


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-13/OA/2021

DIN-20220164WT000000D69F

आदेश की तारीख / Date of Order : 06.01.2022
जारी करने की तारीख / Date of Issue : 07.01.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 48 /2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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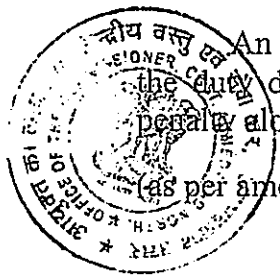
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

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

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)



3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से क)की जाएंगी प्रतियाँ संलग्नम एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

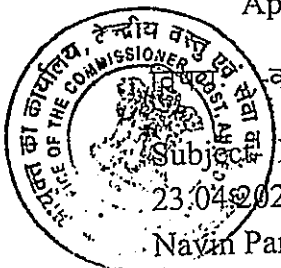
The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.



कारण बताओ सूचना:

Subject: Proceedings initiated vide Show Cause Notice No. STC/15-13/OA/2021 dated 23.04.2021 issued to M/s. B. M. Patel Engineering Corporation, 101, Parth Avenue, Navin Park Society, Naranpura, Ahmedabad.

M/s B. M. Patel Engineering Corporation situated at Office No.101, Parth Avenue, Navin Park Society, Naranpura Char Rasta, Naranpura, Ahmedabad-380 013 were issued SCN F. No. STC/15-13/OA/2021 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North.

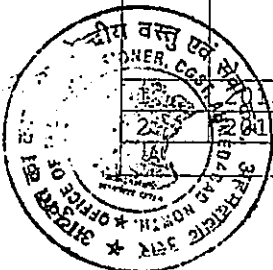
BRIEF FACT OF THE CASE PERTAINING TO ISSUANCE OF THE SUBJECT SCN ARE AS UNDER:

M/s. B. M. Patel Engineering Corporation situated at Office No.101, Parth Avenue, Navin Park Society, Naranpura Char Rasta, Naranpura, Ahmedabad-380 013, GUJARAT (hereinafter referred to as 'Assessee') engaged in providing taxable services, are holding Service Tax Registration No. AADFB4150FSD001.

2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" of B.M.Patel Engineering Corporation was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 & 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes & Customs (CBIC).

3. As per the records available with the Divisional Office of Division-VII, Ahmedabad North Commissionerate and on going through the Third Party Data provided by CBDT of the said assessee for the F.Y. 2015-16 & 2016-17, the total sales of service from ITR/26AS were found to not tallying with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16 & 2016-17. Therefore, it appeared that the said assessee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for the F.Y. 2015-16 & 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16 & 2016-17. The difference in value as observed for FY 2015-16 & 2016-17 was as under:

Sr. No	F.Y.	Taxable value as per ST3 returns (in Rs.)	Gross Receipts from services (Value from ITR/26AS) (in Rs.)	Difference between value of services from ITR/26AS and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax Short Paid (in Rs.)
	15-16	0/-	14,26,95,378/-	14,26,95,378/-	2,06,90,830/-
	16-17	0/-	0/-	0/-	0/-
TOTAL==>>					2,06,90,830/-



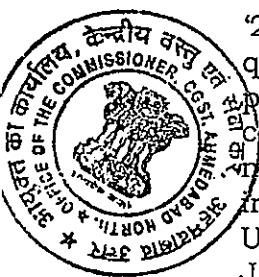
of Third party Data/information of CBDT for the F.Y. 2015-16 & 2016-17, the service provider appeared to have less/not discharged their service tax liability on the actual value received towards taxable services provided at the rate prescribed under Section 66 of the said Act. All these acts of contravention on the part of the service provider appeared to have been committed by way of suppression of the facts by not declaring/not considering the correct value of taxable services provided by them for payment of Service Tax to the Central Government for the period in question, with intent to evade payment of Service Tax and therefore the service tax which was not paid at the material time was required to be demanded and recovered under the proviso to Section 73(1) along with interest as per provision of Section 75 of the Finance Act, 1994.

8. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it appeared that the said assessee had contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee appeared to have rendered the assessee liable to penalty under Section 76 & Section 77 of the Finance Act.

9. The provisions of the repealed Central Excise Act, 1944, the Central Excise Tariff Act, 1985 and amendment of the Finance Act, 1994 have been saved vide Section 174 (2) of the CGST Act, 2017, and therefore the provisions of the said repealed/amended Acts and Rules made there under are enforced for the purpose of demand of duty, interest, etc. and imposition of penalty under the Show Cause Notice.

10. Further, Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified as under :

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



valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'

11. From the facts and circumstances as narrated above, it appeared that the data for the F.Y. 2017-18 (up to June'2017) had not been disclosed thereof by the Income Tax Department, nor the reason for the non-disclosure was made known to this department. The said assessee had also failed to provide the required information even after the issuance of letters from the Department. Therefore, the assessable value for the year F.Y. 2017-18 (up to June'2017) was not ascertainable at the time of issuance of Show Cause Notice. Consequently, if any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action was to be initiated against them under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period F.Y. 2017-18 (up to June'2017) covered under the Show Cause Notice issued, was to be recoverable from the said assessee accordingly.

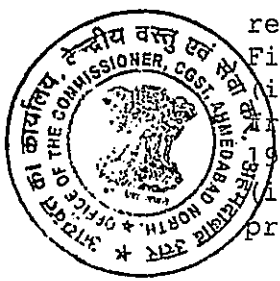
12. As per Board's Instruction No 1080/09/DLA/MISC/15 dated 21.12.2015 and Instruction No 1080/11/DLA/CC Conference/2016 dated 8.7.2016, pre consultation with the adjudicating authority had been made mandatory before issuance of a show cause notice involving an amount of over Rs 50 lacs. Accordingly, a communication was made to the assessee fixing the date for pre-consultation on 23.04.2021 by the SCN issuing authority. Nobody turned up for pre-consultation before issuance of SCN.

13. A Show Cause Notice No.STC/15-13/OA/2021 dated 23.04.2021 was issued by the Commissioner, Central GST & Central Excise, Ahmedabad North to M/s. B.M. Patel Engineering Corporation, Ahmedabad, asking them as to why :

(i) The Service Tax to the extent of Rs. 2,06,90,830/- (Rupees Two Crore Six lakhs Ninety thousand Eight hundred Thirty Only) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994;

(ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;

(iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.



(iv) Penalty should not be imposed on them under the provisions of Section 77(2) of the Finance Act, 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

14. DEFENCE REPLY:

The assessee vide letter dated 11.05.2021 received on 19.05.2021 in the Commissionerate submitted their written submission. They have submitted that, they had filed all ST-3 returns for the period 2015-16 & 2016-17. They have stated that the details of services provided by them were as per the actual billing. They have submitted summary of ST-3 Return for the year 2015-16 & 2016-17 along with the amount of Services on which service tax payment was discharged by them as under;

F.Y.	Period	Value of service declared (Amount in Rs.)	Total value of service for F.Y	Total value of service declared in ST3 as per Notice (amount in Rs.)
2015-16	April to September	1,48,59,518/-	5,27,31,751/-	NIL
	Oct to March	3,78,72,233/-		
2016-17	April to September	Nil		
	Oct to March	16,49,806/-	16,49,806/-	NIL

The assessee have further submitted that they were engaged in setting up of pipe line, water sewage plant for the government and that activity was exempted from levy of Service Tax in accordance with Mega Exemption Notification No.25/2012-ST dated 20th June, 2012, Entry No. 12;

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) ***

(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)

(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)

They have further submitted that, other work carried out by them was sub-contract work of pipeline work, which was also exempted through Entry No.29 (h) of Mega Exemption Notification No.25/2012 dated 20th June, 2012.

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

They have submitted that, said services were not subject to levy of Service Tax; however, due to clerical error it was not



reported in ST-3 returns filed by them. They have submitted that value of exempted services provided by them was Rs.8,99,66,454/- for F.Y.2015-16 and Rs.9,27,26,387/- for F.Y.2016-17.

The assessee have submitted that, in demand cum show cause notice, value of Services was not reconciled with the amount of Services reflected under 26AS. They have submitted the self reconcile working, matched with the turnover declared and amount reflected in 26AS for the respective year as under;

F.Y.	Value of taxable service as declare in ST3 (A)	Value of exempted service (B)	Total service declared C=A+B	Total service value as declared in profit and loss account	Total service value as per 26AS
2015-16	5,27,31,751/-	8,99,66,454/-	14,26,98,205/-	14,26,98,205	14,26,98,205/-
2016-17	16,49,806/-	9,27,26,387/-	9,43,76,193/-	9,43,76,193/-	9,43,76,193/-

They have submitted that, it was clear from the above table, that the amount declared in ST-3 was matching with the amount declared in income tax returns, as well as amount reflected in Form 26AS. They have submitted that they had paid service tax which was due for the F.Y.2015-16 and F.Y. 2016-17 and the same had been reflected in their ST3 returns.

The assessee further submitted that they had paid service tax on the tax liability due on them. They have submitted that SCN had shown payment of service tax "NIL", however, they had paid service tax of Rs.39,02,762/- for F.Y.2015-16 & 2016-17. They have submitted that there was no default for payment of service tax, and there was no short payment of service tax, interest and penalty under the Finance Act,1994.

15. PERSONAL HEARING:

The assessee M/s. B. M. Patel Engineering Corporation, Ahmedabad were granted personal hearing on 09.12.2021 to present their case. Shri Vishrut Shah, Chartered Accountant appeared on behalf of the assessee for personal hearing. They referred to the written reply of the noticee tendered on 11.05.2021. They requested to decide the proceedings taking into consideration averment made by the noticee vide their submission dated 11.05.2021.

DISCUSSION & FINDINGS:

I have carefully gone through the facts of the case and records available in the case file, which include the SCN,

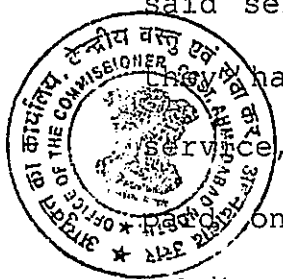


the defense reply dated 11.05.2021 and documents submitted by the assessee.

16.2 On going through the Show Cause Notice, I find that data of Sales /Gross receipt from services as per ITR were shared by the CBDT with CBIC for F.Y. 2015-16 & 2016-17, which was then compared with the gross value declared in ST-3 Returns filed for FY 2015-16 & 2016-17 by the assessee. The difference in value of service to the extent of Rs.14,26,95,378/- was noticed and therefore, in view of the differential values the subject SCN for recovery of Service Tax to the tune of Rs.2,06,90,830/- was issued. Apart from the aforementioned difference noticed, no other documentary evidence was adduced by the department to substantiate the allegations. Accordingly, I find that the issue which requires determination as of now is whether the assessee was liable to pay service tax on the differential value of Rs. 14,26,95,378/- under proviso to section 73(1) of Finance Act, 1944 or not.

17. Thus, first and foremost, to understand the liability or otherwise of the noticee for paying Service Tax, I feel that it is absolutely necessary to understand the activities being carried out by the assessee. I observe that after introduction of new system of taxation of services in negative list regime, any service for a consideration is taxable except those services specified in the negative or exempt list by virtue of mega exemption.

17.1 I discern that the assessee in his defence reply dated 11.05.2021 has stated that they have rendered services of works contract service awarded by the Government and sub-contract work by the main contractor, and the same were Exempted vide Clause 12 & 29(h) of Mega Exemption Notification No.25/2012-ST dated 20.06.2012, and they were not liable to pay service tax on the said services provided by them. Further, they have stated that they had provided the taxable services under works contract service, and service tax of Rs. 39,02,762/- had already been paid on that taxable services of works contract. They have submitted the sample copies of works order awarded by the



Government to them. The assessee vide letter dated 21.12.2021 submitted their additional submission with audited balance sheet for F.Y.2015-16 & 2016-17, Sales Bill register and debtors ledger for F.Y. 2015-16 & 2016-17, work order copies of AMC, Gujarat University, AUDA, reconciliation for F.Y.2015-16 & 2016-17.

17.2 The assessee has also submitted the Audit Report for the F.Y. 2015-16 and 2016-17 issued by auditors J. K. Parmar & Co., Chartered Accountants, 31, 3rd Floor, Binori Corner, Nr. Railway Overbridge, Jivrajpark, Ahmedabad, Membership No.034138 under Section 44AB of the Income Tax Act, 1961. Section 44AB of Income Tax, Act, 1961 is reproduced herein below for ease of ready reference;

SECTION - 44AB, INCOME-TAX ACT, 1961-2021

Audit of accounts of certain persons carrying on business or profession.

44AB. ⁶Every person,—

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year ²[***]:

⁸[Provided that in the case of a person whose—

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment:

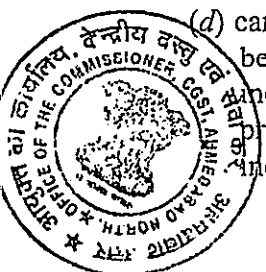
²[Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash,]

this clause shall have effect as if for the words "one crore rupees", the words "¹⁰[ten] crore rupees" had been substituted; or]

(b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or



company and also to call additional information required for verification to arrive at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs of the company. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

17.4 I find that the Notification No. 25/2012-ST dated 20.06.2012 issued under Section 93(1) of the Act, grant exemption to the taxable services enlisted therein from whole of Service Tax leviable under section 66B of the Act. I find that the assessee has contested the demand of Service Tax on services rendered by them being service provided under the Works Contract Services for the Government and sub contractor. The noticee had claimed the exemption from levy of service tax under Sr. No.12 & 29(h) of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. I am in agreement with the assessee that they were eligible for exemption benefit from the payment of service tax for the services provided to AMC, NagarPalika, AUDA for pipeline, conduit or plant for water supply, water treatment or sewerage treatment or disposal and construction of road. I therefore would like to reproduce the said Sr. No.12 & 29 (h) of Mega Exemption Notification No.25/2012-ST dated 20.06.2012 ibid herein as under:

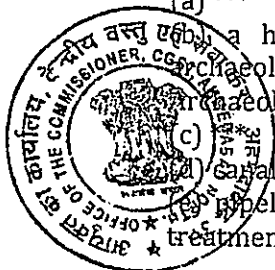
" 12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

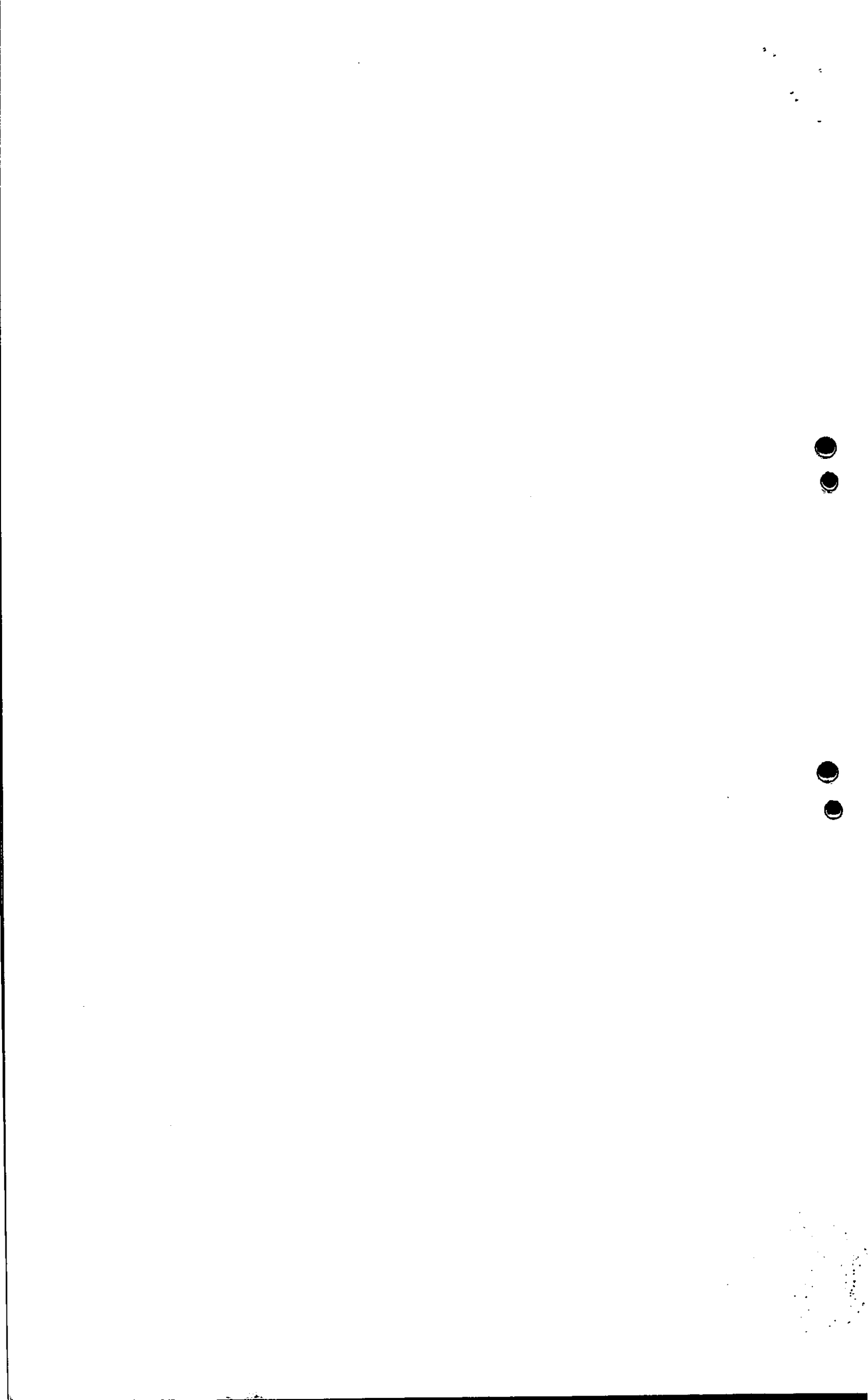
(a) ***

(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) Canal, dam or other irrigation works;

(d) Pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or





(f) ***

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;”

“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;”

17.5 They have submitted that they i.e. M/s. B. M Patel Engineering Corporation were working in the field of construction of works awarded by Government as well as sub-contract work of other contractor to whom the original work had been awarded by the Government, as per clause 12 & 29(h) of Mega Exemption Notification No.25/2012-Service Tax dated 20.06.2021, said services qualified for exemption from levy of service tax, so they were not liable to pay service tax on the said services provided by them. They have stated that, they had paid service tax on taxable services for works contract services which were not covered under Exemption Notification NO.25/2012. They have submitted the sample copy of works orders issued by the Government Authority. They have further informed that they had paid service tax on services which were not exempted by virtue of Mega Exemption Notification during F.Y.2015-16 and F.Y.2016-17. They have submitted that they had filed all service tax return (ST3) for F.Y.2015-16 & 2016-17. They have further submitted the reconciliation of Works Contract Income with Service Tax Return and Income Tax Return herein as below;

F.Y.	Value of taxable service as declare in ST3 (A)	Value of exempted service (B)	Total service declared C=A+B	Total service value as declared in profit and loss account	Total service value as per 26AS
2015-16	5,27,31,751/-	8,99,66,454/-	14,26,98,205/-	14,26,98,205	14,26,98,205/-
2016-17	16,49,806/-	9,27,26,387/-	9,43,76,193/-	9,43,76,193/-	9,43,76,193/-

They have submitted the documents i.e. audited balance sheet & profit and loss account, Service Tax return for F.Y.2015-16, F.Y.2016-17, Copy of 26AS, and sample copy of Works Orders. They have submitted that there was no difference in turnover as per income tax return and service tax return.

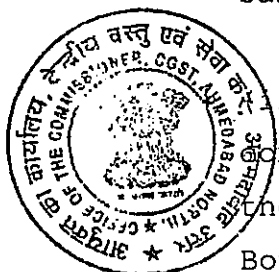
7.6 Keeping in view the aforementioned detailed discussions, I find that the works contract service provided for water supply by the assessee were squarely covered under the Sr. No. 12 of the Notification No. 25/2012-ST dated 20.06.2012 & Sub-Contract work of water supply covered under Sr. No. 29(h) of

the Notification No. 25/2012-ST dated 20.06.2012, I find that the exemption is quite clearly available to the assessee for "pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal" claimed by them. Since I am convinced with the arguments put forth by the assessee they are held not liable for payment of service tax on that aspect of services provided.

18. I find that SCN shows the difference in value to the tune of Rs.14,26,95,378/- for FY 2015-16 & 2016-17, when value of sales/gross receipt as per ITR are compared with gross value declared in ST-3 as mentioned in forgoing paras. Further para 5 of the SCN states that the levy of service tax for FY 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.

19 I find that the assessee has been awarded work by; (i) Ahmedabad Municipal Corporation for providing & laying of RCC sewerage Scheme in Sarkhej Roza Area. Construction of 18.0 lacs gallon capacity underground sump & pump house in Isanpur Ward. Construction of Hathijan Sewage Pumping station alongwith mechanical and electrical installation and allied works. Storm Water Network at New Nikol (Drainage Project Inward NO.4104). Providing & laying sewerage network in Baherampura ward. Construction of 26.00 lacs gallon capacity underground sump and pump house at Jagartpur. Providing and laying storm water network in Naroda. Construction of Hathijan Sewage Pumping Station. Storm Water Network at New Nikol.. Construction of WDS in Sabarmati River Front of 11.5 lakhs gallon capacity.

(i) Registrar Gujarat University, Ahmedabad awarded the Contract Jhankhana Builders and they in turn Sub contracted the same to assessee for rectification & expansion of Botany Department.



(iii) Construction of sewerage pumping station for Bopal by AUDA.

(iv) Paver Block fitting in ward 7 by Kalol Nagarpalika.

20. I find that assessee have provided the copies of ST3 return filed by them for the period 2015-16 & 2016-17. However, I find that in SCN total taxable value provided by the assessee in service tax return (ST3) had been shown as zero(0). The details shown in the SCN herein as under.

(Amount in Rs.)					
Sr. No	F.Y.	Taxable value as per ST3 returns (in Rs.)	Gross Receipts from services(Value from ITR/26AS) (in Rs.)	Difference between value of services from ITR/26AS and Gross Value in Service Tax Provided (In Rs.	Resultant Service Tax Short Paid (in Rs.)
1	2015-16	0/-	14,26,95,378/-	14,26,95,378/-	2,06,90,830/-
2	2016-17	0/-	0/-	0/-	0/-

21. I find that, assessee had filed the ST3 returns for the period 2015-16 & 2016-17 with taxable value of Rs. 5,43,81,557/-. While in Show Cause Notice, STR value had been shown as zero(0). It appears that the total gross value Rs.5,43,81,557/- in the STR filed by the assessee was not considered in the data shared by the CBDT. It is apparent that the assessee had filed the ST3 returns for taxable value of Rs. 5,43,81,557/-, and paid the Service Tax other than on exempted service.

Since, the assessee had not provided any details/information/ documents for the F.Y.2017-18 (upto June,2017), I refrain myself from entering in to the said period to determine liability of assessee for service tax.

22. I find that the assessee has filed the ST3 returns for the F.Y.2015-16 & 2016-17 under the category of Works Contract Service. The assessee has paid the service tax on the taxable service which were not exempted vide Exemption Notification NO.25/2012-ST dated 20.06.2012 as discussed in aforesaid paras.

I find that the assessee were awarded work for "Re-constructing of late Shyam Prasad Vasavada Hall by demolishing existing, situated at TP Scheme NO.7, next to Ruxmani Ben

Hospital At Khokhara Ward in South Zone, Ahmedabad. I find that in the instant case the assessee had made payment of service in relation to construction of late Shyam Prasad Vasavada Hall ,they have paid the service tax up to R.A. Bill No.11. Thereafter, they discontinued the payment of service tax. It proves that assessee had intentionally not made payment of service tax from R.A. Bill NO.12 onwards for F.Y.2015-16 & 2016-17.

22.2 I find on the basis of scrutiny of documents submitted by the assessee that they were liable for payment of service tax on the said work; they had paid service tax for F.Y.2015-16 up to R.A. Bill NO.11. On going through the sales register for the period 01.04.2015 to 31.03.2016, I find that work bill (RA Bill NO.11) raised by the assessee with service tax to AMC, Vasavda Hall, Khokhra. I find that R.A. Bill No.12 to 15 for F.Y.2015-16 & 2016-17 have been raised by the assessee without service tax. The copy of the extract sales register for the period 01.04.2015 to 31.03.2016 for ready reference is reproduced herein as under;

B.M.PATEL ENGINEERING CORPORATION					
Sales Register : 1-Apr-2015 to 31-Mar-2016					
Date	Particulars	Vch Type	Vch NO.	Debit Amount	Credit Amount
	Brought Forward			7,37,18,764.00	
0-11-2015	A'BAD MUNI.COR.VASAVDA HALL KHOKHRA WORK BILL RAISE (SERVICE TAX) R.A.BILL NO.11	Sales	18	63,91,946.00	63,91,946.00
0-11-2015	AMC NEW NIKOL EZ A/C WORK BILL RAISE (SUD LATE) BILL NO.03	Sales	19	91,59,938.00	91,59,938.00
5-2-2016	A'BAD MUNI.COR.ISANPUR UGWT & PUMP HOUSE WORK BILL RAISE R.A.BILL NO.2	Sales	17	30,97,978.00	30,97,978.00
0-2-2016	AMC NEW NIKOL EZ A/C WORK BILL RAISE (SUD LATE) R.A.BILL NO.04	Sales	18	1,53,51,347.00	1,53,51,347.00
15-3-2016	A'BAD MUNI.COR.VASAVDA HALL KHOKHRA WORK BILL RAISE R.A.BILL NO.12	Sales	19	73,23,478.00	73,23,478.00
16-3-2016	A'BAD MUNI.COR.SARKHEJ ROZA WORK BILL RAISE R.A.BILL NO.07 FINAL	Sales	20	77,477.00	77,477.00
18-3-2016	AMC NEW NIKOL EZ A/C WORK BILL RAISE (SUD LATE) R.A.BILL NO.05	Sales	21	85,86,552.00	85,86,552.00
28-3-2016	A'BAD MUNI.COR.ISANPUR UGWT & PUMP HOUSE WORK BILL RAISE R.A.BILL NO.03	Sales	22	71,01,952.00	71,01,952.00
30-3-2016	A'BAD MUNI.COR.VASAVDA HALL KHOKHRA WORK BILL RAISE R.A.BILL NO.13	Sales	23	13,79,148.00	13,79,148.00
31-3-2016	JHANKHANA BUILDERS (SUD-LET) WORK BILL RAISE (SERVICE TAX) BILL NO.03	Sales	24	1,05,09,728.00	1,05,09,728.00
				Total:	14,28,98,206.00

22.3 In view of the above, I hold that service tax of Rs.10,34,325/- for R.A. Bill No.12 to 15 is to demanded and is to be recovered from the assessee under Section 73 of the Finance Act,1994 as calculated herein as under;

2015-16				
R.A. Bill NO.	Bill Amount	Abatement	Taxable Amount	S.Tax payable including Cess
12	7323476	4394085.6	2929390.4	424762
13	1379148	827488.8	551659.2	79991
2016-17				
14	2648152	1588891.2	1059260.8	158889
15	6178050	3706830	2471220	370683
TOTAL S.TAX PAYABLE (INCLUDING CESS)				1034325



22.4 I find that, it is clear from the ledger account/work order provided by the assessee in respect of Ahmedabad Municipal Corporation, Vasavada hall, Khokhra, that the activity carried out by the assessee clearly falls within the meaning of 'service' as defined under the provisions of Section 65B (44) of the Act. In fact for the same service the noticee had paid service tax upto RA Bill No.11. The relevant text to Section 65B (44) of the Finance Act, 1994 ('Act') reads as under:

"service' means any activity carried out by a person for another for consideration, and includes a declared service"

'Taxable Service' defined under Section 65B (51) of the Act reads as under:

"taxable service" means any service on which service tax is leviable under section 66B"

I therefore find that the assessee had provided taxable services under the Finance Act, 1994 and the assessee is liable to pay of Service Tax of Rs.10,34,325/- for F.Y. 2015-16 & 2016-17.

23. In view of the above discussions and findings, the invoking of extended period of limitation under Section 73 of the Finance Act, 1994 is held to be correct and sustainable.

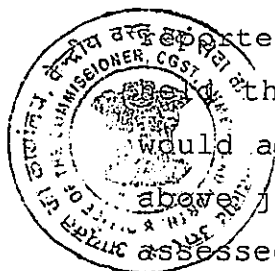
24. Further, I find that invoking extended period of limitation has been discussed in the SCN at length. It is my considered view that the Government has, from the very beginning, put in place mechanism of trust-based compliance on the part of manufacturers/ supplier of goods/ output service providers/ taxpayers and accordingly, measures such as self-assessment etc., based on mutual trust and confidence have been

in place. In the spirit of mutuality of trust and transparent tax administration with reduced compliance burden these rules & procedures the government has consciously



promoted the industries interest. Further, a manufacturer/supplier of goods/ service provider/ taxpayer is not required to maintain any statutory or separate records under the provisions of the Finance Act, 1994 and Rules made thereunder, as considerable amount of trust is placed on them and private records maintained by them, for their normal business purposes, are accepted, practically for all the purposes. All these operate on the basis of expectation of honesty, truthfulness and due diligence on the part of the assessee. Therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on them. From the evidences, it is observed that the assessee had knowingly suppressed the fact of receiving income under Works Contract Service. This deliberate act of suppressing income under Finance Act, 1994 is in utter disregard to the requirements of law and breach of trust reposed in them and is certainly not in tune with Government's efforts in the direction to create a voluntary tax compliance regime.

I rely upon the judgment in the case involving Aircel Digilink India Ltd. V/s. Commissioner of Central Excise, Jaipur, reported in 2006 (3) STR 386 (Tri.-Del) and the case involving Bharti Cellular Ltd. V/s Commissioner of Central Excise, Delhi, reported in 2006 (3) STR 423 (Tri.-Del). In both cases, the hon'ble tribunal upheld invocation of extended period after taking note of the fact that appellants had not disclosed certain details and mode of computation in their ST-3 details and that there was nothing on record to suggest that appellants ever approached the office of the service tax authorities to ascertain the details of their liability to pay the service tax. Similarly, in case of Insurance & Provident Fund Department V/s. Commissioner of Central Excise, Jaipur-I, reported in 2006 (2) STR 369 (Tri.-Del.), Hon'ble Tribunal held that non-disclosure of full amount of premium collected would attract invocation of extended period. The ratio of the above judgments can be applied to the present case also as the assessee had not only suppressed the material facts from the



department but had also failed to comply with law and procedures, including payment of service tax. In view of the above, I hold that in the facts and circumstances of the present case, proviso to section 73 (1) of finance act, 1994, is rightly invoked for raising the demand for service tax against the assessee.

25. Further, it is observed that the assessee was fully aware about the fact that they were receiving such income which was chargeable to Service Tax and had indeed paid the due Service Tax upto RA Bill No.11. However, in spite of being conscious of their liability; they chose not to pay and discharge the said applicable dues related to Service Tax. This was done to escape from the eyes of the department with an intent to evade the payment of dues related to Service Tax under the Finance Act, 1994. This fact of non-payment of dues related to Service Tax would have remained unnoticed, if the third party data had not been received from the CBDT. These acts on the part of the assessee tantamounts to willful suppression, concealment and mis-statement of facts, with an intent to evade the payment of dues related to Service Tax.

26. Since in the instant case, suppression of material facts have been established beyond doubt after discussions in the paras supra, I consider this as a fit case for imposition of penalty under Section 78 of the Finance Act, 1994 which reads as under:

“SECTION 78. Penalty for failure to pay service tax for reasons of fraud, etc. —

(1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period

beginning with the 8th April, 2011 upto the 24 date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined :

Provided further that where service tax and interest is paid within a period of thirty days of — the date of service of notice under the proviso to (i) sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded; (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period :

Explanation. — For the purposes of this sub-section, “specified records” means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of accounts shall be considered as the specified records.”

26.1 Since, it is already proved that the assessee had suppressed the facts, the consequences shall automatically follow. Hon'ble Supreme Court has settled this issue in the case of U.O.I Vs. Dharmendra Textile Processors reported in 2008(231)ELT3(SC) and has further clarified the same in the case of U.O.I. Vs. RSWM reported in 2009(238)ELT3(SC). Hon'ble Supreme Court has said that the presence of *malafide* intention is not relevant for imposing penalty and *mens rea* is not an essential ingredient for penalty for tax delinquency which is a civil obligation. Further, Hon'ble High of Karnataka at Bangalore in the case of Motor World (2012(27)STR225(Kar.)) has held that;

“Section 78 applies to a case where a person has registered himself under the Act and failed to file the prescribed return and in such return filed, he has suppressed or concealed the value of taxable service or has furnished inaccurate value of such taxable service.....

.....Therefore, the argument that once acts of suppression, concealment and furnishing inaccurate particulars are established, the penalty follows as a matter of course or in other words is automatic, is without any substance as it runs counter to the express provision contained in Sections 78 and 80 of the Act. When once it is held that there is no reasonable

cause, then the authority is empowered to impose penalty as prescribed under Section 78, for such failure. Here the penalty prescribed is penalty which shall not be less than but which shall not exceed twice the amount or service tax sought to be evaded by reason of suppression or concealment or the value of taxable service or the furnishing of inaccurate value of such taxable service.

21. When once the ingredients of Section 78 are established and there is no reasonable cause for failure. Section 80 is not attracted. Then the authority has to impose a minimum penalty of the amount or service tax sought to be evaded and the maximum is double the said amount. Here, there is no discretion, which is vested with the authority. The discretion is only confined to impose a penalty above the minimum and less than the maximum provided for under the Act....."

26.2 Thus penalty under Section 78, is attracted whenever any Service Tax has not been levied or not paid or has been short levied or short paid or erroneously refunded by the reasons of fraud, suppression of facts, willful mis-statement or contravention of any provisions of Finance Act, 1994 or of the rules made there under with intent to evade the payment of service tax and this penalty shall not be less than the duty evaded. However, as per the second proviso to section 78, where such service tax along with interest is paid within 30 days from the date of communication of the order penalty would be further reduce to 25% of the service tax so determined. The benefit of reduced penalty shall be available only if such penalty is also paid within 30 days from the date of receipt of the order. Thus the assessee have rendered themselves liable to penalty under Section 78 of the Finance Act, 1994 as they were not paying service tax in spite of the facts that they were providing the taxable service.

27. Regarding penalty under Section 77, I find that the assessee has also contravened the provision of Section 67 of the Finance Act, 1994 in as much as they failed to determine the correct value of taxable services; violated the provisions of Section 68 of the act read with Rule 6 of the Service Tax Rules, 1994 by not paying the Service Tax during the F.Y. 2014-15, 2015-16 & 2016-17. Further, the assessee has not assessed the tax dues, properly on the services provided by them, as assessed above, and had failed to file correct ST3 returns in thereby violating the proviso of Section 70 of the act read with Rule 7 of the Service Tax Rules, 1994. In view of the above, the assessee is liable for imposition of appropriate penalty under Section 77 of the Finance Act, 1994.



28. Further, in view of the discussion made in the forgoing paras, I hold that the assessee has failed to pay the service tax on the taxable income received by suppressing the facts from the department by contravening the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and Section 67(1) of the Finance Act, 1994 read with Rule 5(1) of the Service Tax Rules, 1994. The service tax liability of the assessee has been determined as under:

Period	Difference between value of services from ITR/26AS and Gross value in Service Tax provided (in Rs.) as provided in SCN	S.Tax demanded in SCN	value of exempted services claimed by the assessee	S. Tax paid by the assessee	value of exempted service rejected (para 22.3)	S. Tax recoverable (including cess) (para 22.3)
A	B	C	E	D	F	G
2015-16	142695378	20690830	89966454	3724457	8702624	504753
2016-17	0	0	92726387	173270	8826202	529572
TOTAL	142695378	20690830	182692841	3897727	17528826	1034325

Accordingly, the Service Tax totally amounting to Rs. 10,34,325/- is recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 and they have also rendered themselves liable to pay interest under section 75 of the Finance Act, 1994. They have further rendered themselves liable for penalty under the provisions of Section 78 of the Finance Act, 1994.

29. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

I confirm the demand and order recovery of Service Tax Rs. 10,34,325/- (Rs. Ten Lakh Thirty Four Thousand Three Hundred Twenty five Only) from the assessee under Section 73 of the Finance Act, 1994.



(ii) I order to recover interest at the applicable rate from the assessee under the provisions of Section 75 of the Finance Act, 1994 on the demand at (i) above.

(iii) I impose penalty of Rs.10,000/- (Rupees Ten Thousand Only) upon them under section 77(2) of the Finance Act,1994 for, not make payment of Service Tax and non filing of correct ST3 returns.

(iv) I impose penalty of Rs. Rs.10,34,325/- (Rs. Ten Lakh Thirty Four Thousand Three Hundred Twenty five Only) under section 78 of the Finance Act, 1994. If the service tax amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the Service Tax amount, provided if such penalty is also paid within such period of 30 days.



(Upendra Singh Chavav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.

By Regd. Post AD./Hand Delivery

F.No. STC/15-13/OA/2021

Date: 06.01.2022

To,
B. M. Patel Engineering Corporation
Office No.101, Parth Avenue,
Navin Park Society,
Naranpura Char Rasta,
Naranpura,
Ahmedabad-380 013
Copy to:

1. The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
2. The Assistant Commissioner, CGST & C. Ex., Division-VII, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Ahmedabad North.
4. The Superintendent (System), CGST, Ahmedabad North for uploading on website.
5. Guard File.