


<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p><b>GST</b> ONE NATION. ONE TAX. ONE MARKET</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

फा.सं./F.No. STC/15-220/OA/2021-22

DIN- 20221164WT000000C2F1

आदेश की तारीख/Date of Order :- 24.11.2022

जारी करने की तारीख/Date of Issue :- 24.11.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

**मूल आदेश संख्या / Order-In-Original No. 73/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, अंबावाडी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रू. 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 रू .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

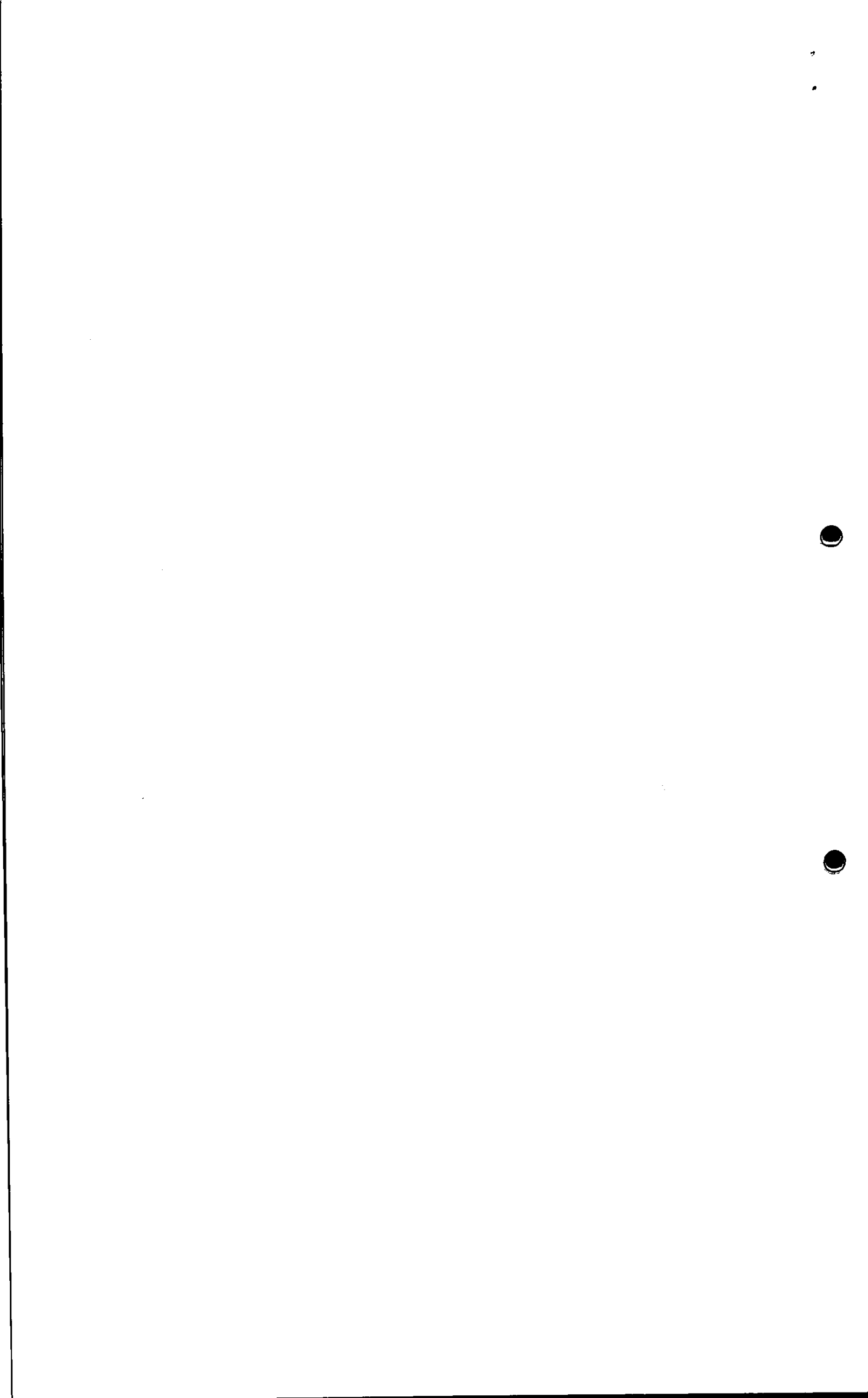
The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-220/OA/2021-22 dated 23.04.2021 issued to M/s Parth Bharatkumar Joshi, 2, Subhi Park, Opp. Zaveri Park, Naranpura, Ahmedabad, Gujarat-380013 .





## BRIEF FACSTS OF THE CASE

M/s. Parth Bharatkumar Joshi, 2 Subhi Park, Opp. Zaveri Park, Naranpura, Ahmedabad 380 013 having PAN No.AGZPJ5036C (hereinafter referred to as the assessee) was engaged in providing taxable services without taking registration.

2. On going through the third party CBDT data for the Financial Year 2015-16 and 2016-17, it has been observed that the Assessee has earned substantial service income by way of providing taxable services but has neither obtained service tax registration nor paid service tax thereon.

3. With effect from 01.07.2012, the negative list regime came into existence under which all the services are taxable and only those services that are mentioned in the negative list are exempted.

4. The nature of activities carried out by the assessee as service provider appeared to be covered under the definition of service and appeared to be not covered under the negative list as given in the section 66D of the Finance Act, 1994, as amended from time to time. These services also appeared to not be exempted under mega exemption notification No.25/2012-ST dated 20.06.2012, as amended from time to time, and hence the aforesaid service provided by the assessee appeared to be subjected to service tax.

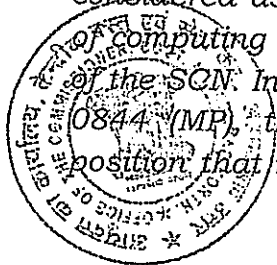
5. The service tax liability of the service tax assessee is ascertained on the basis of income mentioned in their ITR returns and Form 26AS filed by the assessee with the IT Department. The figures/data provided by the IT Department is considered as total taxable value in order to ascertain the service tax liability under section 67 of the Finance act, 1994. By considering the said amount as taxable income, the service tax liability is calculated as detailed below.:

Sr. No.	F.Y.	Total Value for TDS (including 194C, 194Ia, 194Ib,194) (In Rs.)	Service Tax Rate	Resultant Service Tax short paid (in Rs.)
1	2015-16	43477576	14.5%	6304249
2	2016-17	30902964	15%	4635445
	TOTAL			10939694

6. No data was forwarded by CBDT, for the period 2017-18 (upto June-2017) therefore at the time of issue of SCN, it is not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

7. Unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies that:

*"2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the*

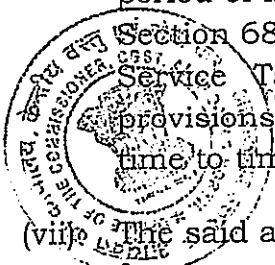


*show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient."*

8. From the facts, it appeared that the "total amount paid /credited under Section 194C, 194H, 194I, 194J for the FY 2017-18 (upto June 2017) has not been disclosed thereof by the income tax department or any other sources/agencies, against the said assessee, action will be initiated against the said assessee under the proviso to Section 73(1) of Finance Act 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 2017-18 (upto June 2017) covered under SCN will be recoverable from the assessee accordingly.

9. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the assessee, M/s. Parth Bharatkumar Joshi, have contraventions of the provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004:

- (i) Section 69(1) of the Finance Act, 1994 read with Noti.No.33/2012 dated 20.06.2012 as much as they failed to obtain service tax registration.
- (ii) Section 67 of the Finance Act, 1994 as much as they failed to determine the correct value of taxable service provided by them as discussed above.
- (iii) Failed to register with the Department and fail to declare correctly assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e.ST 3 and in such manner and at such frequency, as required under section 70 of Finance Act, 1994 read with Rule 6 & 7 of the service Tax Rules, 1994.
- (iv) Section 66B and Section 68 of Finance Act, 1994 and Rule 2&6 of Service Tax Rules, 1994 in as much as they failed to pay service tax correctly at the appropriate rate within the prescribed time in the manner and a the rate as provided under the said provision.
- (v) Section 77 of Finance Act, 1994, in as much as failed to take registration.
- (vi) All the above acts of contravention on the part of the said assessee appear to have been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid is required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years. All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appears to be publishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.
- (vii) The said assessee is also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.



10. The above said service tax liabilities of the assessee has been worked out on the basis of limited data/ information received from the Income tax department for the financial years 2015-16. Thus, the present notice relates exclusively to the information received from the Income Tax Department.

11. It was observed that the assessee has not obtained the ST registration from the Department for the services provided by them for the period FY 2015-16 to 2017-18 (upto June 17). Therefore, it was noticed that the assessee had not paid actual service tax by way of willful suppression of facts and in contravention of provisions of Finance Act, 1994 an rules made thereunder relating to levy and collection of service tax with intent to evade payment of service tax. The service tax amounting to Rs.1,09,39,694/- is therefore recoverable from them by invoking extended period of five years as per first proviso to sub section (1) of Section 73(1) of Finance Act, 1994. For this reason applicable interest u/s.75 of Finance Act, 1994 is also to be demanded & is recoverable from the assessee and the assessee are also liable to penalty under u/s.78 of Finance Act, 1994.

12. Further, the assessee is liable to pay penalty under the provisions of Section 77(1)(a), 77(1)(c) & 77(2) of the Finance Act, 1994 for failure to take registration in accordance with the provisions of section 69 and failure to furnish information/documents called for from them.

13. Therefore, Show Cause Notice No.STC/15-220/OA/2021 dated 23.04.2021 was issued to the assessee called upon to show cause as to why:

- (i) Service Tax of Rs. 1,09,39,694/- which was not paid for the financial year 2015-16 & 2016-17 as mentioned above, should not be demanded and recovered from them under proviso to sub section (1) of Section 73 of the Finance Act, 1994.
- (ii) Service Tax liability not paid during the financial year 2017-18 (upto June-2017), ascertained in future, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (ii) Interest at the appropriate rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty under the provisions of Section 77(1)(a), 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.
- (v) Penalty under Section 78 of the Finance Act, 1994. should not be imposed upon them for suppressing the full value of taxable services and material facts from the department resulting into non payment of service tax as explained hereinabove.



**DEFENCE REPLY**

The assessee vide letter dated 04.11.2022 filed their reply to SCN wherein they submitted that they are government approved contractor/sub

contractor and are done work of water supply projects, canal , irrigation which is exempted under service tax regime. They mentioned the relevant clause 12(d) & (e) and 29 (h) of the Notification No.25/2012 dated 20.06.2012 as amended.

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

(d) canal dam or other irrigation work

(e) pipeline, conduit or plant for

(i) water supply (ii) water treatment or (iii) sewerage treatment or disposal.

15. Thus their work is totally exempted and they are not liable to pay service tax hence the question of registration, filing of return, determination of value of services as mentioned under point no.9 of notice dated 23.04.2021 is not applicable to them. Further they have no intention to evade taxes as mentioned in the notice. They have attached all the work orders and bills of all the construction service provided to various entities during FY 2015-16 & 2016-17 and requested to consider the evidences and dispose off the notice.

#### PERSONAL HEARING

16. Personal Hearing in this case was held on 04.11.2022. Shri Parth Bharatkumar Joshi, proprietor, attended and submitted his written submissions. Further he requested time till 21.11.2022 for submission if remaining documents and accordingly he submitted the remaining documents such as copy of work orders, sample copy of invoices in support of their claim.

#### 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 to adjudicate the SCN.

18. I have carefully gone through the Show Cause Notice, reply to SCN alongwith submission made by the assessee, 26AS, for the year 2015-16 & 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.1,09,39,694/- for the financial year 2015-16 & 2016-17 on the basis of data received from Income Tax authorities. 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. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 1,09,39,694/- for the financial year 2015-16 & 206-17 under proviso to section 73(1) of Finance Act, 1944 or not.

19. On perusal of the reply to SCN and other documents, I find that the assessee has receipt from providing services in relation to water supply projects, canal and irrigation work which they claimed as exempted service in view of clause 12 (d) & (e) of as well as 29 (h) of Noti.no.25/2012 dated 20.06.2012. Here I would like to go the definition of service on which service tax is payable. 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:

*(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.*

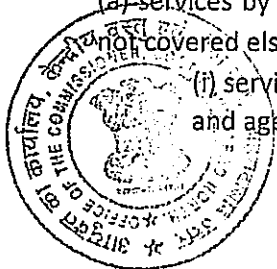
It is clear that the service tax is levied under Section 66B of the Finance Act, 1994 which reads as under:

*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"*

20. According to which service tax is levied on all services other than those specified in negative list (Section 66 D 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 Explanation 2 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;
- funeral, burial, crematorium or mortuary services including transportation of the deceased.

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.

20. 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.

21. Further, the assessee vide their submissions stated that during the financial year 2015-16 & 2016-17, their contract income or contract receipt is in respect of construction water treatment plant at Isanpur, Anand, Construction of RCC underground sump, pump house, WTP, ESR for Vijalpur regional water supply for Gujarat Water Supply and Sewage Board, construction of underground drainage scheme at Vijalpore for Gujarat Urban Development company, construction of distributaries for command area under vallabhuipur branch canal, construction of additional canal on madkha branch canal for Sardar Sarovar Narmada Nigam Ltd, construction of over head water tank for sidhpur Nagar palike, construction of 15 lac Ltrs capacity elevated service reservoir for Surat Municipal Corporation, of laying pipeline for providing water to various villages of Pancha Gram Panchayat as a main contractor and as a sub contractor. The said service provider claimed that these service are exempted from levy of whole of service tax leviable 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 leviable 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;"*

According to which 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 (d) canal, dam or other irrigation works in relation to (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; is exempted from the ambit of service tax.

22. I have carefully gone through the Show Cause Notice, reply to SCN, submissions made by the assessee, 26AS, copies of various work orders issued by various Govt., local bodies and Govt. authorities, copies of invoices for the year 2015-16 & 2016-17. On perusal of the above documents, I find that the assessee is providing services in respect of construction water treatment plant at Isanpur, Anand, Construction of RCC underground sump, pump house, WTP, ESR for Vijalpur regional water supply for Gujarat Water Supply and Sewerage Board. I find that the said assessee is providing services to Gujarat Water Supply & Sewerage Board (GWSSB) which is a wholly owned body of Govt. of Gujarat established under Gujarat Act No.18 of 1979, for rapid development and proper regulation of water supply and sewerage services in the State of Gujarat. In the instant case the work was allotted to M/s.Krishna Corporation and subsequently allotted to the assessee as a sub contractor. In view of the above, the service rendered to Gujarat Water Supply & Sewerage Board (GWSSB) is eligible for exemption in terms of Exemption Notification No.25/2012-ST dated 20.06.2012. 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 works contract allotted to M/s.Krishna Corporation is exempted, the services provided by the said assessee to M/s.Krishna Corporation is also exempted as per Sr. No.29 (h) of Notification No.25/2012-Service Tax dated 20.06.2012.

23. Further the assessee provided services in relation to construction of underground drainage scheme at Vijalpore for Gujarat Urban Development company, construction of distributaries for command area under vallabhuipur branch canal, construction of additional canal on madkha branch canal for Sardar Sarovar Narmada Nigam Ltd, construction of over head water tank for sidhpur Nagar palike, construction of 15 lac Ltrs capacity elevated service reservoir for Surat Municipal Corporation as sub contractor and laying pipeline for providing water to various villages of Pancha Gram Panchayat as a main contractor. I further find that M/s.Sardar Sarovar Narmada Nigam Ltd & Gujarat Urban Development company are wholly owned Govt. Of Gujarat undertaking and therefore, for the service rendered to both the entities are eligible for exemption in terms of Exemption Notification No.25/2012-ST. They have also provided to services to Surat Municipal Corporation, Sidhpur Nagar palika which are also covered under clause 12 of Noti.No.25/2012 as these service receivers are covered under local bodies. All the above services are originally allotted by these govt. organizations /local bodies to various main contractors such as M/s.Navkar Engineers & Construction Co., M/s.Jalaram

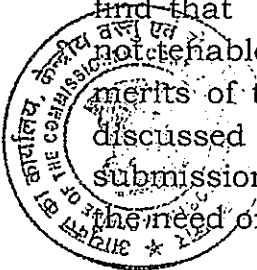
Construction Co, M/s.Jalaram Projects P.Ltd etc and subsequently the assessee provided these services as a sub contractor to these main contractors.

24. In view of the above, the service rendered to these Govt. entities/local bodies is eligible for exemption in terms of Exemption Notification No.25/2012-ST. 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 works contract services allotted to the above referred main contractors are exempted, the services provided by the said assessee to these entities are also exempted. I further find that the assessee has also engaged in pipeline for providing water to various villages of Pancha Gram Panchayat as a main contractor. Pancha Gram Panchayat is covered under the ambit of local body, the service rendered by the assessee is also eligible for exemption in terms of Exemption Notification No.25/2012-ST being a main contractor.

25. Further, on perusal of Form 26AS and other documents, I find that the differential value of Rs.4,34,77,576/- for the FY 2015-16 and Rs.3,09,02,964/- for the FY 2016-17 are received from providing services to the above discussed projects and therefore they are eligible for exemption under clause 12 of Notification No.25/2012 dated 20.06.2012. As the total differential value, as mentioned, is exempted from the ambit of service tax, the service tax of Rs.1,09,39,694/- demanded vide instant SCN is not sustainable and therefore required to be dropped.

26. Further, on perusal of the SCN, I find that the levy of service tax for 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. 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 total value for TDS. I therefore refrain from discussing the taxability on other income other than total value for TDS for the FY 2015-16 & 2016-17

27. In view of the above discussion and findings and also on perusal of SCN, reply to SCN, Form 26AS, reconciliation statement and other documents, I find that demand of Rs.1,09,39,694/- demanded vide above referred SCN is not sustainable in law. Accordingly, I do not consider it necessary to delve on the merits of the case by invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise for imposing any penalty.



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

**ORDER**

29. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 1,09,39,694/- along with interest and penalties against M/s. Parth Bharatkumar Joshi vide SCN No.STC/15-220/OA/2021-22 dated 23.04.2021.

(Lokesh Damor)

Joint Commissioner  
Central GST & Central Excise  
Ahmedabad North

F.No. STC/15-220/OA/2021



Date:

To,  
M/s. Parth Bharatkumar Joshi,  
2 Subhi Park, Opp. Zaveri Park,  
Naranpura, Ahmedabad 380 013



Copy to:

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

<p>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 &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>

निवन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20221164WT000031843B

फा.सं./F.No. STC/15-253/OA/2021

आदेश की तारीख/Date of Order :- 22.11.2022  
जारी करने की तारीख/Date of Issue :- 23.11.2022

द्वारा पारित/Passed by:-

मुकेश राठौर / Mukesh Rathore  
अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 72/ADC/MR /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 रू. 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।

(3) उक्त अपील की प्रति।

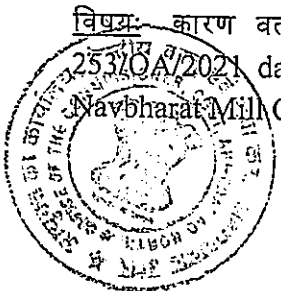
(4) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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:

(3) Copy of accompanied Appeal.

(4) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय: कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No. STC/15-253/OA/2021 dated 09.06.2021 issued to M/s Narandas Mulchanbhai Mukhi, Ground Floor, Navbharat Mill Compound/Noroda road, Naroda, Ahmedabad, Gujarat.





**BRIEF FACTS OF THE CASE:-**

M/s. Narandas Mulchanbhai Mukhi, Ground Floor, Navbharat Mill Compound/Naroda Road, Naroda, Ahmedabad (hereinafter referred to as the 'said assessee') having PAN No.AAHFN5302M was engaged in providing taxable services without taking registration.

2. On perusal of the data received from CBDT, it was noticed that the said assessee had earned substantial service income by way of providing taxable services, but has neither obtained service tax registration nor paid service tax thereon.

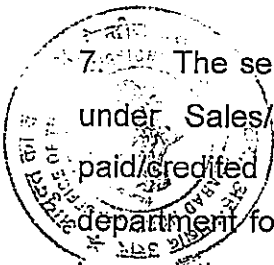
3. A letter dated 28.01.2021 and its reminder dated 16.03.2021 was issued to the assessee with a request to produce the documents mentioned therein within a weeks time from the date of receipt of the letter. However, the said assessee failed to submit the required details/documents.

4. 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.

5. The nature of activities carried out by the assessee as Service Provider appeared to be covered under the definition of service and appeared to be not covered under the Negative List as given in Section 66D of the Finance Act, 1994, as amended from time to time. These services also appeared to not be exempted under mega exemption notification no.25/2012-ST dated 20.06.2012, as amended from time to time, and hence the aforesaid services provided by the assessee appeared to be subjected to service tax.

6. Since the said assessee had not submitted the required details of services provided during the financial year 2015-16, the service tax liability of the service tax assessee was required to be ascertained on the basis of income mentioned in the ITR returns and form 26AS filed by the assessee with the Income Tax Department. The figures / data provided by the Income Tax Department was considered as the total taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.

7. The service tax payable was calculated on the basis value of "Sales of services under Sales/Gross receipts from services (value from ITR)" or "Total amount paid/credited under Section 194C, 194I, 194H, 194J" as provided by the Income tax department for the financial year 2015-16. By considering the said amount as taxable income, the service tax liability was calculated as detailed below :-



Sr .No.	Financial Year	Sales of services under Sales/Gross receipts from services (value from ITR)" or "Total amount paid/credited under Section 194C, 194I, 194H, 194J	Service Tax rate	Service Tax payable
1	2015-16	4,12,11,421/-	14.50%	59,75,656/-
	Total			59,75,656/-

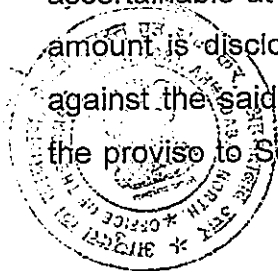
8. No data was forwarded by CBDT for the period 2016-17 and 2017-18 (upto June-2017) and the assessee has also failed to provide any information regarding rendering of taxable service for this period. Therefore, at the time of issuance of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2016-17 and 2017-18 (upto June-2017).

9. 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 clarifies that:

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

10.. From the facts, it appeared that the "Total Amount paid/credited under Section 194C, 194H, 194I, 194J" or Sales/Gross receipts from services (from ITR) for the financial year 2016-17 AND 2017-18 (upto June-17) has not been disclosed by the Income Tax Department, nor the reason for the non disclosure was made known to the department. Further, the assessee had also failed to provide the required information even after the issuance of letters and summons from the department. Therefore, the assessable value for the year 2016-17 and 2017-18 (upto June-17) was not ascertainable at the time of issuance of show cause notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/ agencies, against the said assessee, action would be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with para 2.8 of the Master



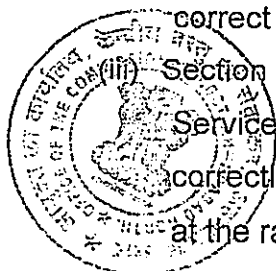


Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the service tax liability arising in future, for the period 2016-17 and 2017-18 (upto June-17) covered under this show cause notice, would be recoverable from the assessee accordingly.

11. The government has from the very beginning placed full trust on the service provider so far as service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust by the service provider, no matter how innocently. From the evidence on record, it appeared that the said assessee had not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider appeared to have made deliberate efforts to suppress the value of taxable service to the department and appeared to have not paid the liable service tax in utter disregard to the requirements of law and the trust deposited in them. Such outright act in defiance of law, appeared to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

12. In light of the facts discussed hereinabove and the material evidences available on records, it was revealed that the assessee, M/s. Narandas Mulchanbhai Mukhi, Ground Floor, Navbharat Mill Compound/Naroda Road, Naroda, Ahmedabad had contravened the following provisions of Chapter-V of Finance Act, 1994, the Service Tax Rules, 1994;

- (i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994;
- (ii) Section 67 of the Finance Act, 1994 in as much as they failed to determine the correct value of taxable service provided by them as discussed above;
- (iii) Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision



- (iv) Section 69(1) of the Finance Act, 1994 read with Notification No.33/2012-Service Tax dated 20.06.2012 in as much as they failed to obtain service tax registration.
- (v) All the above acts of contravention on the part of the said assessee appeared to have been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid is required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years. All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.
- (vi) The said assessee is also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.
- (vii) Section 77 of the Finance Act, 1994 in as much as they failed to take registration and did not provide required data /documents as called for, from them.

13. The above said service tax liabilities of the assessee has been worked out on the basis of limited data / information received from the Income Tax Department for the financial years 2015-16. Thus, the show cause notice relates exclusively o the information received from the Income Tax Department.

14. It was observed that the assessee had not obtained the service tax registration from the department for the services provided by them for the period of 2015-16 nor responded to correspondence made by the department in order to ascertain the actual taxable service income. Therefore, it appeared that the assessee had not paid actual service tax by way of willful suppression of facts and in contravention of provisions of the Finance Act, 1994 relating to levy and collection of service tax and the Rules made thereunder with intent to evade payment of service tax. The service tax amounting to Rs.59,75,656/- was therefore recoverable from them by invoking extended period of five years as per first proviso to sub section (1) of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.NO.CBEC-20/06/08/2020-GST.

14.1 For this reason applicable interest under Section 75 of the Finance Act, 1994 is also demandable and recoverable from the assessee and the assessee are also liable to penalty under Section 78 of the Finance Act, 1994.

15. Further, the said assessee (a) who was liable to pay service tax or required to take registration, fails to take registration in accordance with the provisions of Section 69; (b) failed to furnish information/documents called for from them, accordingly, the said assessee was liable to penalty under the provisions of Section 77(1)(a), 77(1)(c) and 77(2) of the Finance Act, 1994.

16. The said assessee was given opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 09.06.2021 but the said assessee did not appear for the same.

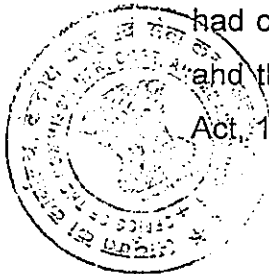
17. Therefore, a Show Cause Notice bearing F.No.STC/15-253/OA/2021 dated 09.06.2021 was issued to M/s. Narandas Mulchanbhai Mukhi, Ground Floor, Navbharat Mill Compound/Naroda Road, Naroda, Ahmedabad to show cause to the Additional Commissioner, CGST & CX, Ahmedabad North having office at 1 Floor, Custom House,. Navrangpura, Ahmedabad as to why:

- (i) Service tax of Rs.59,75,656/- which was not paid for the financial year 2015-16 as mentioned above, should not be demanded and recovered from them under the proviso to Sub Section (1) of Section 73 of the Finance Act, 1994 read with notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;
- (ii) Service tax liability not paid during the financial year 2016-17 and 2017-18 (upto June-17) ascertained in future, should not be demanded and recovered from them under proviso to sub section (1) of Section 73 of the Finance Act, 1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (1) above under Section 75 of the Finance Act, 1994;
- (iv) Penalty under the provisions of Section 77(1)(a), 77(1)(c) and 77(2) of the Finance Act, 1994, as amended, should not be imposed on them.
- (v) Penalty under Section 78 of the Finance Act, 1994, as amended, should not be imposed on them for suppressing the full value of taxable services and material facts from the department resulting into non payment of service tax as explained above.

**DEFENCE REPLY :-**

In response to Show Cause Notice dated 09.06.2021, the said assessee vide letter dated 08.07.2021 submitted their reply wherein they submitted that :

- Their firm has been in the business of transportation of goods by road; that they were issuing consignment notes for the goods received for transporting from one place to another and so they are called Goods Transport Agency
- Rule 4B of Service Tax Rules prescribes that any Goods Transport Agency providing service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the customer. In terms of this rule, the consignment note means a document issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, per liable for paying service tax whether consignor, consignee or the goods transport agency.
- According to Notification No.30/2012-ST dated 20.06.2012, the service tax liability was shifted to service receiver in case of GTA service under reverse charge mechanism; which means they were not liable to charge or pay service tax on their transportation charges.
- During the years 2015-16 they had earned revenue of Rs.4,12,11,421/- from transportation income; that there was no service tax liability on service provider in view of notification no.30/2012; so no service tax liability on this income
- In view of the above, no proceedings should be initiated for the following reasons:-
  - (i) The service provided by them was not liable to service tax under notification no.30/2012 dated 20.06.2012, so it was not chargeable to service tax
  - (ii) As the service which they had provided was chargeable on reverse charge mechanism, they were not liable to pay service tax of Rs.59,75,656/- for the financial year 2015-16. Thus the said demand is not recoverable
  - (iii) As there was no service tax liability, there is no question of interest payable under Section 75 of the Finance Act, 1994
  - (iv) As their service have been chargeable on RCM, they were not liable to obtain service tax registration and thus penalty under the provisions of Section 77(1)(a), 77(1)(c) and 77(2) of the Finance Act, 1994, as amended could not be imposed.
  - (v) There was no will full suppression of the facts to the department as they had complied with all the provisions of the act during the year in question and thus, penalty could not be imposed under Section 78 of the Finance Act, 1994.



**PERSONEL HEARING :-**

19. Personal Hearing in this case has been granted to the assessee on 17.11.2022. Shri Nishit B. Thakkar, CA and Shri Bharat Kumar Kantilal Patel, Partner appeared for personal hearing on 17.11.2022. They reiterated their written submission dated 08.07.2021 and requested to drop the show cause notice.

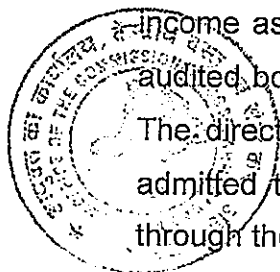
**DISCUSSION AND FINDINGS :-**

20. 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.

21. I have carefully gone through the records of the case, SCN, defence reply as well as oral submissions made by the said assessee during the course of personal hearing. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs. 59,75,656/- for the financial year 2015-16 on the basis of Form 26AS/ITR data received from Income Tax authorities. The Show Cause Notice alleged non-payment/short payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77(1)(a), 77(1)(c) 77(2) & 78 of the Finance Act, 1994.

22. In reply to the show cause notice, the said assessee has contended that that they are into the business of transportation of goods by road i.e. Goods Transport Agency; that according to Notification No.30/2012-ST dated 20.06.2012, the service tax liability was shifted to service receiver in case of GTA service under reverse charge mechanism which means they were not liable to charge or pay service tax on their transportation charges.

23. I find that the said assessee is not registered under Service Tax Department and hence have not filed any ST-3 returns nor paid any service tax on the services provided by them. On the basis of documents submitted by the said assessee i.e. Form No.3 CD for the year 2015-16, I find that the assessee is a Partnership Firm. I find that total income as per the SCN and the income shown under the head "Direct Income" in the audited books of the said assessee for the financial year 2015-16 is Rs.4,12,11,420/-. The direct income of Rs.4,12,11,420/- is their transportation income and they have admitted the same in their written reply dated 08.07.2021. Now I would like to go through the legal aspects of the taxability of GTA services.



24. Rule 2(1)(d)(i)(B)(V) of the Service Tax Rules, 1994 provided that;

(d) "person liable for paying service tax", -

(i) in respect of the taxable services notified under sub section (2) of

Section 68 of the Act, means, -

(B) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(III) any co-operative society established by or under any law;

(IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(V) any body corporate established, by or under any law; or

(VI) any partnership firm whether registered or not under any law including association of persons;

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage :

Provided that when such person is located in anon-taxable territory, the provider of such service shall be liable to pay service tax.

25. Para I(A)(ii) and Para II of Notification No. 30/2012-ST dated 20.06.2012 as amended provided that service tax payable on taxable services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not under any law including association of persons;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :-

TABLE

Sl. No.	Description of Service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving service
02	in respect of services provided or agreed to be	NIL	100%

	provided by a goods transport agency in respect of transportation of goods by road		
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26. On perusal of the financial records, I find that the assessee has Direct income of Rs.4,12,11,420/- from GTA services provided by them. I find that they have bifurcated the direct income in the P&L A/c are as under :-

BPCL Cartage	Rs.60,78,580/-
Cartage Income	Rs.15,22,288/-
Cash Cartage Income	Rs.6,16,476/-
Goodluck Transport Co. Cartage income	Rs.64,67,919/-
IOCL Cartage	Rs.2,65,26,157/-
Total	Rs.4,12,11,420/-

27. As per provisions contained in Rule 2(1)(d)(i)(B)(V) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, service tax on GTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) and any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder is payable in Reverse Charge Mechanism by the service recipient. However, if the freight is paid by an individual / proprietorship firm or HUF then the service tax thereon shall be paid by the GTA itself i.e. the service provider himself.

28. On the basis of documents submitted by the said assessee viz. work order, work completion certificate, transport contract agreement, I find that the said assessee have provided GTA service to M/s Bharat Petroleum Corporation Ltd. (M/s BPCL) for transportation of bulk LPG by road and M/s Indian Oil Corporation Limited (M/s IOCL) for transportation of packed lubes and greases in containerized trucks. I find that the said assessee in their defence reply has claimed that service tax is payable under Reverse Charge Mechanism as per Notification No.30/2012-ST dated 20.06.2012. Since M/s BPCL and M/s IOCL are both body corporate, they are liable to pay service tax under Reverse Charge mechanism on the GTA service provided by the said assessee. Hence, the said assessee is not required to pay service tax on the transportation income totally amounting to Rs.3,26,04,737/- (Rs.60,78,580/- BPCL + Rs.2,65,26,157/- IOCL) received from M/s BPCL and M/s IOCL, respectively and the same is liable to be dropped.

29. As regards, the remaining transportation income as detailed below, I find that the said assessee has not submitted any bifurcation/ledger of Cartage Income of Rs.15,22,288/- and Cash Cartage Income of Rs.6,16,476/-. I also find that the said assessee has not produced any work order, documents to prove the legal status of Goodluck Transport Co from whom they have received transportation income of Rs.64,67,919/-. Hence, in absence of documents, the transportation income of Rs.86,06,683/- cannot be treated as transportation income received from a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) and any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944).

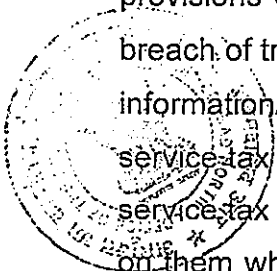
Cartage Income	Rs.15,22,288/-
Cash Cartage Income	Rs.6,16,476/-
Goodluck Transport Co. Cartage income	Rs.64,67,919/-
Total	Rs.86,06,683/-

Therefore, I find that the said assessee is liable to pay service tax on the transportation income of Rs.86,06,683/- which comes to Rs.3,74,391/-, as detailed below :-

Sr. No.	Year	Transportation income	Abatement @ 70% as per Not. No.8/2015-ST dtd. 1.3.15	Taxable value	Service Tax @ 14.5%
1	2015-16	Rs.86,06,683/-	Rs.60,24,678/-	Rs.25,82,005/-	Rs.3,74,391/-

In view of the above discussion, I find that the said assessee is liable to pay service tax amounting to Rs.3,74,391/- on the transportation income of Rs.86,06,683/- and the same is liable to be recovered from them.

30. 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 deposited 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



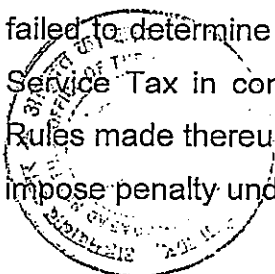


the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts. Therefore, service tax amounting to Rs.3,74,391/- as worked out in Table supra for financial Year 2015-16 is required to be recovered 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.

31. 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.

32 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; that they failed to furnish information thereby rendering themselves liable for penalty under Section 77(1)(c) of the Finance Act, 1994; that they failed to determine the correct value of taxable service provided by them and failed to pay the service tax correctly at the appropriate rate thereby rendering themselves liable for penalty under Section 77(2) of the Finance Act, 1994.

33. 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 intend 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.

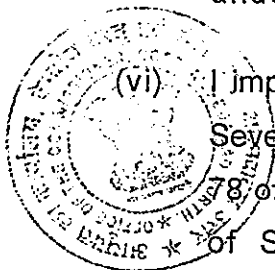


34. On perusal of para 8 & 9 of the SCN, I find that the levy of service tax for Financial Year 2016-17 and 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. I, however, do not find any charges levelled for demand for financial year 2016-17 and 2017-18 (upto June 2017) in charging part of the SCN. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income shown in 26AS. I therefore refrain from discussing the taxability on other income other than the income shown in 26AS.

35. In view of the above facts and findings, I pass the following order:-

### ORDER

- (i) I confirm the demand of Service Tax of Rs.3,74,391/- ( including cess) (Rupees Three Lakh Seventy Four Thousand Three Hundred Ninety One 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; I drop the remaining demand of Service Tax amounting to Rs.56,01,265/- as discussed above;
- (ii) 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;
- (iii) I impose penalty of Rs.10,000/- on M/s. Narandas Mulchanbhai Mukhi under Section 77(1)(a) of the Finance Act, 1994;
- (iv) I impose penalty of Rs.10,000/- on M/s. Narandas Mulchanbhai Mukhi under Section 77(1)(c) of the Finance Act, 1994;
- (v) I impose penalty of Rs.10,000/- on M/s. Narandas Mulchanbhai Mukhi under Section 77(2) of the Finance Act, 1994;

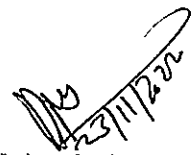


- (vi) I impose Penalty of Rs.3,74,391/- ( including cess) (Rupees Three Lakh Seventy Four Thousand Three Hundred Ninety One Only), under Section 78 of the Finance Act, 1994, as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s. Narandas Mulchanbhai Mukhi pays the amount of Service Tax as determined

at Sl. No. (1) above and interest payable thereon at (2) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Narandas Mulchanbhai Mukhi 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.

36. Accordingly the Show Cause Notice bearing F.No. STC/15-253/OA/2021 dated 09.06.2021 is disposed off.

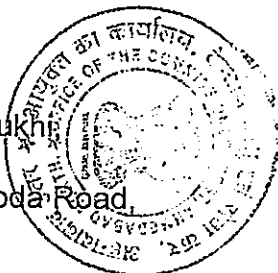


  
(Mukesh Rathore)  
Additional Commissioner  
Central GST & Central Excise  
Ahmedabad North

By RPAD  
F.No. STC/15-253/OA/2021

Dt.:- 23.11.2022

To,  
M/s. Narandas Mulchanbhai Mukhi  
Ground Floor,  
Navbharat Mill Compound/Naroda Road,  
Naroda,  
Ahmedabad



Copy to:

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

