rs. 2,25,35,733/- on which they have not paid any service tax or filed any STR claiming the service tax exemption. Therefore SCN has been issued to the assessee demanding service tax of Rs.27,85,417/- on the said value. In response to the notice, the assessee submitted that they have provided services to the state government department and others and claimed service tax exemption under Notification No.25/2012 dated 20.06.2012.

Sr.No.	Party Name	Contract income as per books
1	Gujarat State Land Dev. Corporation	4,73,534
2	Viramgam Nagarpalika	65,80,713
3	Gujarat High Court Division R&B	70,25,221
4	The Agriculture Produce Market	75,17,186
5	State Bank of India	9,02,001
6	The Mehsana Urban Co-Op Bank	37,078
	Total	2,25,35,733

25. In this connection, I have gone through the Notification No.25/2012 dated 20.06.2012 to verify the eligibility of the assessee for service tax exemption. On perusal of the above table, ledger account and form 26AS produced by the assessee, I find that the assessee have received an income of Rs.4,73,534/- from Gujarat State Land Development Corporation during the year 2014-15. On perusal of documents produced by the assessee, I find that the work has been granted vide for land development work at Junagadh and



have an income of Rs.4,73,534/- as per the ledger account and Form 26AS. On perusal of the records, I find that Gujarat State Land Development Corporation Limited (GSLDC) is a State Government Under taking and was formed under Companies Act, 1956, on 28th March, 1978 and Corporation gets share capital from State Government from time to time and present 100% equity capital is hold by state. Main work of the corporation is to carry out works of land development. In view of the above, the income received from the service provided to Gujarat State Land Development Corporation Ltd is not chargeable to service tax as the same is exempted under Entry No 12 (a) of Notification No.25/2012 dated 20.06.2012.

26. Further the assessee had a income of Rs.65,80,713/- from Viramgam Nagarpalika for providing construction of office building, compound wall and civil structures. The service receiver is a municipality, a local authority as envisaged in the Notification, hence said services are also exempted from service tax under Category No.12(a) of Notification No.25/2012 dated 20.06.2012. Further assessee have an income of Rs.70,25,221/- received from the Office of Executive Engineer, Gujarat High Court (R & B) division for construction of new fire safety building for High Court of Gujarat. As the Gujarat High Court is a Government body, the service provided to the Gujarat High Court also exempted from payment of service tax under entry No. 12(a) of Notification No.25/2012 dated 20.06.2012. Further an amount of Rs.75,17,186/- is received from The Agriculture Produce Market (Viramgam) for construction of godown, compound wall and related civil work. Agricultural Produce Market Committees (APMC) is the marketing board established by the state governments under APMC Act 2003. As the APMC is established by the State Government under APMC Act, the said agency will be treated as Government agency. Therefore the services provided to APMC are not liable to be service taxable and therefore the said amount received by the assessee is treated as exempted from service tax vide Entry No.12(a) of Noti.25/2012 dated 20.06.2012. Further on perusal of the ledger accounts for the Financial Year, I find that the assessee have an income of Rs.9,02,001/- from SBI and Rs.37,078/- from Mehsana Urban Co operative Bank Ltd. However the assessee did not give any explanation or supporting documents to prove that the said income is exempted from service tax and therefore I consider this income of Rs.9,39,079/- as taxable income for the Financial Year 2014-15. However the aggregate value i.e.Rs.9,39,079/- (Rs.2,25,35,733/- - Rs.2,15,96,654/-) does not exceed the threshold limit of Rupees Ten lakh in the said Financial Year, they are eligible for exemption from payment of Service Tax on that taxable value in view of Exemption Noti.No.33/2012-ST dated 20.06.2012.

27. In view of the above facts, the amount of Rs. 2,15,96,654/- received by the assessee during the year 2014-15 is exempted by virtue of Notification No.25/2012 dated 20.06.2012 and the amount of Rs.9,39,079/- is exempted by way of Notification No.33/2012 dated 20.06.2012 as discussed, I find that the service tax demand of Rs.27,85,417/- for FY 2014-15 is not sustainable and therefore required to be dropped.

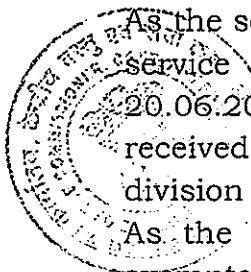


FINANCIAL YEAR 2015-16

28. I have carefully gone through SCNs, Reply to the show cause notices, Form 26AS, Balance sheet, Ledger copy, reconciliation statement, copies of invoices for the year 2015-16. On perusal of the same, I find that the assessee have the gross receipt as per ITR/audited Balance sheet of Rs. 2,16,41,132/- on which they have not paid any service tax or filed any STR claiming the service tax exemption. Therefore SCN has been issued to the assessee demanding service tax of Rs.31,37,964/- on the said value. In response to the notice, the assessee submitted that they have provided services to the state government department and others and claimed service tax exemption under Notification No.25/2012 dated 20.06.2012 as detailed below.

Sr.No.	Party Name	Contract income as per books
1	Gujarat State Land Dev. Corporation	1,50,996
2	Virangam Nagarpalika	34,35,735
3	Gujarat High Court Division R & B	3,23,073
4	Kiran N Patel	3,50,000
5	Dhara Costruction & Earthmovers	1,62,78,434
6	The Mehsana Urban Co-Op Bank	10,000
7	Security Deposits	1,92,894
8	Paumil M Patel HUF	9,00,000
	Total	2,16,41,132

29. In this connection, I have gone through the Notification No.25/2012 dated 20.06.2012 to verify the eligibility of the assessee for service tax exemption. On perusal of the above table, ledger account and form 26AS produced by the assessee, I find that the assessee have received an income of Rs.1,50,996/- from Gujarat State Land Development Corporation during the year 2015-16. On perusal of documents produced by the assessee, I find that the work order has been granted vide work order dated 04.04.2013 for civil work and they have an income of Rs.1,50,996/- as per the ledger account and Form 26AS. On perusal of the records, I find that Gujarat State Land Development Corporation Limited (GSLDC) is a State Government Under taking and was formed under Companies Act, 1956, on 28th March, 1978 and Corporation gets share capital from State Government from time to time and present 100% equity capital is hold by state. Main work of the corporation is to carry out works of land development. In view of the above, the income received from the service provided to Gujarat State Land Development Corporation Ltd is not chargeable to service as the same is exempted under Entry No 12(a)of Notification No.25/2012 dated 20.06.2012. Further the assessee had a income of Rs.34,35,735/- from Virangam Nagarpalika for providing construction of office building, compound wall and civil structure. As the service receiver is municipality, the said services are also exempted from service tax under Category No.12(a) of Notification No.25/2012 dated 20.06.2012as amended. Further assessee have an income of Rs.3,23,073/- received from the Office of Executive Engineer, Gujarat High Court (R & B) division for construction of new fire safety building for High Court of Gujarat. As the said work is also provided to Government body, the same is also exempted from payment of service tax under entry No. 12 of Notification No.25/2012 dated 20.06.2012.



30. Further, it was also noticed that an amount of Rs.1,62,78,434/- is received from M/s.Dhara Construction & Earthmovers, the main contractor for clearing derbies from various drains of Borsad Taluka under package No.15 under Anand Irrigation Division, petland Taluka, deepening and construction of Pond at Surendranagar District, Ahmedbad District etc. I have gone through the work order issued by Govt of Gujarat to the main contractor M/s.Dhara Cosntruction & Earthmovers as well as the agreement between the service provider and M/s.Dhara Cosntruction & Earthmovers and find that the said services are exempted from ambit of service under entry No.12(d) of exemption Notification No.25/2012 dated 20.06.2012 being the work is related to irrigation works. Being a sub contractor, the services provided by the assessee is also exempted under 29(h) of Notification. Accordingly the income Rs.1,62,78,434/- received from M/s.Dhara Construction & Earth movers is exempted from payment of service tax under Entry No.(d) of Notification No.25/2012 dated 20.06.2012. Further, the assessee in their submissions, an amount of Rs.1,92,894/- has also be shown as their income under security deposits which is also exempted from the ambit of service tax as the said income has not derived from providing any service attracting service tax, but return of security deposits made with other clients. On perusal of ledger account for the FY 2015-16, I find that the assessee could not explain or produce any documents to prove that nature of the income of Rs.12,60,000/- (Rs.2,16,41,132/- - Rs.2,03,81,132/-). They have also not put forth any document to prove that the said income is exempted from service tax. Hence, I consider the said income of Rs.12,60,000/- as taxable income for the FY 2015-16. However, the as assessee is eligible for threshold exemption limit of Rs.10,00,000/- as per Exemption Notification No.33/2012 dated 20.06.2012 and

31. In view of the above facts, the amount of Rs. 2,03,81,132/- received by the assessee during the year 2015-16 is exempted by virtue of Notification No.25/2012 dated 20.06.2012 and the amount of Rs.10,00,000/- is exempted by way of Notification No.33/2012 dated 20.06.2012 as discussed. I also find that the amount of Rs.2,60,000/- (Rs.12,60,000/- - Rs.10,00,000/-) is considered as taxable and accordingly I confirm the demand of Rs.37,700/- on Rs.2,60,000 considering the same as taxable income and drop the service tax demand of Rs.31,00,264/- (Rs.31,37,964/- - Rs.37,700/-) as the same is not sustainable as discussed above for FY 2015-16.

FINANCIAL YEAR 2016-17

32. I have carefully gone through SCNs, Reply to the show cause notices, Form 26AS, Balance sheet, Ledger copy, reconciliation statement, copies of invoices for the year 2016-17. On perusal of the same, I find that the assessee have the gross receipt as per ITR/audited Balance sheet of Rs. 3,50,70,949/- on which they have not paid any service tax or filed any STR claiming the service tax exemption. Therefore SCN has been issued to the assessee demanding service tax of Rs.52,60,642/- on the said value. In response to the notice, the assessee submitted that they have provided services to the state government department and others and claimed service tax exemption under Notification No.25/2012 dated 20.06.2012 as detailed below.



Sr.No.	Party Name	Contract income as per books
1	Executive Engineer Ahmedabad Irrigation Division	5106169
2	Viramgam Nagarpalika	6630836
3	The Agriculture Produce Market	3345919
4	Executive Engineer Ahmedabad Irrigation Division	49520
5	Patdi Nagarpalika	1431205
6	Dhara Costruction & Earthmovers	18507300
	Total	35070949

33. In this connection, I have gone through the Notification No.25/2012 dated 20.06.2012 to verify the eligibility of the assessee for service tax exemption. On perusal of documents of receipts of income for the year 2016-17, I find that Rs.51,55,689/- is received from Executive Engineer, Ahmedabad Irrigation Division for the works of strengthening banks of aghar ukload drain, construction of underground tank for conservation of water, construction of pond for harvesting rain water, deepening of water tank at village Vahelal, village Gorasu, village bagodara of Dist Ahmedabad etc. As these works are related to construction of canal and irrigation works, the said service is falls under exempted from service tax vide entry No.12(d) of Notifcation No.25/2012 dated 20.06.2012. Further the assessee had a income of Rs.66,30,836/- from Viramgam Nagarpalika for providing construction of compound wall and civil structure and also for construction of grave yard. The service receiver is municipality, the said services are also exempted from service tax under Category No.12(a) of Notification No.25/2012 dated 20.06.2012 as amended.

34. Further an amount of Rs.33,45,919/- is received from The Agriculture Produce Market (Virangam) for construction of godown, compound wall and related civil work. Agricultural Produce Market Committees (APMC) is the marketing board established by the state governments under APMC Act 2003. As the APMC is established by the State Government under APMC Act, the said agency will be treated as Government agency. Therefore the services provided to APMC are not taxable and therefore the said amount received by the assessee is not taxable as the same is exempted vide Entry No.12(a) of Noti.25/2012 dated 20.06.2012. Moreover and amount of Rs.49,520/- is derived from Executive Engineer , ahemdabad Divison. On perusal of the records, I find that the amount is derived from providing services in relation to irrigation works and therefore the said income is exempted from the ambit of service tax in view of clause 12(d) of Notification No.25/2012 dated 20.06.2012.

35. Further the assessee had a income of Rs.14,31,205/- from Patadi Nagarpalika for providing construction of storm water drain between indira nagar and bajpainagar vista at Patdi Nagar Palika. The service receiver is municipality and the civil work is related to irrigation, the said services are also exempted from service tax under Entry No.12(d) of Notification No.25/2012 dated 20.06.2012. Further, it was also noticed that an amount of Rs.1,85,07,300/- is received from M/s. Dhara Construction & Earthmovers, the main contractor for clearing derbies from various drains of Borsad Taluka under package No.15 under Anand Irrigation Division, Petland Taluka, deepening and construction of Pond at Surendranagar District, Ahmedbad District etc. I have gone through the work order issued by Govt of Gujarat to the main contractor M/s.Dhara Cosntruction & Earthmovers as well as the

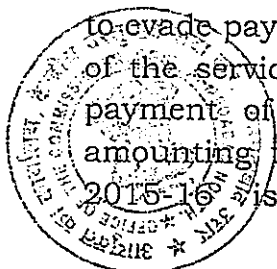
agreement between the service provider and M/s.Dhara Cosntruction & Earthmovers and find that the said services are exempted from ambit of service under entry No.12(d) of exemption Notification No.25/2012 dated 20.06.2012 being the work is related to irrigation works. Being a sub contractor, the services provided by the assessee is also exempted under 29(h) of Notification. Accordingly the income Rs. 1,85,07,300/- received from M/s.Dhara Construction & Earth movers is exempted from payment of service tax under Entry No.12(d) of Notification No.25/2012 dated 20.06.2012.

36. In view of the above facts, I find that an amount of Rs. 3,50,70,949/- received by the assessee during the year 2016-17 is exempted from payment of service tax by virtue of Notification No.25/2012 dated 20.06.2012 and therefore the service tax demand of Rs.52,60,642/- is not sustainable and therefore requires to be dropped. For the sake of clarity I reconcile the figure as under:

Sl.No.	Particulars	2014-15	2015-16	2016-17
01	Total value as per SCN/Balance Sheet	22535733	21641132	35070949
02	Less. Exempted services vide Noti.No.25/2012 dt.20.06.20123 as discussed	21596654	20188238	35070949
03	Less: Security deposits	0	192894	0
04	Difference	939079	1260000	0
05	Less: Exempted vide Noti.No.33/2012 dated 20.06.2012	939079	100000	0
06	Taxable Value	0	260000	0
07	Service Tax	0	37700	

In view of the above discussion, I find that the said assessee is liable to pay service tax amounting to Rs.37,700/- on the differential income of Rs,2,60,000/- and the same is liable to be recovered from them.

37. The government has from the very beginning placed full trust on the service tax assessee so far as service tax is concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of the service tax assessee; therefore, the governing statutory provisions create an absolute liability, when any provision is contravened or there is a breach of trust, on the part of service tax assessee, no matter how innocently. From the information/data received from CBDT, it appeared that the assessee has not discharged service tax liability in spite of declaring before Income Tax Department. Non-payment of service tax is utter disregard to the requirements of law and the breach of trust deposed on them which is outright act of defiance of law by way of suppression, concealment & non-furnishing value of taxable service with intent to evade payment of service tax. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts. Therefore, service tax amounting to Rs.37,700/- as worked out in Table supra for financial Year 2015-16 is required to be recovered from them under Section 73 (1) of



Finance Act, 1994 by invoking extended period of five years under the proviso to Section 73(1) of the Finance Act, 1994.

38. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the said assessee has failed to pay their Service Tax liabilities in the prescribed time limit, I find that the assessee is liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

39 The said assessee was liable to pay service tax on the services provided by them and therefore was required to take registration thereby rendering themselves liable for penalty under Section 77(1)(a) of the Finance Act, 1994;

40. As far as imposition of penalty under Section 78 of Finance Act, 1994 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under section 78 of Finance Act, 1994 as they failed to pay the correct duty with the intent to evade the same. It is also a fact that they had deliberately not take registration and suppressed the value of services provided by them, with an intent to evade the proper payment of service tax on its due date. These facts would not have come to light had the CBDT not shared the data. The assessee have thus, willfully suppressed the actual provision of taxable service provided by them with an intent to evade the Service Tax. Hence it is found that the assessee, as a service provider, deliberately suppressed the actual provision of the taxable services provided by them, from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed hereinabove. Hence I find that this is a fit case to impose penalty under Section 78 of Finance Act, 1994.

41. The Balance sheet and profit and loss account of an assessee is vital statutory records. Such records are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for evincing true financial position. Assessee was legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in unorganized method. The statute provides mechanism for supervision and monitoring of financial records. It is mandate upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive fair conclusion in respect of the balance sheet and profit and loss accounts. It is also onus upon auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs. The Chartered Accountant, who audited the accounts of the assessee, being qualified professional has given declaration that the balance sheet and profit and loss accounts of the noticee reflect true and correct picture

of the transaction and therefore, I have no option other than to accept the classification of incomes under profit and loss account as true nature of the business and to proceed to conclude instant proceedings accordingly.

42. Further, as mentioned in the SCN, I find that the levy of Service Tax for the financial year 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of subject SCN, if he same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under proviso to Section 73(1) read with master Circular No. 1053/02/2017-CX dated 10.03.2017, the service tax liability was to be recovered from the assessee accordingly. Since the assessee has not provided any details/information/documents for the FY 2017-18 (upto June 2017) and the department has not also adduced any information/evidence and the reason for the non disclosure has also not been made known to the department, I refrain myself from entering into the said period to determine the liability as otherwise of assessee for service tax. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income shown as per ITR/P &L, I therefore refrain from discussing the taxability on other income other than the income shown in their ITR / P & L.

43. In view of the above discussion and findings and also on perusal of SCN, reply to SCN, Form 26AS, reconciliation statement, ITR, audited Balance Sheet, submissions made by the said assessee and other documents, I find that the service provided by the assessee is rightly eligible for exemption under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 as amended and therefore the assessee is not liable to pay service tax of Rs.1,11,46,323/- (Rs.1,11,84,023/- - Rs.37,700/-) demanded vide above referred SCN. Accordingly they are also not liable to pay Penalty under Section 77 and 78 and interest under Section 75 of Finance Act, 1994. However the assessee is liable to pay service tax of Rs.37,700/- alongwith interest and penalty.

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

ORDER

- (i) I confirm the demand of Service Tax of Rs.37,700/- (including cess) (Rupees Thirty Seven Thousand Seven Hundred Only), which was not paid/short paid during the Financial Year 2015-16 as per Table supra, and order to recover the same from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994;
- (ii) I drop the remaining demand of Service Tax amounting to Rs. 1,11,46,323/- as discussed above;
- (iii) I drop the service tax demand amounting to Rs.77,57,693/- demanded vide SCN No. STC/15-209/OA/2021-22 Dated 23.04.2021 as discussed above at Para 11.



- (iv) I confirm the demand of Interest at the appropriate rate and order to recover the same from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;
- (v) I impose penalty of Rs.10,000/- on M/s. Purshottambhai Dahyabhai Patel under Section 77(1)(a) of the Finance Act, 1994 for failure to take Service Tax Registration.
- (vi) I impose Penalty of Rs.37,700/- (including cess) (Rupees Thirty Seven Thousand Seven Hundred only), under Section 78 of the Finance Act, 1994, as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s. Purshottambhai Dahyabhai Patel pays the amount of Service Tax as determined at Sl. No. (i) above and interest payable thereon at (iii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Purshottambhai Dahyabhai Patel shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

Accordingly the Show Cause Notices No.STC/15-55/OA/2020 Dated 29.09.2020 & SCN No. STC/15-209/OA/2021-22 Dated 23.04.2021 are disposed off.



(Lokesh Damor)

Joint Commissioner
Central GST & Central Excise
Ahmedabad North

F.No. STC/15-55/OA/2020

Date:

To,
M/s. Purshottambhai Dahyabhai Patel,
247, Sukan Mall, Science City Road,
Sola Ahmedabad -0380060.

Copy to:

- 1) The Commissioner Central GST & Central Excise, Ahmedabad North.
- 2) The A.C, Central GST & Central Excise, Division-III, Ahmedabad North.
- 3) The Supdt., C GST & C. Ex., Range-II , Division-III, Ahmedabad North
- 4) The Supdt. Systems ,CGST& CX, Ahmedabad North for uploading the order
- 5) Guard File.