



प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST, Commissionerate- Ahmedabad South,
अपराध और अधिनिर्णय खंड, छठी मंजिल, अम्बावाड़ी GST,
भवन, अहमदाबाद ३८००१५



6th Floor, O&A Section, GST Bhavan, Ambawadi 380015

DIN- 2022 08 64 WS0000 21262 F

निबन्धित पावती डाक द्वारा/ By REGISTERED POST A.D.
फा./सं. F.No. STC/4-42/O&A/Harshadkumar/20-21

आदेश की तारीख/Date of Order : 01.08.2022

जारी करने की तारीख/Date of Issue: 01.08.2022

द्वारा पारित/Passed by:- सुनील कुमार सिंह प्रधान, आयुक्त
SUNIL KUMAR SINGH, PRINCIPAL COMMISSIONER

मूल आदेश संख्या / Order-In-Original No. : AHM-EXCUS-001-COM-003-22-23
Dated 01.08.2022.

1. जिस व्यक्ति उसे व्यक्तिगत प्रयोग के लिए, को यह प्रति भेजी जाती है (यों) निःशुल्क प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क उत्पाद, अ, शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, सीमा शुल्क, 0-20, मेघानीनगर 016 380-अहमदाबाद, न्यू मेन्टल हॉस्पिटल कंपाउंड, को सम्बोधित 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, 0-20, Meghani Nagar, Mental Hospital Compound, Ahmedabad-380 016.

3. उक्त अपील प्रारूप सं. एम.डी.एस दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) 2001, नियमावली के नियम में विनिर्दिष्ट व्यक्ति (2) के उप नियम 3(ियों 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, अपील से सम्बंधित सभी (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए) ही प्रतियाँ संलग्न की जाएँ दस्तावेज भी चार प्रतियाँ में अंग्रेजित किए जाने चाहिए।

The Appeal should be filed in Form No. S.T-5. 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 प्रतियाँ में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी, (उनमें से कम से कम 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 वहां ,बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है 35 न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित के किसी भी राष्ट्रीयकृत बैंक की शाखा से 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. इस आदेश के विरुद्ध सीमा शुल्क उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के , 7.5% जहां शुल्क अथवा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शीर्ष जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती 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".

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

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

9. 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.

विषय: -

Sub : Show Cause Notice No. STC/4-42/O&A/Harshadkumar/20-21 dated 22.12.2020 issued to M/s Harshad Bhailal & Co. 18, Bhakti Society, Sharda Mandir Road, Paldi, Ahmedabad

BRIEF FACTS OF THE CASE

M/s Harshad Bhailal & Co. having their registered address at 18, Bhakti Society, Sharda Mandir Road, Paldi, Ahmedabad (hereinafter referred to as the assessee) were primarily engaged in executing Works Contracts in relation to immovable property. The service portion in executing such Works Contracts is a declared service and is exigible to service tax. They were not registered with Service tax department.

2.1 The Income-tax department shared the TDS data in respect of the categories which would probably fall under the head of services as defined under Section 65B(44) of the Finance Act, 1994. Based on such data, inquiry was initiated against the assessee and summons dated 6.8.2020 was issued in terms of Section 14 of the Central Excise Act, 1944 as made applicable to Service Tax under Section 83 of the Finance Act, 1994 to the assessee seeking documents for the period 2014-15 to June 2017. The Summons was returned undelivered by the postal authorities. Thereafter a letter dated 22.9.2020 was issued seeking copies of Audited Balance Sheet, Profit and Loss Account, Income ledgers, Form 26AS, copy of Income tax return, copy of ST-3 return.

2.2 The assessee submitted copies of Audit Report, Form 26AS, Balance Sheet, Profit and Loss Account, some expense ledgers and Income ledger for the Financial years 2014-15, 2015-16, 2016-17 and 2017-18 (April to June) and copies of some Work Orders. The copies of Work Orders submitted by the assessee and the nature of activity undertaken under the said Work Orders are tabulated under:

S.No.	Date of Work Order	Authority issuing Order	Amount (Rs.)	Type of work.
1	8.7.2016	Executive Engineer Gandhinagar	73450017	Construction of Girls school
2	11.5.2016	R&B Himmatnagar	31440439	Construction of Secondary school, Vatrakgadh Bayad
3	15.3.2016	Road n Building Patan	129655854	Construction of Resi quarter for judicial officers
4	30.12.2016	R&B Himmatnagar	107331738	Construction of S.P Office
5	19.4.2016	R&B Himmatnagar	29168699	Construction of Boy's Hostel Bayad
6	21.4.2016	Executive Engineer, Drive in, Ahmedabad	14505668	Construction of Secondary school Dholka
7	11.11.2016	APMC Tharad		Construction of Shops and Godown
8	3.12.2015	Executive Engineer Patan	14623143	Construction of Taluka Panchayat
9	27.11.2015	R&B Himmatnagar	19784767	Construction of Intensive cattle dev office
10	27.5.2016	Executive Engineer Patan	43936544	Construction of Frozen Semen station
11	6.4.2016	Executive Engineer Patan	54907726	Construction of ITI building

2.3 Further, the assessee submitted copies of the under-mentioned Work Orders/contracts under their letter dated 17.12.2020 in response to letter dated 9.12.2020:

S.No.	Date of Work Order	Authority issuing Order	Amount (Rs.)	Type of work.
1	10.11.14	R&B, Palanpur	75683270	Construction of Government Arts College Building, Banaskantha
2	11.11.14	R&B, Himmatnagar	67339875	Construction of Arts College, Bayad
3	31.1.15	R&B, Palanpur	9811493	Construction of Nagar Sewa Sadan, Banaskantha
4	24.7.14	R&B, Palanpur	24623624	Construction of Girls Hostel Building, Banaskantha
5	20.1.14	Municipal Office, Patan	24711589	Construction of 240 units under IHSDP Scheme
6	3.12.15	Executive Engineer, Patan	14623142	Construction of Taluka Panchayat Building, Ta. Harij
7	3.1.17	R& B, Himmatnagar	52823012	Construction of New Court Building, Aravalli

All the above Work Orders indicated that the assessee had undertaken the Turnkey Project of construction of the specified civil structures/ buildings/ complexes. This was further fortified by the fact that the Annexure 'D' to Form 3 CD clearly mentioned that the assessee had entered into Works Contract for construction of Government and Semi-Government departments. The narration at Sr. No. 3 of the said Annx. D is reproduced under:

The assessee is doing the construction work of Govt. & Semi Govt. Departments. The works contracts are mostly for a short period of a year. So the outcome of the contract cannot be estimated reliably. Contract income is recognised which is received during the year.

2.4 Further, Annexure B of Form 3CD specified nature of business or profession of the assessee as Civil Contractors. Thus, the copies of work orders produced during the course of investigation and the statutory information submitted in Form 3CD revealed that the assessee was engaged in executing contracts for the purpose of carrying out construction of immovable property wherein transfer of property in goods involved in the execution of such contract was leviable to tax as sale of goods. Such contracts were squarely covered under the definition of 'Works Contract' as defined under Section 65B(54) of the Finance Act, 1994 read as under:

"works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

3. The term 'service' defined under Section 65B(44) of the Finance Act, 1994 stipulated that 'declared services' were covered under 'service' and the relevant text of the same read as under:

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

The above definition stipulated that 'declared services' were included in the definition of 'service'. Declared services specified under Section 66E of the Finance Act, 1994 and clause (b) stipulated that service portion in execution of a works contract was a declared service. The relevant text of Section 66E of the Finance Act, 1994 reproduced under for case of reference:

The following shall constitute declared services, namely:—

- a) -----
- b) -----
- b) *service portion in the execution of a works contract*

3.1 The term 'taxable service' defined at Section 65B(51) of the Finance Act, 1994 read as under:

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

Section 66B of the Finance Act, 1994 read as under:

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of [fourteen per cent] on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed

A conjoint reading of the above provisions of law indicated that any services as defined under Section 65B(44) of the Finance Act, 1994 provided in the taxable territory and not listed in the negative list as specified under Section 66D of the Finance Act, 1994 were covered under the category of 'taxable services'

4. In the instant case, it appeared that the assessee had provided the declared services under Section 66E(h) of the Finance Act, 1994 within the taxable territory i.e. the whole of India except the state of Jammu and Kashmir. Further, the service portion in the execution of a works contract had not been specified in the negative list as stipulated under Section 66D of the Finance Act, 1994. Thus, it appeared that the assessee had provided taxable services during the period from April 15 to June 17.

5. Sr. No. 12 of Notification No. 25/2012-ST exempted the Services provided to the Government, a local authority or a governmental authority by way of construction of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession. However, the said entry was omitted with effect from 1.3.2015 by Notification No. 6/2015 dated 1.3.2015. Thus, the exemption vide Sr. No. 12 of Notification No. 25/2012-ST would not be applicable for the period April 15 onwards. Further, Sr. No. 12A was inserted in Notification No. 25/2012-ST by Notification No. 9/2016 dated 1.3.2016, which exempted the services specified therein from payment of service tax, and the said entry reads as under:

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

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

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

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

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

However, for the purpose of exemption under Sr. No. 12A, the contract should have been entered into prior to 1.3.2015 and the stamp duty (if applicable) should have been paid prior to 1.3.2015.

5.1 In the instant case, all the work orders tabulated at paragraph 2.2 above were after the specified date i.e. 1.3.2015. Further, Sr. No. 3 of Annexure D to Form 3CD also specified that

the contracts were mostly for a short period of one year. Thus, the income received in respect of the said work orders cannot be considered from the contracts entered into prior to 1.3.2015. As regarding the work orders appeared at Sr. Nos. 1 to 5 of the table at paragraph 2.3 above, though the work orders were dated prior to 1.3.2015, the assessee had not furnished any proof that the appropriate stamp duty in respect of such work orders has been paid before 1.3.2015. Thus, the dual condition of the contract having been entered into before 1.3.2015 and payment of appropriate stamp duty before such date is not fulfilled in respect of all the above work orders. Therefore, it appeared that the exemption under Sr. No. 12A of Notification No. 25/2012 ST was also not admissible to the assessee. Accordingly, it appeared that the assessee had provided taxable services for which no exemption provided for and as such they were liable to pay service tax on the consideration received towards such services.

6. Though assessee submitted copies of Work order, the copies of the contracts entered into with the all the service recipients whose names are appearing in the ledgers titled 'Construction Income VAT' and 'Construction Income GST' have not been furnished. Such copies of contracts had not been submitted the communication under letters dated 22.9.2020 and 9.12.2020 and summons dated 6.8.2020 and 10.12.2020. By way of such tactics of not submitting all the documents pertaining to the services provided by them, it appeared that the assessee was attempting to disrupt the investigation and buy time so as to cross the extended period of limitation available to the department. In such circumstances, where the assessee abstained from furnishing the relevant documents called for by the department, the revenue had no option but to assessment of the service tax liability on the basis of the relevant material available on records in terms of the provisions of Section 72 of the Finance Act, 1994 which read as under:

If any person, liable to pay service tax, —

(a) fails to furnish the return under section 70;

(b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder,

the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

6.1 For the purpose of computation of service tax liability for the period from April 15 to June 17 the income as shown in the Profit & Loss Account of the audited financial statements of the assessee had been considered as the taxable value in terms of the principles of best judgment assessment on the following grounds:

- The entire income had been accrued owing to construction activity which is evident from the fact that the Profit & Loss Account has shown the income under the head of Construction Income.
- The construction work of civil structures had been undertaken by the assessee under a Works Contract as is evident from the copies of work orders submitted by the assessee.
- Annexure 'D' to Form 3 CD clearly mentioned that the assessee had entered into Works Contract for construction of Government and Semi-Government departments.
- Annexure 'D' to Form 3 CD depicted the nature of business/ profession of the assessee as Civil Contractors.

Accordingly, it appeared that the entire income as shown in the Profit & Loss Account under the head of 'Construction Income' was liable to service tax as service portion in execution of Works Contract.

6.2 In terms of the provisions of Rule 2A(ii)(A) of the Service Tax (Determination of Value) Rules, 2006, the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable on forty per cent of the total amount charged for the works contract.

6.3 Further, it appeared that the assessee had received income under the head of 'Sub-let' and 'Rent' as evident from the Profit & Loss Account for the years 2015-16 and 2016-17. Such an activity of renting of immovable property was covered under the declared services at Section 66E(a) of the Finance Act, 1994 and chargeable to service tax.

7. Further, the expenditure side of the Profit & Loss Account for the years 2015-16 and 2016-17 indicated that the assessee had incurred expenses under the head of 'Vakil Fees'. Thus, it appeared that the assessee had received legal services as defined under Rule 2(cca) of the Service Tax Rules, 2004. In terms of the powers conferred under Section 68(2), the Government has issued Notification No. 30/2012 ST dated 20.6.2012 as amended, wherein the class of services under the reverse charge mechanism, the person liable to pay service tax and the extent of service tax payable by such person, had been specified. For ease of reference the said notification is reproduced hereunder:

"In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849(E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely :—

I. The taxable services,—

- A)(i) _____
(ii) _____
(iv) provided or agreed to be provided by,-
(A) an arbitral tribunal, or
(B) an individual advocate or a firm of advocates by way of support services, or
(C) Government or local authority by way of support services excluding,-
(1) renting of immovable property, and
(2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994,

to any business entity located in the taxable territory

The extent of service tax payable thereon by the person who provided the service and the person who received the service for the taxable services specified at (I) to Notification No. 30/2012 ST as amended had been specified at the Table at II of the said notification and the relevant portion of the same had been reproduced as under:

TABLE

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
5	in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services	Nil	100%*

7.1 The person liable to pay service tax under the reverse mechanism charge had also been stipulated under Rule 2(d) of the Service Tax Rules, 1994 which read as under:

"2(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, -*

(A) -----

(B) -----

(D) *in relation to service provided or agreed to be provided by, -*

(I) *an arbitral tribunal, or*

(II) *a firm of advocates or an individual advocate other than a senior advocate by way of legal services*

(II) *an individual advocate or a firm of advocates by way of legal services other than representational services by senior advocates;*

7.2 In the instant case the service recipient was a business entity and the service had been provided by individual advocate or a firm of advocates by way of legal services. Thus, in terms of the provisions of Section 68(2) of the Finance Act, 1994 read with Rule 2(d) of the Service Tax Rules, 1994 and Notification No. 30/2012 ST as amended, the assessee i.e. the service recipient was liable to pay 100% of the service tax payable in respect of Legal Services.

8. In view of the foregoing paragraphs, it appeared that the assessee had contravened the following provisions of law:

- Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they failed to properly assess the service tax due and reflect the same in their ST-3 returns.
- Section 68(1) of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they failed to pay Service Tax in the time and manner as prescribed on the above said services.
- Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 in as much as they failed to obtain the service tax registration within the stipulated time frame
- Section 68(2) of the Finance Act, 1994 read with Rule 2(d)(D) of the Service Tax Rules, 1994 and Notification No. 30/2012 ST as amended in as much as they failed to discharge their service tax liability under the reverse charge mechanism in respect of Legal Services
- Section 14 of the Central Excise Act, 1944 as made applicable to service tax matters vide Section 83 of the Finance Act, 1994 in as much as they failed to appear before the investigating officer and produce the documents called upon under summons
- Rule 4A of the Service Tax Rules, 1994 in as much as they failed to issue invoices as prescribed therein in respect of the taxable services rendered by them

9. In view of the above, it appeared that the assessee had not paid service tax to the tune of Rs. 3,17,06,071/- (as detailed at Annex. A to the notice) during the period from April 15 to June 17. Further, it appeared that the assessee had failed to obtain service tax registration, file the ST-3 returns and pay service tax within the stipulated time frame. Thus, it appeared that the said service tax to the tune of Rs. 3,17,06,071/- had not been paid by resorting to suppression of facts. Section 70 of the Finance Act, 1994 stipulated that every person liable to pay the service tax shall himself assess the tax due. The Government introduced self-assessment system under a trust based regime which casted the onus of proper assessment and discharging of the service tax on the assessee. The definition of "assessment" available in Rule 2(b) of Service Tax Rules, 1994 is reproduced as under:

"assessment" includes self assessment of service tax by the assessee, re-assessment, provisional assessment, best judgment assessment and any order of assessment in which the tax assessed is nil; determination of the interest on the tax assessed or re-assessed.

9.1 In the instant case the assessee failed to properly assess the service tax liability and also failed to reflect the correct information in the ST-3 returns. Thus, they have resorted to suppression of material facts by not filing the ST-3 returns and reflecting the taxable value therein. These facts only came into notice only when the enquiry was initiated in 2020 on the

basis of information shared by the Income Tax department. Had the enquiry been not initiated, the said facts would never have seen the light of the day. Therefore, the said Service Tax of Rs. 3,17,06,071/- not paid by them is liable to be recovered by invoking the extended period of limitation as provided for under proviso to Section 73(1) of the Finance Act, 1994 along with interest in terms of the provisions of Section 75 of the Finance Act, 1994.

9.2 In the self-assessment era, the Service Providers are required to be proactive in declaring their activities to the department and getting themselves registered and fulfill their tax obligations. Service Tax being an indirect tax requires the service provider only to collect the same from the service receiver and remit it to the Government. The Government has from the very beginning placed full trust on the service provider so far service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, 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 them 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 placed on the service provider. In the instant case the assessee has not complied with the provisions of Service Tax. They have received cash amount from customers but did not disclose the same before department nor paid service tax thereon and these facts came to the knowledge of the Department only when the enquiry was initiated by Department. This act of the said assessee is tantamount to willful misstatement and suppressing the facts with an intention to evade service tax payment. The assessee is also liable for penal action as per Section 78 of the Finance Act, 1994 for making willful misstatement and suppression of facts from the department, with an intention to evade service tax payment.

10. Further, the assessee have rendered themselves liable to penalty in terms of the provisions of Sec. 77(1)(c) of the Finance Act, 1994 in as much as they failed to produce the documents called for and appear before the investigating officer in response to the summons. The assessee have also rendered themselves liable to penalty in terms of the provisions of Section 77(1)(a) of the Finance Act, 1994 in as much as they failed to obtain service tax registration as provided for under Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994.

11. Therefore, M/s Harshad Bhailal & Co. were issued show cause notice F.No. STC/4-42/O&A/Harshadkumar/20-21 dated 22.12.2020 whereby they were called upon to show cause to the Principal Commissioner having his office at 7th Floor, GST Bhavan, Nr. Govt. Polytechnic, Ambawadi, Ahmedabad as to why:

- a) Service tax amounting to Rs.3,17,06,071/- (Rs. Three Crore Seventeen Lakhs Six Thousand Seventy One only), as detailed at Annexure-A to this notice, should not be demanded and recovered from them in terms of the provisions of Section 73 of the Finance Act, 1994 by invoking the extended period of limitation;
- b) Interest at the applicable rate should not be charged and recovered from them in terms of the provisions of Section 75 of the Finance Act, 1994 on the above demand;
- c) Penalty in terms of the provisions of Section 78 of the Finance Act, 1994 should not be imposed on them for the above mentioned contraventions;
- d) Penalty in terms of the provisions of Section 77(1)(c) of the Finance Act, 1994 should not be imposed on them for failure to produce the documents called for and appear before the investigating officer in response to the summons;
- e) Penalty in terms of the provisions of Section 77(1)(a) of the Finance Act, 1994 should not be imposed on them for failure to obtain service tax registration.

12. On 24.05.2022, the assessee had filed reply to the show cause notice wherein he denied all the allegations made in the show cause notice.

12.1 The assessee submitted that various work contracts executed are eligible for exemption under Mega Exemption Notification No.25/2012-ST (hereinafter referred to as 'Mega Exemption Notification')/Negative list under Section 66D of Finance Act 1994 as tabulated below:

(Amount in Rupees)

Sr. No.	Contracts	Brief description of work done	Work awarded by	2015-16	2016-17	2017-18 (upto June)	Total	Exemption claimed
1	APMC Market Yard, Tharad	Construction of godown at Market Yard Tharad	APMC Tharad	-	9773455	2120427	11893882	S.66D(d)(v)E No 14(d) of Mega Exemption Notification
2	APMC Tharad-shop cum godown	Work of shop cum godown (80 Nos) in market yard at Tharad	APMC Tharad	-	32536150	44000509	76536659	-do-
3	Arts College (WAV)	Construction of Government Arts College building at WAV	Govt of Gujarat-R&B Dept. Palanpur	52338679	-	-	52338679	E.No.12A of Mega Exemption Notification (Work started on 10.11.2014)
4	Bayad Works Arts College	SR to Arts College at Bayad (Providing Collapsible gate, curbing ground, electrification and water supply & drainage and Misc work)(Job No.2059/SR/NR/MO D/2019-20/51)	Govt. of Gujarat. R&B Dept. Modasa	48536163	-	-	48536163	E.No.12A of Mega Exemption Notification (Work started on 11.11.2014)
5	Bhabar nagar seva sadan building	Construction of Nagar Seva Sadan Building at Bhabhar	Govt. of Gujarat-R&B Dept., Palanpur	7212288	-	-	7212288	E.No.12A of Mega Exemption Notification (Work started on 31.01.2015)
6	C & CI type counter	Construction of C-I type quarters 6 unit at Mulpur, Dist. Aravalli	Govt. of Gujarat-R&B Dept., Himmatnagar	10803800	-	-	10803800	E.No.13/14 of Mega Exemption Notification
7	Deesa Canal Work (Sujlam Sullam)	Flood damage repairing of Sujlam Sullam spreading canal	Deesa Irrigation Division, Deesa	1830403	3033612	-	4864015	E.No.12(d) of Mega Exemption Notification
8	Girls Hostel Building, Ratnapura (Sihori)	Construction of Girls Hostel Building (100 scaled) for Model School at Ratnapura Sihori Dist. Banaskantha	Govt of Gujarat-R&B Dept. Palanpur	14794002	-	-	14794002	E.No.12A of Mega Exemption Notification (Work started on 24.07.2014)
9	Patan Nagarpalika Srarajivi Work	Under Integrated Housing & Slum Development Program (IHSDP) construction of 240 residential units in Shamjivi Vihar in Patan Dist	Patan Nagar Palik	-	-	731630	731630	E.No.13/14 of Mega Exemption Notification

12.2 The assessee submitted that construction activity done for APMC (Sr. No.1 & 2 of table at paragraph 12.1) which is primarily engaged in trading, storage and maintenance of agriculture produce. Since the construction activity is in relation to storage and warehousing of agricultural produce, they are not liable to pay service tax as per Entry No.66D(d)(v) of Finance Act 1994. The assessee submitted that the expression 'relating to' is used by legislature to widen the scope and dimension of the subject in order to establish a greater nexus between activity and service implicit in the activity. The expression 'pertaining to' is an expression of expansion and not of contraction. They relied upon the following case laws.

Doypack Systems (Pvt) Ltd-1988 (36) ELT.201 (SC)
M.P Power Transmission Co. Ltd-2008 (12) STR.183 (Tri-Del)
Garware Polyester Ltd-2011-TIOL-988-CESTAT-Mum

12.3 Service of construction of APMC market yard and shop-cum-godown is eligible for exemption as per Entry No.14(d) of the Mega Exemption Notification. They relied upon case of *Ganpati Mega Builders (India) Pvt. Ltd-2021 (55) GSTL.161 (Tri-All)*.

12.4 The assessee submitted that contracts provided to the Government (Sr. No.3,4,5 & 8 of above table at paragraph 12.1) are eligible for exemption as per Entry No.12A of the Mega

Exemption Notification. On the basis of the information furnished in the table above, the assessee submitted that agreement was entered before 01.03.2015. In case there is no specific date of agreement mentioned in work completion certificate, it can be substantiated from the fact that the work for each of the aforesaid contract was started before 01.03.2015 and the condition of date of the agreement before 01.03.2015 has been complied.

12.5 The assessee, with regard to the Deesa Canal Work (Sr. No.7 of table at paragraph 12.1), submitted that entry No.12(d) of Mega Exemption notification provided that the services provided to Government by way of construction, commissioning, installation, erection, repair, maintenance, renovation or alteration of canal, dam or other irrigation works is exempted.

12.6 In regard to the works at Sr.No.6 & 9 of table at paragraph 12.1, the assessee submitted that he was providing construction service in relation to construction of houses for slum redevelopment and upgradation which is exempted vide entry No.13/14 of Mega Exemption Notification.

12.7 The assessee, without prejudice to the above submissions, argued that considering that no additional service tax was recovered from the customers, the amount received by him is inclusive of service tax and the benefit of cum-tax should have been provided for determining the service tax liability. He relied upon the following decisions:

- (i) *Robot Detective & Security Agency-2009 (14) STR.689 (Tri)*
- (ii) *Advantage edia Consultant-2008 (10) STR.449 (Tri)*
- (iii) *Gem Star Enterprise Pvt. Ltd-2007 (7) STR.342*

12.8 The assessee submitted that even if it is assumed that he is liable to pay service tax under RCM on consultancy services, there is no undue benefit available because the amount of tax under RCM would have been eligible to claim CENVAT credit. He relied upon the following case laws:

- (i) *Indeos Abs Ltd-2010 (254) ELT.628(Guj)*
- (ii) *Ashirwad Foundaries Pvt Ltd-2020 (3)TMI.847*
- (iii) *Punjab Chemicals & Corp Protection Ltd-2017 (47) STR.345 (Tri)*
- (iv) *Narayan Polyplast-2005 (179) ELT.20 (SC)*
- (v) *Narmada Chematur Pharmaceuticals Ltd-2005 (179) ELT.276 (S.C)*

12.9 The assessee further contended that demand cannot be sustained only on the basis of the income tax data or the financial statements. He submitted that it is responsibility of the department to discharge the burden that the notice is providing taxable services and liable to pay tax. Without discussing the nature of each contract furnished by the notice, the assessee submitted that, the impugned SCN has proposed liability of tax which did not discharge the burden of revenue. He relied upon the following decisions.

- (i) *Go Bindas Entertainment Pvt Ltd-2019 (27) GSTL.397 (Tri)*
- (ii) *Beekaylon Synthetics-2003 (158) ELT.307*
- (iii) *Kipps Education Centre-2009 (13) STR.422*
- (iv) *Ramesh Studio & Color Lab-2020 (20) STR.817*
- (v) *Mayfair Resorts-2011 (21)STR.589*
- (vi) *Chetak Marmo Pvt Ltd-2015 (325) ELT.150*

12.10 Without prejudice to the above, the assessee submitted that, the demand is barred by limitation. He submitted extended period of limitation can be invoked only when there is suppression, omission or failure to disclose information with intent to evade payment of service tax. He relied upon the case of *Pahwa Chemicals Pvt Ltd-2005 (189) ELT.257 (SC)*, *Anand NishiKawa Co. Ltd-2005 (188) ELT.149 (SC)*. The assessee also contended that he was under bona fide belief that service was not taxable.

12.11 The assessee further argued that demand for the period from April 2015 to September 2015 is barred from extended period of limitation as the SCN is issued beyond 5 years.

12.12 The assessee also submitted that penalty is not imposable and interest is not leviable as the demand itself is not sustainable.

PERSONAL HEARING

13. Shri Ashish Agarwal, appeared in the virtual personal hearing held on 08.06.2022 on behalf of the assessee and reiterated the points contained in their reply to SCN. He submitted that they were engaged in providing services of works contract for construction during the period April 2015 to June 2017 and these services were provided to Government, Local Authority, APMC Markets etc and as such there were in the Negative List under Section 66D or under various exemption notifications. He further stated that particulars of works contract performed by them during the aforesaid period were tabulated in the written submissions at page 11 and 12 and exemption claimed. specific to each works contract have been shown against them in the table and has been discussed in detail in subsequent pages. The case of *Ganpati Mega Builders (India) Pvt. Ltd-20201 (55) GSTL 161* was cited to say that post harvest storage and marketing of Mandi/Samiti is exempted under Sr. No.14 of Notification No.12/2012-ST.

DISCUSSION AND FINDINGS

14. I have carefully gone through the facts of the case on record and the submissions made by the assessee. On recapitulating, I find that the issue involved is that the assessee had provided taxable services of 'works contract' and 'renting of immovable property' but not obtained Service tax registration and not paid service tax. The assessee also received legal services on which the liability to pay service tax is on the recipient of service. Therefore the present notice demanding service tax was caused to be issued.

15. The submissions of the assessee were on the following main grounds:

- Service tax cannot be demanded on the basis of the financial statements/income tax returns only.
- He is eligible for various exemptions provided under the Service Tax regime.
- Demand is barred by limitation as the notice is not guilty of any fraud, wilful misstatement or suppression of fact with intent to evade payment of duty for the disputed period.
- The demand for the period of April 2015 to September 2015 is barred by limitation even by the extended period of limitation as the captioned notice has been issued beyond a period of 5 years from the relevant date.
- Benefit of cum-duty is required to be extended.
- Interest and penalty are not leviable as the duty demanded is not justifiable.

16.1 First of all let me discuss the nature of service provided and its taxability. The inquiry was originated when Income-tax department shared the TDS data in respect of the categories which would probably fall under the head of services as defined under Section 65B(44) of the Finance Act, 1994. The assessee submitted copies of Audit Report, Form 26AS, Balance Sheet, Profit and Loss Account, some expense ledgers and Income ledger for the Financial years 2014-15, 2015-16, 2016-17 and 2017-18 (April to June) and copies of some Work Orders. Work Orders indicated that the assessee had undertaken construction of the specified civil structures/buildings/ complexes. Annexure 'D' to Form 3 CD clearly mentioned that the assessee had entered into Works Contract for construction of Government and Semi-Government departments. Further, Annexure B of Form 3CD specified nature of business or profession of the assessee as Civil Contractors. Thus, the copies of work orders produced during the course of investigation and the statutory information submitted in Form 3CD revealed that the assessee was engaged in executing contracts for the purpose of carrying out construction of immovable property wherein transfer of property in goods involved in the execution of such contract was leviable to tax as sale of goods. Such contracts were squarely covered under the definition of 'Works Contract' as defined under Section 65B(54) of the Finance Act, 1994 read as under:

"works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

16.2 The term 'service' defined under Section 65B(44) of the Finance Act, 1994 stipulated that 'declared services' were covered under 'service' and the relevant text of the same read as under:

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

16.3 The above definition stipulated that 'declared services' were included in the definition of 'service'. Declared services specified under Section 66E of the Finance Act, 1994 and clause (h) stipulated that service portion in execution of a works contract was a declared service. The relevant text of Section 66E of the Finance Act, 1994 reproduced under for ease of reference:

The following shall constitute declared services, namely :—

- c) -----
- d) -----
- i) *service portion in the execution of a works contract*

16.4 The term 'taxable service' defined at Section 65B(51) of the Finance Act, 1994 read as under:

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

16.5 Section 66B of the Finance Act, 1994 read as under:

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed

16.6 In view of the above provisions of law, it is evident that the activity carried out by the assessee is squarely covered under the definition of 'taxable service' and the service is exigible to levy of service tax under the category of 'works contract'. The above provisions of law are already discussed in the show cause notice. Thus the contention of the assessee, that the SCN has proposed liability of tax which did not discharge the burden of revenue, is fallacious. The show cause notice has mentioned the work order furnished by the assessee and only after considering all the work orders the demand of service tax has been made. Further, I find that, the demand has not been made not from the Income Tax returns or TDS data only. The assessee was asked to produce copies of Audit Report, Form 26AS, Balance Sheet, Profit and Loss Account, some expense ledgers and Income ledger and the service tax liability has been derived from these documents produced by the assessee. Thus the revenue has discharged its burden of proving the taxability of the service provided and in quantifying the demand.

17. From the financial records like contract income ledger, it is observed that the assessee has provided the following works contract services.

(Amount in Rupees)

Sr. No.	Contracts	Brief description of work done	Work awarded by	2015-16	2016-17	2017-18 (upto June)	Work order/date of starting
1	APMC Market Yard, Tharad	Construction of godown at Market Yard Tharad	APMC Tharad	0	9773455	2120427	11.11.2016
2	APMC Tharad-shop cum godown	Work of shop cum godown (80 Nos) in market yard at Tharad	APMC Tharad	0	32536150	44000509	11.11.2016
3	Arts College (WAV)	Construction of Government Arts College building at WAV	Govt. of Gujarat-R&B Dept., Palanpur	52338679	-	-	10.11.2014
4	Bayad Works Arts College	SR to Arts College at Bayad (Providing Collapsible gate, curbing ground, electrification and water supply & drainage and Misc work)(job No.2059/SR/NR/MOD/2019-20(51))	Govt. of Gujarat. R&B. Dept., Modasa	48536163	-	-	11.11.2014
5	Bhabar nagar seva sadan building	Construction of Nagar Seva Sadan Building at Bhabhar	Govt. of Gujarat-R&B Dept., Palanpur	7212288	-	-	31.01.2015
6	C & CI type counter	Construction of C-I type quarters 6 unit at Malpur, Dist. Anavalli	Govt. of Gujarat-R&B Dept., Hammalnagar	10803800	-	-	13.04.2015

7	Deesa Canal Work (Sujlam Sujlam)	Flood damage repairing of Sujlam Sujlam spreading canal	Deesa Irrigation Division, Deesa	1830403	3033612	-	02.02.2016
8	Girls Hostel Building, Ratanpura (Sabon)	Construction of Girls Hostel Building (100 seated) for Model School at Ratanpura Sabon Dist. Hanasankatha	Govt of Gujarat-R&B Dept., Patanpur	14794002	-	-	24.07.2014
9	Patan Nagarpalika Shamjivi Work	Under Integrated Housing & Slum Development Program (IHSDP) construction of 240 residential units in Shamjivi Vistar in Patan Dist	Patan Nagar Palika	0	-	731630	20.01.2014
10	Harij Taluka Panchayat	Construction of Taluka Panchayat building at Harij	EE, Dist Panchayat, Patan	2998028	6627009	4003112	03.12.2015
11	KODP Himmatnagar	Construction of Intensive Cattle Development Office at Himmatnagar	EE, R & B Division, Himmatnagar	39119011	14867573	-	27.11.2015
12	Patan Taluka Panchayat	Construction of Taluka Panchayat building at Patan	EE, Dist Panchayat, Patan	1960570	8759069	937438	03.12.2015
13	Adarsh Nivashi Manyn Chhatralay	Construction of hostel for Boys and Girls	Executive Engineer, Gandhinagar	-	4531468	11041376	08.07.2016
14	State Froom Semen Patan Bull Shed	Construction of Bull shed at State Froom Semen Station, Patan	EE, R & B Division, Patan	-	34323096	19418314	27.05.2016
15	Pisawada Secondary School	Construction of Govt Secondary school at Pisawada	EE, R & B Division, Ahmedabad	-	1880451	-	21.04.2016
16	S.P Office Modasa	Construction of S.P office at Modasa	EE, R & B Division, Himmatnagar	-	12182964	42348712	30.12.2016
17	Sami Court & Flooring				289295		
18	Sami ITI Building	Construction of ITI building at Sami	EE, R & B Division, Patan	-	46886509	2921547	06.04.2016
19	Siddhipur Residential quarters	Construction of residential quarters for judicial officer at Siddhipur	EE, R & B, Division, Patan	-	10706756	-	15.03.2016
20	Secondary School Vatrak Gadhi	Construction of Secondary School at Vatrakgadhi, Bayad	EE, R & B Division, Himmatnagar	-	14926631	14824744	11.05.2016
21	Meghray Court Building	Construction of New Court Building at Meghray	EE, R & B Division, Himmatnagar	-	-	15737722	03.01.2017
22	Boys hostel, Bayad	Construction of boys hostel at Bayad	EE, R & B Division, Himmatnagar	-	27096422	-	19.04.2016
				144385834	201324038	157685531	

18.1 The assessee claimed that construction activity done for APMC (Sr. No.1 & 2 of table at paragraph 17) is in relation to storage and warehousing of agricultural produce, they are not liable to pay service tax as per Entry No.66D(d)(v) of Finance Act 1994. He has also claimed that service of construction of APMC market yard and shop cum godown is eligible for exemption as per Entry No.14(d) of the Mega Exemption Notification. On going through Section 66D(d)(v) of Finance Act 1994, I find that loading, unloading, packing, storage or warehousing of agricultural produce are covered under negative list as under:

- (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;*

18.2 The service provided by the assessee is construction and the same is not covered under negative list under Section 66D(d)(v) as claimed by him. However, I find that construction of post harvest storage infrastructure for agricultural produce is exempted as per Entry No.14(d) of Notification No.25/2012-ST as under:

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

“(a) railways, excluding monorail and metro;

Explanation.-The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt.”.

(b) a single residential unit otherwise than as a part of a residential complex;

(c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the ‘Scheme of Affordable Housing in Partnership’ framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

“(ca) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under:

(i) the “Affordable Housing in Partnership” component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;

(ii) any housing scheme of a State Government.”. Inserted vide Notification 9/2016- Service Tax to be in effect from 1 March 2016.

(d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

(e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

18.3 I have perused the work order dated 11.11.2016 and Work Completion Certificate in Format No.3A dated 04.08.2018 issued by Secretary, APMC, Tharad, and found that the work carried out by the assessee is construction of shop cum godown at market yard and for Agriculture Produce Market Committee, Tharad. Scanned image of the same is as under:

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FORMAT NO.3A
(REFERRED TO IN RULE NO.5 (b) (ii))

30

WORKWISE DETAILS OF WORK COMPLETED/IN PROGRESS BY THE CONTRACTOR

1. Name of contractor :- Harshadkumar Bhambhani & Co. AHMEDABAD
2. Name of work :- Construction of Shop cum Godown at Market yard, Tharad (No. of Shop -00)
3. Estimated cost of work put to Tender :- 15,25,36,000=00
4. Tended amount :- 12,27,45,719=00
5. Date of starting the work :- 09-11-2016
6. Date of completion of the work :- 18-11-2017
(As per contract agreement)
7. Actual date of the completion of the Work :- 02-0-2018
8. Amount of work done up to :- 14,76,38,508=00

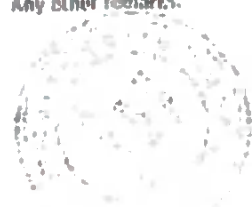
For, Harshadkumar Bhambhani & Co.
Signature of the contractor

[Handwritten Signature]

9. State whether the details in above Given by the contractor are correct, if not state as to what is the correct information :- Yes
10. State whether the contractor has executed the "work as specified" Satisfactorily or the specification has completed the work Satisfactorily as per specification, if Not give the correct position of the Work :- Satisfactory Completed.

11. Any other remarks :- Bldg, RCC Frame Structure

[Handwritten Signature]



Place:- THARAD
Date:- 04-08-2018

श्री हराधर ॥

॥ साखो तोल ॥

RUD-10 रोडका नामा ॥



श्री भेलीवाडी उत्पन्न अजार समिति थराद.

स्थापना :- २५/०८/१९९७

संस्थापक अध्यक्ष : डॉ. वि. वि. सायब, थराद-सायोर हाथवे, मु. पो. ता. थराद, जि. जनासबाग.

टेलीफोन : (०२७७७) २२३८२८

फैक्स : ६८२५०५७०३२

टेलीग्राम : (०२७७७) २२२१४७, २२२१७०

Email ID : apmctharad@yahoo.co.in

क्रमांक : ३५३ / २०१५ - १७

तारीख : ११/११/२०१५

प्रति,

श्री. सुधीरकुमार भाईबाळभाई अन्ड कुं.
प्लॉट नं. १५२, पीसा हाथवे, टी.पी.अरु रस्ता नळक,
थराद.

विषय :- मुम्प्याड-थराद जाते गोप-अ-गोप-नं-२० नुं अम-अज शर करवा पावत.

महाराज,

आधी उपरोक्त विषय अनुसंधाने जगावमाणुं के तमोये मुम्प्याड थराद जाते गोप-अ-गोप-नं-२० जाते अरेल आवणुंक माईट कमिटी, थराद मंजूर करेल छे. जे अन्वये तमोने ता. १५/१०/२०१६ ना पत्र जा.नं.- १५२/२०१६-१७ मी अंमिमेन्ट करी जवानी जाणु करेल छी. सदर पत्र अन्वये तमोने ता. ०७/११/२०१६ ना राज येरमेनशी, माईट कमिटी, थराद-पीसा हाथवे अंमिमेन्ट करी आपेल जोई तमोने टेन्डरनी शरतो मुजबनुं पालन करेल छे. जेने थाना-सायोर हाथवे उपर अम शर करवा तमोने आ वर्क ओर्डर आपवाभा आवे छे.

संस्थापक अध्यक्ष
माईट कमिटी, थराद

I am of the considered view that the work carried out by the assessee i.e. construction of godown/shop for APMC is covered under exemption vide Entry No.14(d) of Notification No.25/2012-ST and demand to this extend as at Sr. No.1 & 2 of table at paragraph 17 is required to be dropped.

19.1 The assessee submitted that contracts provided to the Government (Sr. No.3,4,5 & 8 of table at paragraph 17) are eligible for exemption as per Entry No.12A of the Mega Exemption Notification. The assessee submitted that agreement was entered before 01.03.2015. In case there is no specific date of agreement mentioned in work completion certificate, it can be substantiated from the fact that the work for each of the aforesaid contract was started before 01.03.2015 and the condition of date of the agreement before 01.03.2015 has been complied.

19.2 I have perused the work order No.AB/Tender/B-5695/14 dated 10.11.2014 and Work Completion Certificate in Form No.3A issued by Executive Engineer, R & B Division, Palanpur for construction of Arts College Building. Tal. Wav. Work Order No.AB/TC/B-2/8576 of 2014 dated 11.11.2014 and Work Completion Certificate in Form No.3A issued by Executive Engineer, R & B Division, Himatnagar for construction of Arts College At Bayad, Work Order No.AB/Tender/B-608 dated 31.01.2015 issued by R & B Division, Palanpur for construction of Nagar SEva Sadan Bulding at Bhabar, Work Order No. AB/TC/B-4107 dated 24.07.2014 and Work Completion Certificate in Form No.3A issued by Executive Engineer, R & B Division, Palanpur for construction of Girls Hostel Building at Ratanpur. As per these work orders and work completion certificates, it is found that the assessee has carried out construction of Government Buildings. Scanned image of the work orders are as under:

FORM NO. 3A

31

REFERRED TO IN RULE NO. 5b (ii)

WORKWISE DETAILS OF WORK COMPLETED OR IN PROGRESS BY THE CONTRACTOR

- 1. Name of the contractor: Harshadkanner Bhadbbhai & Co.
- 2. Name of the work: Construction of Arts College Building, Tal. Wav, Dist. BK.
- 3. Estimated cost of work out to tender: Rs. 75082200.00
- 4. Tendered Amount: Rs. 62566000.00
- 5. Date of the starting of the work: 10/11/2011 (15/05/2011)
- 6. Date of completion of the work: 09/11/2015
- 7. Actual date of completion of the work: 09/11/2015
- 8. Amount of work done:
 - Civil Work Done: 67067005.00
 - Electrical Work Done: 4126600.00
 - 71193605.00**

For, Harshadkanner Bhadbbhai & Co.

[Handwritten Signature]

Signature of the contractor

- 9. State whether the details as above given by the contractor are correct, if not state as to what is correct information. Yes
- 10. State whether the contractor has executed the "work-in-progress" satisfactory as per the specification has completed the work satisfactory as per specification, if not give the correct of the work. Work is completed satisfactorily within time limit.
- 11. Any other remarks: 4 + 2 RCC Frame Structure Building

Earth Work (cum.)	RCC Work (Cum.)	TMT Bars (Kg)	Brick Work (Cum.)
15581.04	3700.00	40420.11	1250.00

[Handwritten Signature]
 Deputy Executive Engineer
 Road & Building Sub Division
 Tharad

[Handwritten Note]
 not approved 1/1/16
 15.05.2016
 in case no 54-4/15/16



[Handwritten Signature]
 Executive Engineer
 Road & Building Division
 Palanpur

FORM NO - 3(A)
Referred to in Rule No.5-B (ii)

32

WORK WISE DETAILS OF WORK IN PROGRESS BY THE CONTRACTOR

- 1 Name of Contractor : The Indianair Bhawal Ltd and co.
- 2 Name of Work : Constructing of Arts College at Road, Dism
Kavalli
- 3 Agreement No : B-2/1583/20 of Dt- 11/11/2011
- 4 Estimated cost of work put to tender : Rs. 3,29,19,800.00
- 5 Contracted Amount : Rs. 6,73,92,875.00 (i.e. 100% of tender)
- 6 Date of starting the work : 10/11/2011
- 7 Date of completion of the work (As per contract agreement) : 10/06/2012
- 8 Actual date of the completion of the work : 09/10/2012
- 9 Amount of work done up to
Final Bill : Rs. 7,13,61,561.00
Civil work : 672,11,000.00
Electrical : 46,50,561.00

[Signature]
Signature of Contractor

10 State whether the above details given by the contractor are correct, not true or to what is the correct information.

11 State whether the contractor has executed the "Work in Progress" satisfactorily as per specifications and completed the work satisfactorily as per specifications. If not give the correct position of the work

Work is completed

12 Period of extension granted if any

NA

13 Reason for delay in completion of work

NA

14 Amount of remarks

100% RCC frame structure building

Final Work (mm)	W.C. Work (mm)	PAID (mm)	Final Work (mm)
1324.82	1335.54	100000.00	1505.00


The Engineer,
District Engineer
30-6-12
2012



[Signature]
Executive Engineer
R & B Co. Ltd
Hindupur

WORKWISE DETAILS OF WORK COMPLETED OR IN PROGRESS BY THE CONTRACTOR

- 1. Name of contractor :- **Marshall Kumar Chhatrabhai & Co.**
- 2. Name of work :- **Construction of Girls Hostel Building (100 Seated) for Model School at Patanpur (Sindur) Dist:- B.K.**
- 3. Estimated cost of work, as per Tender :- **₹ 20,00,000/-**
- 4. Agreement No. :- **B-2115-2013-12**
- 5. Tendered amount :- **₹ 20,00,000/-**
- 6. Date of starting the work :- **30/07/2013**
- 7. Date of completion of the work (As per contract agreement) :- **27/09/2015**
- 8. Actual date of the completion of the Work :- **27/09/2015**
- 9. Amount of work done up to :- **₹ 10,00,000/-**

For, **Marshall Kumar Chhatrabhai & Co.**

 Signature of the contractor

- 10. State whether the details as above given by the contractor are correct. If not state as to what is the correct information
- 11. State whether the contractor has executed the "work in progress" satisfactorily as per specification. Has completed the work satisfactorily as per specification. If not give the correct portion of the Work
- 12. Any other remarks

Yes

:- Work is Completed satisfactory as per specification.

Earth Work (Cum.)	RCC Work (Cum.)	Other Work (Cum.)
1400.00	100.00	00.00

No.AB /B / / 2014
O/o. The Executive Engineer,
Road & Building Division, Patanpur.
Date :- 25/11/2015



Executive Engineer
R & B Division,
Patanpur

આર.વી.એ.ડી.વારા

RUB-15

ક્રા.નં. એવી/ટે-કર/બી-
માર્ગ અને મહાન વિભાગ (રાજ્ય)
પાલનપુર તા. ૦૬/૧૧/૧૪

૫૬૫૧૨

પ્રતિ,
હર્ષદુમાર ભાયાલાલ એન્ડ કું,
પ્રભા-૧૮, સક્રિત સોસાયટી,
સારદા મંદિર પાસે,
પાલડી, અમદાવાદ-૩૮૦૦૦૭

વિષય :- કન્સ્ટ્રક્શન એન્ડ ગવર્નમેન્ટ આર્ટર્સ કોલેજ બિલ્ડીંગ એટ વાવ, ટી.બનાસકાંઠા

૧. આપનું ટેન્ડર ખોલ્યા તારીખ :- ૨૩/૦૭/૨૦૧૪
૨. અર્જનો પત્ર નં. એવી/ટે-કર/ ૫૬૫૮ તા. ૧૦/૧૦/૧૪
૩. આપનો પત્ર તારીખ :-

પ્રતિ,

- ૧ ઉપરોક્ત કામના ટેન્ડરમાં પુરૂલ અંદાજીત રકમ રૂ. ૭૫૬૮૩૨૬૯.૫૭ -ની સામે રૂ. ૬૫૪૬૫૬૩૯.૮૨ નું ૧૭.૫૦% નીચું ટેન્ડર અંદાજીતભેદના પત્ર નં. ૨ થી સ્વિકારવામાં આવેલ છે.
- ૨ ઉપરોક્ત કામની જામીન અનુમત રૂ. ૦/- રાષ્ટ્રીય બનતા પ્રમાણપત્રના રૂપમાં તથા રૂ. ૧૮૯૩૦૦૦/- થી પહેલાણા અર્પન કો.ઓ. લેંડ પહેલાણાની યાજનાના રૂપમાં તથા રૂ. ૩૭૮૬૦૦૦/- અનુમુખિત (મીડિયુલ) બેંકની યાજના પરકોર્મીસ બોન્ડના રૂપમાં આપે ભરેલ છે અને કરારખતમાં સહી ફિક્કા કરી ગયેલ છે. જે અન્યથે કરારખત નં. બી-૨/મી.સને ૨૦૧૪-૧૫ થી ઉપરોક્ત કામ નાખમ કાર્યપાલક ઉજ્જનેર સી. મા. અને મ. પેટા વિભાગ વરાદ ની દેખરેખ હેઠળ કરવામાં આવી આદેશ આપવામાં આવે છે.
- ૩ આ કામ આપે આ આદેશની તારીખથી ૧૨ (બાર) મહિનાની સમય મર્યાદામાં પૂર્ણ કરવાનું છે.
- ૪ સરકારની ઠરાવ ક્રમાંક : ટી અને સી : ૨૦૭૪ : ૧૭૬ : સી તા. ૩૦-૧૦-૧૯૮૦ મુજબ ઉપરોક્ત કામ કરતી વખતે કોઈપણ આર્ટિટમનું જથ્થો કરારખતના જથ્થા કરતાં સમય અધિકારીની લેખિત પરવાનગી વિનાય વધેલા વધે નહીં તેની ખાસ કમ્પ્લી તેવાની રહેશે. નહીં તો સમગ્રી જવાબદારી આપના સિરે રહેશે.
- ૫ આ કામ કરવા માટે વાપરવામાં વતી માલ સામાન સ્થળ ઉપર લાવતા પહેલાં સરકારી રીસર્ચ લેબોરેટરીમાં ટેસ્ટ કરાવી એમુલ થયા પછી જ સાર્ટિ ઉપર લાવવો તે સિવાય લાવેલ માલ સામાન સ્વીકાર્ય રહેશે નહીં. અને આપના ખર્ચ અને જોખમને દુર કરાવવામાં આવશે.
- ૬ કોન્સ્ટ્રક્શન એન્ડ રેગ્યુલેશન એન્ડ એમ્પ્લોયીસ એક્ટ - ૧૯૭૦ તેમજ તે હેઠળના નિયમો ૧૯૭૨ની શોગવાઈનું કુલજસો પાલન કરવાનું રહેશે.
- ૭ આ સાથે કરારખતની નકલો અને જરૂરી નકાલો સામેલ છે.

નિઘાન :- ઉપર મુજબ

જાણી
કાર્યપાલક ઉજ્જનેર
માર્ગ અને મહાન વિભાગ
પાલનપુર

TCM Work order - 4

BY REGD. POST A.D.
In AB-TC Work Order

NO. AB-TC/B-27/V2-8576 OF 2014
OFFICE OF THE EXECUTIVE ENGINEER,
Road and Building Division, Opp. Sub Jail,
Himmatnagar - 383001, Phone: (02772) 241651.
Date- 11 / 11 / 2014

TO,
HARSHADKUMAR BHAILALBHAI & CO.
PLOT NO. 52, DEESA HIGHWAY,
NR. T.B. THREE ROAD,
PATAN - 384265.

ID NO : 148571

[WMS:7949/0]

Subj: Tender for the work of :- Constructing Arts college at Bayad,
Dist. - Aravalli

GENTLE MAN,


As your tender amounting to Rs. 6,73,39,875.00 i.e. 18.7892 % Below, the estimated cost of Rs. 8,29,19,870.90 is accepted & as you have paid the Security Deposit as below and completed the tender documents for the above noted work, you are requested to start the above noted work immediately under the instruction of the Deputy Executive Engineer R & B Sub Div. Mudasa and complete the same within the stipulated time mentioned in tender agreement i.e. on or before. 11 / 11 / 2015

- 1 Please note that the date of order to start the work will be considered from the date of issue of this letter.
- 2 No excess quantity be executed than the Tender quantity without prior approval of competent authority other wise it will be your personal responsibility for the same.
- 3 The true copy of the accepted tender is furnished herewith for information.
- 4 The license under the rule Gujarat contract labour act must be produced from Asstt. Labour Commissioner, Himmatnagar before starting the work.

5	S.D paid in N.S.C.	Rs.	-----
	S.D paid in F.D.R.	Rs.	<u>2073000.00 (FDR No. 0794348)</u>
	To be recovered From R.A. Dtl	Rs.	<u>2073000.00</u>
6	Performance Bond:	Rs.	<u>4146000.00</u>

The Melsani Urban Co-Op. Bank Ltd. Branch Patan BG No. 32/396 Dt. 22.10.2014
Valid up to 22.10.2015

D.A. One Tender Copy

Your's faithfully,

Executive Engineer
R & B Division, Himmatnagar.

(P.T.O)

RUDIT

જાન્યવરી ૨૦૧૭ ના ૨૦
જાહેર અને વહીવટ વિભાગ (૨૧૫૫)
પાલિકા નંબર ૩૭૧૧૧૫

પત્ર,
અધિકારી : આઈ.આઇ.એન.કે.કે.
૩૦૯, સી.એલ. માલ, મેડિકલ કોલેજ કોમ્પ્લેક્સ
સેક્ટર ૧૧
ગાંધીનગર, ૩૮૨ ૦૧૭

વિષય :- કન્સ્ટ્રક્શન ઓફ પબ્લિક વેલ્ફેર પ્રજેક્ટ ડિલીવરી એન્ડ બાયર તા. બાયર ગ્રી. બનાવવા

- અવગણના :-
૧. આપનું ટેન્ડર ખોલ્યા તારીખ :- ૨૭/૦૨/૨૦૧૭
 ૨. સત્રનો પત્ર નં. એમી/ટેન્ડર/ ૮૦૧૫ તા. ૬/૧/૧૫
 ૩. આપનો પત્ર તારીખ :- ૨૮/૦૧/૨૦૧૫

પ્રતિ,

- ૧ ઉપરોક્ત કામના ટેન્ડરમાં મુકવ અંદાજીત રકમ રૂ.૯૮૧૧૪૯૩.૧૦ ની સામે રૂ.૯૨૪૪૬૭૩.૯૫ નું પૈસા નીચું ટેન્ડર સંદર્ભલેવા પત્ર નં. ૨ થી સ્વિકારવામાં આવેલ છે.
- ૨ ઉપરોક્ત કામની જાણીત અનુચિત રૂ. ૦૦/- રાષ્ટ્રીય ભવન પ્રવેશ પત્રના રૂબેરૂ તથા સુવિદ્યમાન બી.એસ.સી. સર્કલ ઓ.સી. લેડ.લી. મેડિકલ કોલેજના પાયાના રૂબેરૂ તથા રૂ. ૨૯૨૨૦૦/- મેડિકલ કોલેજના પાયા પર કોલેજના પાયાના રૂબેરૂ તથા ભવન છે અને કારણતર્યા સહી સિક્કા કરી અધિકારીના આગે કરાવવામાં આવી છે અને તેના પાયાના ઉપરોક્ત કામના પાયાના કારણતર્યા કરવામાં આવી છે.
- ૩ આ કામ અંગે આ અહેવાલની તારીખથી ૩૦-૦૧-૨૦૧૭ થી આ કામના પાયાના ઉપરોક્ત કામના પાયાના કારણતર્યા કરવામાં આવી છે.
- ૪ ઉપરોક્ત કામના કારણતર્યા કરવામાં આવી છે અને તેની સામે રૂ. ૯૨૪૪૬૭૩.૯૫ નું પૈસા નીચું ટેન્ડર સંદર્ભલેવા પત્ર નં. ૨ થી સ્વિકારવામાં આવેલ છે.



19.3 I find that Services provided to the Government, a local authority or a governmental authority by way of construction of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession was exempted vide Sr. No. 12 of Notification No. 25/2012-ST. However, items (a), (c) and (f) of entry No.12 of Notification No.25/2012-ST were omitted with effect from 1.3.2015 by Notification. No. 6/2015 dated 1.3.2015. Sr. No.12 after its amendment read 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) ***

(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) ***

19.4 As a result of the amendment, the exemption vide Sr. No. 12 of Notification No. 25/2012-ST would not be applicable for the period April 15 onwards. The demand in respect of works at Sr.No.3,4,5 & 8 of the above table at paragraph 17 is for the period April 2015 to March 2016 onwards and hence the exemption at Sr.No.12 of Notification No. 25/2012-ST would not be applicable for the period 01.04.2015 to 29.02.2016.

19.5 Though the assessee claimed exemption under Sr. No. 12A, the same was inserted in Notification No. 25/2012-ST by Notification No. 9/2016 dated 1.3.2016, which exempted the services specified therein from payment of service tax, and the said entry reads as under:

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

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

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

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

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

19.6 Thus, there is no notification for granting exemption for construction of Government Buildings, for the period between 1st April 2015 and 29th February 2016. However, I find that, for granting exemption for construction of Government Buildings, for the period between 1st April 2015 and 29th February 2016, the Government had found place in provisions in Finance Act 2016 under Section 102 which read as under:

102. Special provision for exemption in certain cases relating to construction of Government buildings. — (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of—

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

(b) a structure meant predominantly for use as —

(i) an educational establishment;

(ii) a clinical establishment; or

(iii) an art or cultural establishment;

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

under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all the material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

19.7 In the present case, from the documents submitted by assessee as discussed at paragraph 19.2, I observe that the work orders entered into were prior to 1st March 2015 or work was commenced before 1st March 2015 in respect of works mentioned at Sr. No.3,4,5 & 8 of the table at paragraph 17. Therefore, these works are exempted from payment of Service tax as per Section 102 of Finance Act 2016 for the period between 1st April 2015 to 29th February 2016 and exempted under Sr. No. 12A of Notification No. 25/2012-ST for the period from 1.3.2016 onwards and demand to this extent is required to be dropped.

20. In regard to the Deesa Canal Work (Sr. No.7 of chart at paragraph 17), the assessee submitted that entry No.12(d) of Notification No. 25/2012-ST which provided that the services provided to Government by way of construction, commissioning, installation, erection, repair, maintenance, renovation or alteration of canal, dam or other irrigation works is exempted. From the copy of Work Order No.AB/TC/Flood damage/SSS Canal/215 dated 18.01.2016 and Form 3(A) giving work wise details of work completed or in progress by the contractor issued by Executive Engineer, Deesa Irrigation Division, Deesa made available by the assessee, I find that the work carried out is flood damage repairing of Sujlam Sulam Spreading Canal. The scanned image of Form 3(A) is as under:

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LOCAL GOVT
PUNE MUNICIPAL CORPORATION

WORK WISE DETAILS OF WORK COMPLETED OR IN PROGRESS OF THE CONTRACTOR

1	Name of Contractor	Handal Kumar Mechanicals & Co.
2	Name of work	Flood Damage Repairing of "Vishnu Sahay" Spreading Channel No. 3, 4, 5, 6 & 7, 8, 9, 10, 11 & 12
3	Agreement/Job No.	B-2110/2018/16
4	Estimated cost of work Put to tender	Rs. 20.77 Crores
5	Tendered amount	Rs. 20.77 Crores
6	Date of starting the work	15.01.2018
7	Date of Completion of the work (As per contract agreement)	15.01.2018
8	Actual date of the Completion of the work	15.01.2018
9	Amount of work done upto Final Bill	Rs. 20.77 Crores

[Signature]
Handal Kumar Mechanicals & Co.

10.	State whether the details, as above, given by the contractor are correct. If not, State the information.	Yes, Correct
11.	State whether the contractor has "fixed the 'Working progress' satisfactorily as per specification and completed the work satisfactorily as per specifications. If not, give the detailed position of the work.	Work is completed satisfactorily & per Specifications
12.	Any Other Remarks	Earth Work 5.20 Crores Cementing 5.11 Crores Rolling 1.92 Crores

Place : **Dhase**

Date : **12/01/2018**

[Signature]
Executive Engineer
Dhase Irrigation Division
Dhase

FORM NO. 10
INVESTIGATION REPORT

WORKS OF INTEREST OF WORKS CARRIED OUT BY THE CONTRACTOR

1. Name of Contractor Name of work	Contract Number Place of work
2. Agreement/Date No.	Contract Value
3. Estimated cost of work Tendered amount	Actual cost of work
4. Date of starting the work	Actual date of completion of the work
5. Date of completion of the work (As per contract agreement)	Actual date of completion of the work
6. Actual date of the Completion of the work	Amount of work done upto
7. Amount of work done upto	Remarks
8. State whether the details, as above, given by the contractor are correct, Partial, Still as information.	Work is completed satisfactorily as per specifications
9. State whether the contractor has executed the "Working program" satisfactorily as per specifications. If not, give the reason.	Remarks
10. Any Other Remarks	

Place : Deesa

Date : 12/01/2018

Executive Engineer
Deesa Irrigation Division
Deesa

Since the work carried out is repair of canal for Government of Gujarat, the same is covered under exemption as per entry No.12(d) of Notification No.25/2012-ST and therefore the demand to this extent is required to be dropped.

21.1 The assessee has claimed exemption vide entry No.13/14 of Notification No. 25/2012-ST for the works mentioned at Sr.No.6 & 9 of table at paragraph 17. The works carried out by the assessee are 'Construction of C-1 type quarters 6 units at Malpur, Dist. Aravalli' and 'construction of 240 residential units in Shamjivi Vistar in Patan Dist under Integrated Housing & Slum Development Program (IHSDP)'. The assessee has not mentioned specifically under which entry, whether it is entry No.13 or 14 of Notification No.25/2012-ST the exemption is granted. Sr. No.13 and 14 read as under:

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

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

(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv AwasYojana;

"(ba) a civil structure or any other original works pertaining to the 'In-situ rehabilitation of existing slum dwellers using land as a resource through private participation' under the Housing for All (Urban) Mission/Pradhan Mantri AwasYojana, only for existing slum dwellers."

(bb) a civil structure or any other original works pertaining to the Beneficiary-led individual house construction / enhancement under the Housing for All (Urban) Mission/Pradhan Mantri AwasYojana;";

(c) a building owned by an entity registered under section 12 AA of the Income Tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;

(d) a pollution control or effluent treatment plant, except located as a part of a factory; or

(e) a structure meant for funeral, burial or cremation of deceased;

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

"(a) railways, excluding monorail and metro;

Explanation.-The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt

(b) a single residential unit otherwise than as a part of a residential complex;

(c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

"(ca) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under:

(i) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri AwasYojana;

(ii) any housing scheme of a State Government ". Inserted vide Notification 9/2016- Service Tax to be in effect from 1 March 2016.

(d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

(e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

21.2 As per Sr. No.13 and 14 of notification, exemption is granted to construction of specific housing schemes like, Jawaharlal Nehru National Urban Renewal Mission or Rajiv AwasYojana, and Housing for All (Urban) Mission/Pradhan Mantri AwasYojana only. I have gone through the work Completion Certificate in Form No.3(A) issued by Executive Engineer, R &B Division, Himatnagar for construction of C-I type quarters at Malpur and Work Order dated 20.01.2014 and work Completion Certificate in Form No.3(A) issued by Chief Officer, Patan Nagarpalika for construction of residential units under IHSDP Scheme. In the copy of work orders furnished by the assessee, I do not find mention of any housing scheme as covered under Sr. No.13 or 14 of the Notification No.25/2012-ST for which exemption is granted. The assessee also failed to adduce evidence in support of their claim of exemption from service tax under any specific entry of either Sr. No.13 or 14 of Notification No.25/2012-ST. Therefore, I do not find any substance in the submission of the assessee claiming exemption for construction of residential units.

22. In respect of the works mentioned at Sr.No.10 to 22 of the table at paragraph 17, the work orders are after 01.03.2015 and, therefore, there is no exemption for such works. I find that the assessee has not made any claim of exemption for the works other than those mentioned at Sr. No.1 to 9 of Table at paragraph 17. Therefore the demands of service tax on these services are to be confirmed. As discussed earlier in this order, the service provided by the assessee is

'works contract' service and the service tax on the services, other than those which are held to be exempted, is to be demanded and confirmed under 'works contract' service.

23. The assessee, however, argued that considering that no additional service tax was recovered from the customers, the amount received by him is inclusive of service tax and the benefit of cum-tax should have been provided for determining the service tax liability. In this regard, I find that, the assessee was not registered under Service Tax Rules and not charged any service tax from the customers. There is no allegation in the show cause notice as well that the assessee has charged service tax. Therefore, as per Section 67(2) of the Finance Act 1994 the gross amount charged is to be considered as inclusive of service tax and the benefit as submitted by the assessee is available.

24. As evident from the Profit & Loss Account for the years 2015-16 and 2016-17 the assessee had received income under the head of 'Sub-let' and 'Rent'. Such an activity of renting of immovable property is covered under the declared services at Section 66E(a) of the Finance Act, 1994 and chargeable to service tax. Therefore the demand under this category is to be confirmed.

25.1 Regarding the demand of service tax in respect of expenses under the head of 'Vakil Fees', it is evident that the assessee had received legal services as defined under Rule 2(cca) of the Service Tax Rules, 2004. In terms of Notification No. 30/2012 ST dated 20.6.2012 as amended, the person liable to pay service tax in relation to service provided or agreed to be provided by,

- (I) an arbitral tribunal, or
- (II) a firm of advocates or an individual advocate other than a senior advocate by way of legal services
- (II) an individual advocate or a firm of advocates by way of legal services other than representational services by senior advocates;

is the recipient of service. The assessee, being a business entity, has received the service of advocate,, in terms of the provisions of Section 68(2) of the Finance Act, 1994 read with Rule 2(d) of the Service Tax Rules, 1994 and Notification No. 30/2012 ST as amended, is liable to pay 100% of the service tax payable in respect of Legal Services.

25.2 The assessee, however, submitted that even if it is assumed that he is liable to pay service tax under RCM on consultancy services, there is no undue benefit available because the amount of tax under RCM would have been eligible to claim CENVAT credit. In this regard, I find that, the service provided by the assessee is 'works contract' service and the service tax is computed in terms of Rule 2A of Service tax (Determination of Value) Rules 2006 where non-availing of cenvat credit on inputs and input services is a condition, the argument of eligibility of CENVAT credit and resultant revenue neutral situation is incongruous. The case laws relied upon by the assessee is not squarely applicable in the present facts and circumstances of the case.

25.3 Having discussed the tax liability of the works provided and the availability of exemption as claimed by the assessee, the service tax liability is determined as under:

Works Contract and Rent Income

(Amount in Rupees)									
Year	Construction Income	Exemption	40% of value	Sublet income	Rent Income	Total Income	Taxable Value	Service Tax rate	Service Tax
2015-16	144385834	124711535	7869720	125620	0	7995340	6982829	14.50%	1012511
2016-17	228420460	45343217	73230897	405327	150000	73786224	64161934	15%	9624290
2017-18 (upto June 17)	157685531	46120936	44625838	0	0	44625838	38805077	15%	5820761
Total							109949840		16457561

S.Tax on legal charges under RCM

(Amount in Rupees)			
Year	Legal Fees	Service Tax rate	Service Tax
2015-16	269444	14.50%	39069
2016-17	165000	15%	24750
2017-18 (upto June 17)	0	0	0
Total	434444		63819

Total Service Tax Liability

(Amount in Rupees)

Year	S. Tax on income	S Tax under RCM	Total Service Tax payable
2015-16	1012510	39064	1151574
2016-17	9624290	24750	9649040
2017-18 (upto June 17)	5820761	0	5820761
Total	16457561	63814	16521380

26. Regarding the argument of the assessee that the demand is barred by limitation as there is no suppression, omission or failure to disclose information, I find that Section 70 of the Finance Act, 1994 stipulated that every person liable to pay the service tax shall himself assess the tax due. The Government has introduced self-assessment system under a trust based regime which casts the onus of proper assessment and discharging of the service tax on the assessee. In the self-assessment era, the Service Providers are required to be proactive in declaring their activities to the department and getting themselves registered and fulfill their tax obligations. Service Tax being an indirect tax requires the service provider only to collect the same from the service receiver and remit it to the Government. The Government has from the very beginning placed full trust on the service provider so far service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, 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 them 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 placed on the service provider. In the instant case the assessee has not complied with the provisions of Service Tax. They have received amount from customers but did not disclose the same before department nor paid service tax thereon and these facts came to the knowledge of the Department only when the enquiry was initiated by Department. This act of the said assessee is tantamount to willful misstatement and suppressing the facts with an intention to evade service tax payment. Hon'ble High Court of Chhattisgarh in the case of **Pawan Engineering Works-2019 (31) G.S.T.L. 10 (Chhattisgarh)** has held that non-registration definitely will amount to suppression of facts. Hon'ble High Court held as under:

10. The contention of the appellant is that the extended period of 'five years' is not applicable to the instant case, as it does not come within the purview of specific Clauses at 'a, b, c, d and e'. This aspect has been considered by the Tribunal and it has been clearly held in paragraph 17 that non-registration of the appellant, in the given circumstances, definitely will amount to suppression of the relevant facts, which came to the notice of the Department, only later, on the basis of some intelligence gathered by the Preventive Officers of the Central Excise. This being the position, it squarely comes within the purview of 'sub-Clause (d)' under the proviso to Section 73(1) of the Finance Act, 1994 and hence it was open for the Department to have invoked the extended period of 'five years' for issuing the show cause notice. We are of the view that the finding rendered by the Tribunal is well supported by the reasoning and hence it warrants no interference.

27. It is also not out of place if it mentioned that even when the exemption to construction services provided to Government was withdrawn, the assessee has not come forward for registering himself under Service Tax laws. Thus it is evident that the assessee had no intention of abiding the requirement of law and thus there is clear violation of law with intent to evade payment of service tax. These facts only came into notice only when the enquiry was initiated. Had the enquiry been not initiated, the said facts would never have seen the light of the day. Therefore, the service tax not paid by them is recoverable by invoking the extended period of limitation as provided for under proviso to Section 73(1) of the Finance Act, 1994 along with interest in terms of the provisions of Section 75 of the Finance Act, 1994. In view of the above factual position, the case law relied upon by the assessee are clearly distinguishable and they do not come to the rescue of the assessee.

28. I also find that the assessee had rendered liable to penalty under Section 77(1)(a) of the Finance Act, 1994 in as much as he failed to obtain service registration. He also had rendered liable to penalty in terms of the provisions of Section 77(1)(c) of the Finance Act, 1994 in as


much as he failed to produce the documents called for and appear before the investigating officer in response to the summons.

29. The assessee further argued that demand for the period from April 2015 to September 2015 is barred from extended period of limitation as the SCN is issued beyond 5 years. In this regard I find that the time limit for issuing show cause was extended upto 31st December 2020 by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and hence the show cause notice is issued within the time limit prescribed under Section 73 of the Finance Act 1994.

30. In view of my above discussions and findings, demand of service tax to the tune of Rs.1,65,21,380/- as detailed at paragraph 25.3 is required to be confirmed and remaining demand of Rs.1,51,84,691/- as discussed at paragraphs 18.3, 19.7 and 20 are required to be dropped. Accordingly, I pass the following order:

ORDER

- (i) I confirm the demand of Service tax amounting to Rs. 1,65,21,380/- (Rupees one crore sixty five lakh twenty one thousand three hundred eighty only) and order to recover from the assessee in terms of the provisions of Section 73 of the Finance Act, 1994 by invoking the extended period of limitation;
- (ii) I drop the demand of Rs.1,51,84,691/- (Rupees one crore fifty one lakh eighty four thousand six hundred ninety one only);
- (iii) I order to charge and recover the interest at the applicable rate on Rs. 1,65,21,380/- (Rupees one crore sixty five lakh twenty one thousand three hundred eighty only) in terms of the provisions of Section 75 of the Finance Act, 1994;
- (iv) I impose penalty of Rs.10,000/- (Rupees ten thousand only) in terms of the provisions of Section 77(1)(c) of the Finance Act, 1994;
- (v) I impose penalty of Rs.10,000/- (Rupees ten thousand only) in terms of the provisions of Section 77(1)(a) of the Finance Act, 1994;
- (vi) I impose penalty of Rs. 1,65,21,380/- (Rupees one crore sixty five lakh twenty one thousand three hundred eighty only) in terms of the provisions of Section 78 of the Finance Act, 1994. However, in view of clause (ii) of the second proviso to Section 78 (1), if the amount of Service Tax confirmed and interest thereon is paid within period of thirty days from the date of receipt of this Order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.


(SUNIL KUMAR SINGH)
Principal Commissioner
Central Goods & Service Tax
Ahmedabad - South

BY R.P.A.D./Hand Delivery

F.No. STC/4-42/O&A/Harshadkumar/20-21

Date: 01.08.2022

To
M/s Harshad Bhaillal & Co.,
18, Bhakti Society, Sharda Mandir Road,
Paldi, Ahmedabad

Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad Zone.
2. The Asstt. Commissioner, Central Tax, Division-VII, Ahmedabad South.
3. The Asstt. Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South
4. The Asstt. Commissioner (Prosecution), HQ, Ahmedabad South.
5. The Superintendent, Central Tax AR-II, Div.-VII, Ahmedabad South
6. The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website.
7. Guard file.