



कार्यालय आयुक्त केंद्रीय उत्पाद शुल्क एवं सेवाकर
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
प्लॉट न. ६७-७६ / बी-१ "सिद्धि सदन" बिल्डिंग
PLOT NO. 67-76/B-1, "SIDDHI SADAN" BUILDING,
नारायणभाई उपाध्याय मार्ग, भावनगर - ३६४ - ००१
NARAYAN UPADHYAY MARG, BHAVNAGAR-364 001.

फ़ोन : (0278) 2523627

फैक्स : 0278-2513086

रजिस्टर्ड डाक पावती द्वारा
By Regd. Post A. D.

फ़ाइल नं. - V/15-02/Dem-ST/HQ/2012-13
F. No. - V/15-02/Dem-ST/HQ/2012-13

आदेश की तारीख : 21.02.2014.
Date of Order : 21.02.2014.

जारी करने की तारीख : 27.02.2014.
Date of Issue : 27.02.2014

पारितकर्ता,

श्री नवनीत गोयल.

आयुक्त केंद्रीय उत्पाद शुल्क एवं सेवाकर, भावनगर

Passed by,

SHRI NAVNEET GOEL

Commissioner, Central Excise and Service Tax, Bhavnagar

मूल आदेश नं.: 02/BVR/Commissioner/2014
Order-in-Original No. 02/BVR/Commissioner/2014

- यह प्रति उस व्यक्ति को, जिसके लिए यह आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है।
- इस मूल आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित ढंग से कर सकता है :

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील :

- वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत अपील निम्न को की जा सकती है।

पश्चिम क्षेत्रीय पीठ, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)
ओ20, न्यू मेन्टल अस्पताल कंपाउन्ड, मेघाणीनगर, अहमदाबाद 380016।



- 5। अपीलीय न्यायाधिकरण का वित्त अधिनियम, 1994 की धारा 86 की उप धारा (1) के अंतर्गत अपील, सेवाकर नियमावली, 1994 के नियम 9(1) के अंतर्गत निर्धारित एस.टी.-5 में, चार प्रतियों में आदेश प्राप्ति के दिनांक से तीन माह के भीतर की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निर्धारित किए अनुसार शुल्क लगा होना चाहिए। जिस स्थान पर न्यायाधिकरण की न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्रा बैंक के न्यायापीठ के सहायक रजिस्ट्रार के नाम से निर्धारित फीस रेखांकित बैंक ड्राफ्ट के रुप में भेजनी होगी।
- 6। वित्त अधिनियम, 1994 की धारा 86 की उपधाराओं (2) एवं (2ए) के अंतर्गत सेवाकर नियमावली, 1994 के नियम 9(2) के अंतर्गत निर्धारित किए गए फॉर्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क या आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश के प्रति (उनमें से एक प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उर्प आयुक्त, केन्द्रीय उत्पाद शुल्क को अपीलीय न्यायाधिकरण में आवेदन करने के आदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड / आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।
9. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार यथास्थिति मूल आदेश या न्यायनिर्णयनकर्ता प्राधिकारी के आदेश की प्रति पर रुपये 6.50/ का न्यायालय टिकट लगा होना चाहिए।
10. व्यौरापूर्ण करने हेतु सीमाशुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 की ओर ध्यान आकर्षित किया जाता है।

BY RPAD

To,
M/s. P. R. Patel & Co.,
G-1, Mahavir Palace, Kalubha Road,
Opp. Municipal Commissioner's Bungalow,
Bhavnagar - 364 001.

Subject: Show Cause Notice : V/15-02/Dem-ST/HQ/2012-13 dated 19.04.2012



BRIEF FACTS OF THE CASE;

On the basis of Intelligence that M/s. P. R. Patel & Co., G-1, Mahavir Palace, Kalubha Road, Opp. Municipal Commissioner's Bungalow, Bhavnagar, (*hereinafter referred to as 'the Noticee'*) was providing the taxable services of 'Construction of Residential Complex' and 'Commercial or Industrial Construction' services and not paying Service Tax properly, inquiry was conducted by issuing summons.

2. A statement of Shri Chintan Prakashbhai Patel, Partner of the Noticee was recorded under Section 14 of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 (*hereinafter referred to as "the Act"*) on 02.03.2012 before the Superintendent (A.E.), Central Excise, H.Q., Bhavnagar in question-answer form as reproduced below:

Q. No. 1: *What kinds of services are provided by your firm?*

Answer: *Our firm M/s P. R. Patel & Co. is a civil construction company. We provide our construction services to various departments of State as well as Central Governments. During the last five years we have provided our services for construction of various Government buildings such staff quarters for employees of various Government departments, Government office buildings, Government owned medical college buildings etc. Apart of this we have also undertaken work of maintenance & repair of various Government buildings. We do not provide our services to private sector.*

Q. No. 2: *When did your firm start and at present how many partners are there in your firm?*

Answer: *Our firm was started in the year 1976 and at present there are four partners in our firm namely Shri Chinar Prakashbhai Patel who is my brother, Shri Prakashbhai Ratilal Patel my father, Kanakben Prakashbhai Patel who is my mother and myself.*

Q. No. 3: *Have you taken Service Tax registration for the services provided by your firm? If yes then please produce the certificate.*

Answer: *No we are not registered with Service Tax Department as we provide our services to Government departments only and as per our knowledge no Service Tax is levied on the services provided to Government Departments.*

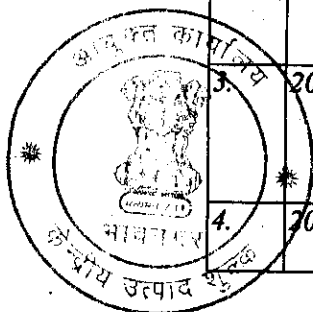
Q. No. 4: *It means no Service Tax has been paid by your firm till date. Is it true?*

Answer: *Yes, it is true; we have not paid any Service Tax till date on the services provided by our firm.*

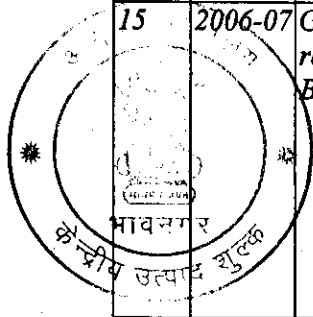
Q. No. 5: *Please give year wise details of the amount received by your firm against the services provided to various recipients from the financial year 2006-07 onwards alongwith type of service provided.*

Answer: *The details as desired by you are as under-*

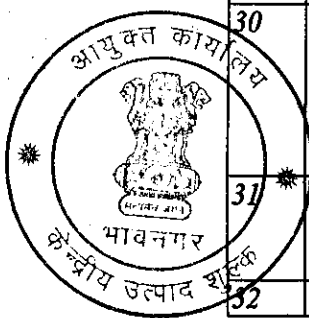
Sr. No.	Year	Name of the Service Recipient	Amount Received	Type of Service Provided
1.	2006-07	Excel Crop Care Ltd., Gajod	47,34,256/-	Under this contract we had constructed cement sheds for relief of the people affected by earth quack, I'll submit copies of work order and sample bill within one week.
2.	2006-07	District Seva Sadan, Rajkot	5,68,48,627/-	Under this contract we had constructed Jila Seva Sadan building in Rajkot. I produce Work Order dated 17.02.2006 in this regard.
3.	2006-07	DRM office Building Railway-Ahmedabad	1,97,08,794/-	Under this contract we had constructed office building of Divisional Railway Manager. I produce Work Order No. W623/273/04-05 (W-6) dated 04.02.2005 in this regard.
4.	2006-07	GSPHCL	31,18,707/-	Under this contract we had constructed staff quarters for employees of Gujarat Police in



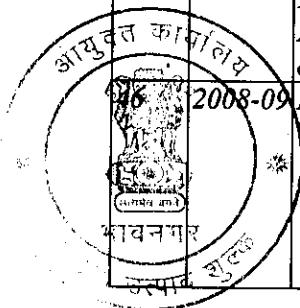
				Rajkot. I produce copy of Notice to proceed with the work No. PHC/TECH/TENDER/MD/2390/2866/2004 dated 22/26.07.2004 in this regard.
5	2006-07	GMDC Ambaji Kam Bill	25,05,170/-	Under this contract we had constructed Administrative office building, Museum, Art Gallery and other Infrastructure at stone park at Kumbharia - Ambaji, Taluka: Danta, Dist. Banaskantha for Gujarat Mineral Development Corporation Limited (GMDC). I produce Work Order No. CV/STN/AMBAJI/257/11889/06-07 dated 27.09.2006 in this regard.
6	2006-07	Patel Infrastructure Pvt Ltd. (Sardar Patel Ring Road, Ahmedabad)	60,43,640/-	Under this contract we had undertaken the work of widening of road at Sardar Patel Ring road around Ahmedabad City. I produce Work Order No. PIPL/SPRR/WO-15 dated 12/02/2007 in this regard.
7	2006-07	Rannade Mataji Temple	8,75,000/-	Under this contract we had undertaken the work of construction of Dining Hall and residential part in the school of Rannade Mataji Temple, Vallbhipur. I produce copy of mutual contract dated 09.02.2006 in this regard.
8	2006-07	GSPHCL Quarter work, Gadhada	17,20,000/-	Under this contract we had constructed staff quarters for employees of Gujarat Police in Gadhada. I produce copy of Notice to proceed with the work No. ગુપોહા/ટેક/ટેન્ડર/એમડી/૨૮૦૮/૬૩૪૦/૨૦૦૬ dated 06/17.01.2006 in this regard.
9	2006-07	GSPHCL Quarter work, Bhavnagar	5,416/-	Same as Sr. No. 8
10	2006-07	GSPHCL Quarter work, Ghogha.	23,40,000/-	Under this contract we had constructed staff quarters for employees of Gujarat Police in Ghogha. I produce copy of Notice to proceed with the work No. ગુપોહા/ટેક/ટેન્ડર/એમડી/૨૦૮/૬૫૩૩/૨૦૦૬ dated 21/23.01.2006 in this regard.
11	2006-07	Engineering College Bhavnagar Work Bill	6,50,56,578/-	Under this contract we had constructed building of Engineering Degree College at Bhavnagar. I produce Work Order dated 15.05.2006 in this regard.
12	2006-07	Rate List Bill	86,294/-	This income is against the annual maintenance contract with R & B Department. I'll produce copy of contract & bill in this regard within one week.
13	2006-07	Railway Platform Work-Final Bill	4,15,707/-	Under this contract we had undertaken the construction work of railway platform between Bhavnagar Jetty to Dhola Jn. I produce copy of Work Order No. Dy CE(C)/ADI/SUNR-BVC/10 dated 13.01.2003 in this regard.
14	2006-07	PGVCL, Bhavnagar	1,20,637/-	Under this contract we had undertaken work of maintenance & Repair. I'll produce documents in this regard within one week.
15	2006-07	GSPHCL repairing work, Bhavnagar	6,84,457/-	Installation of drainage line in the residential quarter of Bhavnagar Police staff and also undertake the maintenance and repair work of hospital building of police headquarters and dog squad building at Bhavnagar. I produce copy of Notice to proceed with the work No. ગુપોહા/ટેક/ટેન્ડર/એમડી/૨૮૭૦/૭૨૩૯/૨૦૦૬ dated 17/20.02.2006 in this regard.



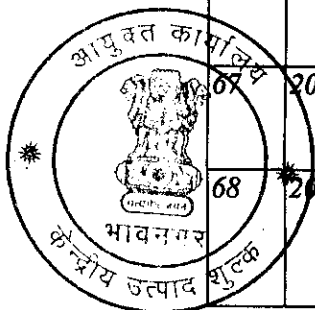
16	2007-08	District Seva Sadan, Rajkot	3,34,63,344/-	Same as Sr. No. 2
17	2007-08	DRM office Building Railway-Ahmedabad	1,68,46,527/-	Same as Sr. No. 3
18	2007-08	GMDC Ambaji Kam Bill	1,33,42,510/-	Same as Sr. No. 5
19	2007-08	Ramnade Mataji Temple	41,75,000/-	Same as Sr. No. 7
20	2007-08	GSPHCL Quarter work, Gadhada	10,01,881/-	Same as Sr. No. 8
21	2007-08	GSPHCL Quarter work, Ghogha.	10,06,001/-	Same as Sr. No. 10
22	2007-08	Engineering College Bhavnagar Work Bill	4,38,03,469/-	Same as Sr. No. 11
23	2007-08	PGVCL, Bhavnagar	21,671/-	Same as Sr. No. 14
24	2007-08	P.I.U. Staff Quarter, Bhavnagar	54,45,583/-	Under this contract we had undertaken the construction of Staff Quarters, Compound Wall & Connecting Bridge in Sir, T. Hospital at Bhavnagar City. I produce Work Order No. PIU/A/cs/STH/BNR/1065-69/07 dated 29/06/2007 in this regard.
25	2007-08	Jafrabad Port Office Building work	23,81,058/-	Under this contract we had undertaken the construction work of office building for G.M.B. Port, Bhavnagar. I produce work order dated 17.11.2006 in this regard.
26	2007-08	Construction of Boys Hostel	1,33,43,212/-	Under this contract we had undertaken the construction work of Boy's Hostel Building (Phase-II) for Medical College, Bhavnagar. I produce work order No. Tender/161 dated 29.05.2007 in this regard.
27	2007-08	Construction of Staff Quarter B-96 Vidyannagar	1,03,94,802/-	Under this contract we had constructed staff quarters for employees of Gujarat Police at Vidyannagar Police Line, Bhavnagar. I produce copy of Notice to proceed with the work No. ગુપોહા/ટેક/ટેન્ડર/એમડી/૩૨૩૩/૩૫૮૧૨૦૦૭ dated 13/17.08.2007 in this regard.
28	2007-08	Gujarat Police Housing Botad	28,85,171/-	Under this contract we had constructed staff quarters for employees of Gujarat Police at Botad. I produce copy of Notice to proceed with the work No. ગુપોહા/ટેક/ટેન્ડર/એમડી/૨૯૮૦/૧૨૮૪૨૦૦૬ dated ૨૪/૨૯.૦૫.૨૦૦૬ in this regard.
29	2007-08	Civil Work Office Building AMC Ahmedabad	1,15,27,920/-	Under this contract we had undertaken the work of construction of building for Ahmedabad Municipal Corporation. I produce the work contract dated 05.09.2007
30	2007-08	Redevelopers of Swimming Pool, Ahmedabad	25,88,278/-	Under this contract we had undertaken the work of construction of swimming pool at Kankaria, Ahmedabad for Ahmedabad Municipal Corporation. I produce the work contract dated 11.08.2007 in this regard
31	2007-08	Panna Park Terrace Rent Income	74,032/-	This is the income from rent of the tower Vodafone installed at the roof of our flat at Sardarnagar, Bhavnagar.
32	2008-09	Administrative	88,61,906/-	Under this contract we had constructed



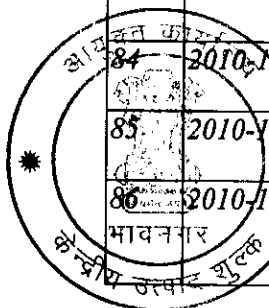
		Building Railway Para Work Site		Administrative Building for railways at Bhavnagar. I produce Work Order No. DYCE(C)P&D/ADI/BVP-W.SHOP/15 dated 23.01.2009 in this regard.
33	2008-09	DRM office Building Railway-Ahmedabad	4,20,635/-	Same as Sr. No.3
34	2008-09	GMDC Ambaji Kam Bill	1,77,13,349/-	Same as Sr. No.5
35	2008-09	Mangrol Mamlatdar Office Work Site	10,43,710/-	Under this contract we have constructed building of Mamlatdar Office at Mangrol Dist. Surat. I produce copy of work order No. AB/TC/3904/2008 dated 10.11.2008 in this regard.
36	2008-09	GSPHCL Quarter work, Amreli	95,08,519/-	Under this contract we had constructed staff quarters for employees of Gujarat Police at Amreli. I produce copy of Notice to proceed with the work No. ગુપોહ/૨૬/૨૦૦૨/એમડી/૩૫૭૪/૧૩૮૯/૨૦૦૮ dated 25/28.11.2008 in this regard.
37	2008-09	GSPHCL Quarter work, Paliyad.	13,50,063/-	Under this contract we had constructed staff quarters for employees of Gujarat Police at Paliyad. I produce copy of Notice to proceed with the work No. ગુપોહ/૨૬/૨૦૦૨/એમડી/૩૭૩૭/૧૦૮૯/૨૦૦૯ dated 06/07.02.2009 in this regard.
38	2008-09	GSPHCL Quarter work, Vidyanagar.	1,65,18,373	Same as Sr. No. 27
39	2008-09	Construction of Ukai work site	23,45,457/-	Under this contract we have constructed a residential School Complex at Ukai, Dist. Surat. I produce copy of Work Contract No. AB/TC/...../2008 dated 20.10.2008 in this regard.
40	2008-09	Engineering college land scraping work	16,96,162/-	Same as Sr. 11
41	2008-09	Engineering College work site	1,16,02,137/-	Same as Sr. 11
42	2008-09	E-40/D-40 Quarter Work site	12,497/-	Under this contract we have constructed staff quarters for Medical College, Bhavnagar under R & B Department. I produce copy of Work Order No. Tender/71 dated 21.02.2009
43	2008-09	Shree Somnath Trust Work (Sub Contract)	1,48,32,559/-	We were awarded the contract of development of Somnath Temple Front area. I produce Work Contract No. ST/CIVI/APPROACH/987/07-08 dated 22.02.2008 in this regard. We had sublet this work to M/s Khushi Construction, Bhavnagar.
44	2008-09	Somnath Trust (sub contract) dining Hall	1,44,39,642/-	We were awarded the contract of construction of Dining Hall, Huts and Dormitory and Guest House at Somnath. I produce Work Contract No. ST/CIVIL/NEW GHC/WO/234/08-09 dated 11.06.2008 in this regard. We had sublet this work to M/s Khushi Construction, Bhavnagar.
45	2008-09	Swimming Pool Kankairya, A'bad (sub contract)	1,57,59,049	Same as Sr. No. 30
46	2008-09	Railway Para Work site	5,47,23,640/-	Under this contract we have undertaken the work of construction of building of manufacturing and repairing shop of rail coaches and bogies, office, BTC Hostel etc. I produce Work Order No. DYCE(C)P&D/ADI/BVP-W.SHOP/05 dated



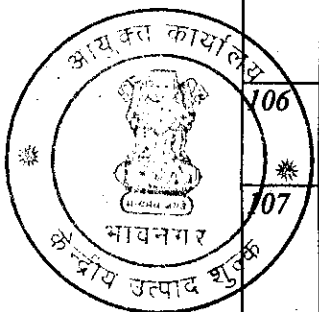
				13.05.2008 in this regard.
47	2008-09	P.I.U. Staff Quarter, Bhavnagar	1,43,93,201/-	Same as Sr. No. 24
48	2008-09	Jafrabad Port Office Building work	2,14,447/-	Same as Sr. No. 25
49	2008-09	Construction of Boys Hostel	2,75,46,407/-	Same as Sr. No. 26
50	2008-09	Civil Work Office Building AMC Ahmedabad	4,14,76,376/-	Same as Sr. No. 29
51	2008-09	Profit on sale of GSPH old structure Vidyanagar	4,520/-	Same as Sr. No. 27
52	2008-09	Panna Park Terrace Rent Income	1,08,000/-	Same as Sr. No. 31
53	2009-10	Ahmedabad Municipal Corporation Building Work	4,14,31,146/-	Same as Sr. No. 29
54	2009-10	Administrative Building Railway para work	5,32,75,954/-	Same as Sr. No. 32
55	2009-10	Boy's hostel Building work	1,64,61,283/-	Same as Sr. No. 26
56	2009-10	Construction of school ukai work	2,11,37,303/-	Same as Sr. No. 39
57	2009-10	G.M.D.C Bharatnagar, Bhavnagar work	1,22,76,196/-	Under this contract we have constructed Hosing colony, overhead water tank, compound wall garages, roads etc. for GDC Lignite Project, Bhavnagar. I produce work contract No. CV/LBH/COLONY/376/09-10 dated 23.09.2009
58	2009-10	D/40 E/40 staff quarter work	4,59,20,066/-	Same as Sr. No. 42
59	2009-10	Engineering college land scraping work	11,12,452/-	Same as Sr. no. 11
60	2009-10	Cons.of P.G.Hostel at Asarva, A'bad	10,11,194/-	Under this contract we have constructed Hostel for doctors at Aarva, Civil Hospital Campus, Ahmedabad. I produce Work Order No. PIU/ACs/WO/New PG-CH-Abd/aa/1519-25/10 dated 28.01.2010 in this regard.
61	2009-10	G.M.D.C. Ambaji work	19,47,720/-	Same as Sr. No. 5
62	2009-10	G.S.P.H Amreli Work	4,14,18,802/-	Same as Sr. No. 36
63	2009-10	G.S.P.H Paliyad Work	1,10,24,310/-	Same as Sr. No. 37
64	2009-10	GSPHCL Quarter work, Vidyanagar.	47,75,610/-	Same as Sr. No. 27
65	2009-10	Mangrol Mamlatdar office work	1,42,81,165/-	Same as Sr. No. 35
66	2009-10	Shree Somnath Trust Work (Sub Contract)	18,38,525/-	Same as Sr. No. 43
67	2009-10	Somnath Trust (sub contract) daining Hall	2,86,36,764/-	Same as Sr. No. 44
68	2009-10	Swimming Pool Kankairya, A'bad (sub contract)	2,90,47,545/-	Same as Sr. No. 30



69	2009-10	Railway para Work site	3,94,44,472/-	Same as Sr. No. 46
70	2009-10	P.I.U. Staff Quarter, Bhavnagar	68,97,879/-	Same as Sr. No. 24
71	2009-10	Cons. Of finishing item for RCC railway, bhavnagar	11,65,774/-	Under this work we have undertaken finishing work of Railway Administrative Building at Bhavnagar. I produce Work Contract No. DYCE(C)P&D/ADI/BVP-W.SHOP/19 (RI) dated 09.09.2009 in this regard.
72	2009-10	Boys Hostel Electric Work	12,37,406/-	Same as Sr. No.26
73	2009-10	Construction of BECL Project Padva	59,04,266/-	We have constructed site office of Bhavnagar Energy Co. Ltd. at village Padva under this work order. I produce copy of work order No. BECL/Site Office/565 Dated 13.10.2008 in this regard.
74	2009-10	Cons.of Excelence Building ITI work	51,71,205/-	Under this contract we have constructed building for ITI at Vyara Dist. Tapi under R&B Department. I produce copy of Work Contract No. AB/TC/1709/1/09 dated 23.09.2009 in this regard
75	2009-10	Cons.of Physiotherapy Hostel Work	38,52,727/-	Under this contract we have constructed one physiotherapy hostel at Civil Hospital Surat. I produce copy of work order No. PIU/A/CS/CH/Surat/160-66/10 dated 05.01.2010 in this regard.
76	2009-10	Cons. Of Teaching & Non Teaching Class Caty-3 valod	37,82,220/-	Under this contract we have constructed quarters for teaching & non teaching staff of Government Schools at Valod, Dist. Tapi under R&B Department. I produce copy of work order No. AB/TC/1763/09 dated 01.10.2009 in this regard.
77	2009-10	Cons.of Vishram Gruh at Botad	83,31,995/-	Under this contract we have constructed Circuit House at Botad. I produce copy of work order No. Tender/249 dated 29.06.2009 in this regard.
78	2009-10	Cons.of VTC and Multi Metal Project Ambaji	21,65,924/-	Under this contract we have constructed VTC Hall for GMDC, Ambaji. I produce copy of work contract No. GMDC/MMP/CIVIL/299/08-09 dated 03.01.2009.
79	2009-10	G.S.P.H. Vidyanagar Electric Work	23,41,077/-	Same as Sr. No. 27
80	2009-10	P.I.U. staff Quarter Electric Work	20,84,547/-	Same as Sr. No. 24
81	2009-10	Panna Park Terrace Rent Income	1,08,000/-	Same as Sr. No. 31
82	2010-11	Ahmedabad Municipal Corporation Building Work	1,91,85,828/-	Same as Sr. No. 29
83	2010-11	Administrative Building Railway para work	24,39,469/-	Same as Sr. No. 32
84	2010-11	Boy's hostel Building work	3,25,491/-	Same as Sr. No. 26
85	2010-11	Construction of school ukai work	1,94,16,616/-	Same as Sr. No. 39
86	2010-11	G.M.D.C Bharatnagar, Bhavnagar work	3,26,85,650/-	Same as Sr. No. 57



87	2010-11	D/40 E/40 staff quarter work	5,20,60,451/-	Same as Sr. No. 42
88	2010-11	Engineering college land scraping work	1,05,386/-	Same as Sr. No. 11
89	2010-11	Cons.of P.G.Hostel at Asarva, A'bad	4,41,78,176/-	Same as Sr. No. 60
90	2010-11	G.S.P.H Amreli Work	73,12,898/-	Same as Sr. No. 36
91	2010-11	Mangrol Mamlatdar office work	9,56,275/-	Same as Sr. No. 35
92	2010-11	Somnath Trust (sub contract) daining Hall	81,06,078/-	Same as Sr. No. 44
93	2010-11	Railway para Work site	44,49,355/-	Same as Sr. No. 33
94	2010-11	P.I.U. Staff Quarter, Bhavnagar	6,80,192/-	Same as Sr. No. 24
95	2010-11	Cons. Of finishing item for RCC railway, bhavnagar	1,35,47,101/-	Same as Sr. No. 71
96	2010-11	Construction of BECL Project Padva	12,33,546/-	Same as Sr. No. 73
97	2010-11	Cons.of Excelece Building ITI work	49,33,450/-	Same as Sr. No. 74
98	2010-11	Cons.of Physiotherapy Hostel Work	4,23,03,591/-	Same as Sr. No. 75
99	2010-11	Cons. Of Teaching & Non Teaching Class Caty-3 valod	37,82,220/-	Same as Sr. No. 76
100	2010-11	Cons.of Vishram Gruh at Botad	1,87,24,706/-	Same as Sr. No. 77
101	2010-11	Cons.of VTC and Multi Metal Project Ambaji	2,43,933/-	Same as Sr. No. 78
102	2010-11	P.I.U. staff Quarter Electric Work	1,27,456/-	Same as Sr. No. 24
103	2010-11	Panna Park Terrace Rent Income	1,11,690/-	Same as Sr. No. 31
104	2010-11	Cons of B.J.Medical College Referbismnt work	3,35,05,691/-	Under this contract we have undertaken work of renovation of B. J. Medical College, at Asarwa, Ahmedabad. I produce work order No. PIU/ACs/WO/Refurb-BJMC-Abad/MCC/140002-08/09 dated 18.12.2009 in this regard.
105	2010-11	Administrative Building work Bhavnagar University	56,36,034/-	Under this contract we are constructing administrative building in Bhavnagar University. I produce work order No. Estate/11 th Plan/Administrative/476/ .3451/10 dated 25.10.2010 in this regard.
106	2010-11	Cons B. J. Medical College Electric Work	47,42,030/-	Same as Sr. No. 104
107	2010-11	Cons of BSNL Mehsana Tower Work	6,70,747/-	Under this contract we have undertaken the work of construction of tower foundation and erection of tower in Banaskantha district. I produce copy of work order No. 70(121)/10-



				11/EE/BSNL-CD/MEH/10 dated 03.01.2011 in this regard.
108	2010-11	Cons of D/40 E/40 Quarter Electric Work	27,18,588/-	Same as Sr. No. 42
109	2010-11	Cons of General Stream School Work Sagbara	12,14,186/-	Under this contract we have under taken work of construction of building of a new Government school at Sagbara Dist. Narmada. I produce copy of work order No. AB/D/991/2011 dated 11.05.2011 in this regard.
110	2010-11	Cons of GSPH Umrala Work	35,17,525/-	Under this contract we have undertaken remaining work of construction of staff quarters for Gujarat Police under GSPHCL at Umrala Dist. Bhavnagar. I produce copy of work order No. GSPH/TAKE/TENDER/MD/4113/856/2010 dated 30.01.2010
111	2010-11	Cons of New Govt. Secondary School at PAT work	5,49,518/-	Under this contract we have under taken work of construction of building of a new Government school at Pat Dist. Narmada. I produce copy of work order No. AB/D/990/2011 dated 11.05.2011 in this regard.
112	2010-11	Cons of Nurshing School at Vyara	1,96,38,325/-	Under this contract we are constructing building of a nursing school at Vyara, Dist. Tapi. I produce copy of work order No. PIU/A/CS/NS/Tapi/9183-90/09 dated 04.12.09 in this regard.
113	2010-11	Cons of P.G.Hostel Electric Work at Asarva	35,00,058/-	Same as Sr. No. 60
114	2010-11	Cons of Railway Pit Line Work	5,01,360/-	Under this order we have undertaken the work of construction of pit line for railway at Ahmedabad. I produce work order No. DY.CE(C)II/ADI/CMF/I(R) dated 19.04.2004
115	2010-11	Cons of Science Stream School At Sagbara	20,32,651/-	Under this order we have undertaken work of construction of new building of a school at Sagbara Dist. Narmada. I produce copy of work order No. AB/D/992/2011 dated 11.05.2011 in this regard.
116	2010-11	Cons of Stone Artition Park Electric Work	32,72,281/-	Same as Sr. No. 5
117	2010-11	Shri Arasuri Gabbar Top Work	75,10,291/-	We have undertaken the work of construction of administrative building for Shri Arasuri Ambaji Mata Devsthan Trust working under Gujarat Tourism Corporation. I produce copy of work order dated 07/12/09 in this regard.
118	2010-11	RMC Machine Rent	5,40,000/-	This is the income from rent of Ready Mix Concrete Machine given on rent by us to M/s DMD Developers, Surat. I'll produce copies of bills in this regard within a week.
119	2010-11	Cons of VIP Guest House Work at Somnath	1,50,56,315/-	Under this contract we have undertaken the construction of a new guest house at Somnath Temple under Shree Somnath Trust. I produce copy of work order No. ST/CIVIL/NEWGHC/WO/36/10-11 dated 10.04.2010 in this regard.



I undertake to produce the work orders/ contracts of the work undertaken by our firm wherever the same is not available, within one week.

Q. 5: Have you utilised your own material for construction of Civil Structure as stated by you above?

Answer: Yes we have utilised our own construction material for all the construction work undertaken by us and we have paid VAT on the said material.

Q. No. 7: Apart of above, have your firm provided construction or other services to any other recipient also? If yes then please provide the details.

Answer: No.

Q. No. 8: Apart of above, have your firm provided any other service to the above said recipients which have not been included in the above mentioned table? If yes then please provide details.

Answer: No.

Q. No. 9: Please peruse the balance sheets of your company in which under column Other Income some entries are given such as JCB Rent Income, Truck Rent Income Flat Rent Income etc. Please explain what kinds of incomes are shown by these entries?

Answer: I explain as below-

(1) JCB Rent Income (2006-07):- This is the income of Rs. 3,49,196/- from renting the JCB machine in the year 2006-07

(2) Flat Rent Income (2006-07, to 2010-11):- we have extended our flat in Sardamagar, Bhavnagar on rent and received 64,000/-, 69,500/-, 60,500/-, 58,500/- and 1,02,000/- as rent respectively in the years from 2006-07 to 2010-11.

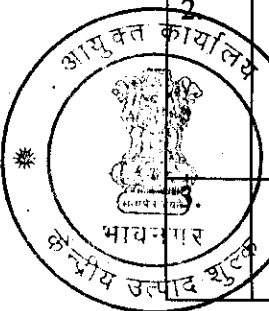
(3) Truck Rent Income (2007-08):- We had a dumb water tanker which we used to give on rent, we have received Rs. 60,000/- as rent on this in the year 2007-08.

Q. No. 10: Apart of above do you want to add something else in the matter?

Answer: No.

3. On going through copy of audit report for the financial year 2006-07 to 2010-11, it was found that the Noticee had earned income of Rs.47,34,256/- from M/s Excel Crop Care Ltd., Gajod for construction of Earth Quake Worker Shed during the year 2006-07 and income earned of Rs.8,04,70,595/- from Gujarat Mineral Development Corporation (hereinafter referred to as "GMDC for construction of Administration office, Museum, Art Galary and other Infrastructure at stone park Kumbharia-Ambaji and for construction of Government Staff Quarters for GMDC during the financial year 2006-07 to 2010-11. These services appeared to be falling under the category of "Commercial or Industrial Construction services" as M/s. Excel Crop Care Ltd and M/s GMDC were industrial concerns. The details of "Commercial or Industrial Construction services" provided during the financial year 2006-07 to 2010-11 was as under:-

Sr. No	Service Recipient	Year					Type of Service Provided
		2006-07 (from 01.10.06)	2007-08	2008-09	2009-10	2010-11	
1.	Excel Crop Care Ltd, Gajod	2866020	NIL	NIL	NIL	NIL	Earth Quake Worker Shed
2.	GMDC Ambaji Kam Bill	2505170	13342510	17713349	4113644	3516214	Administratio n Building, Training centre, Stone Artition park
	GMDC Bharatnagar, Bhavnagar	NIL	NIL	NIL	12276196	32685650	Govt. Staff Quarters



4..	BECL, Padava	NIL	NIL	NIL	5904266	1233546	Govt. Office.
5.	BSNL, Mehshana	NIL	NIL	NIL		670747	Govt Tower for BSNL.
	TOTAL	5371190	13342510	17713349	22294106	38106157	

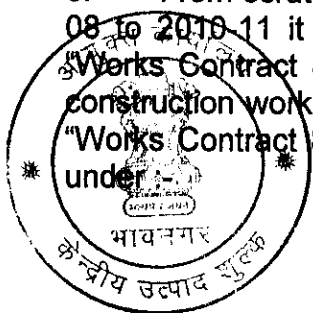
4. From scrutiny of Contracts/Agreement and Audit Report for the financial year 2006-07 provided by the Noticee, it appeared that the noticee had provided services to GSPHCL Bhavnagar for Maintenance and Repair, to PGVCL Bhavnagar for repair work and miscellaneous repairing work under the category of "Management, Maintenance or Repair" service. The details of "Management, Maintenance or Repair Services" provided during the financial year 2006-07 to 2007-08 was as under:-

Sr. No	Service Recipient	Year					Type of Service Provided
		2006-07 (from 01.10.06)	2007-08	2008-09	2009-10	2010-11	
1.	PGVCL, Bhavnagar	120637	21671	NIL	NIL	NIL	Renovation of Govt. Office Building
2.	GSPHCL repairing work	684457	NIL	NIL	NIL	NIL	Repairing for Govt. Staff Quarter
3.	Rate list Bill	86294	NIL	NIL	NIL	NIL	Misc. repairing Work
	TOTAL	891388	21671	NIL	NIL	NIL	

5. From scrutiny of Contracts/Agreement and Audit Report for the financial year 2007-08 to 2010-11 provided by the noticee, it appeared that the noticee had provided taxable service in relation to "Renting of Immovable Property Service". The details of "Renting of Immovable Property Service" provided during the financial year 2007-08 to 2010-11 was as under:-

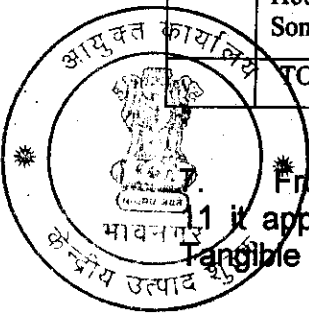
Sr. No	Service Recipient or Income earned from.	Year				Type of Service Provided
		2007-08	2008-09	2009-10	2010-11	
1.	Panna Park Terrace Rent	74032	108000	108000	111690	Property Rent Income (Flat)
	TOTAL	74032	108000	108000	111690	

6. From scrutiny of Contracts/Agreement and Audit Report for the financial year 2007-08 to 2010-11 it appeared that the noticee had provided taxable service in relation to "Works Contract Service" as they had utilized their own construction material for all the construction work undertaken by them and had paid VAT on said material. The details of "Works Contract Service" provided during the financial year 2007-08 to 2010-11 was as under:-



Sr. No	Service Recipient	Year				Type of Service Provided
		2007-08	2008-09	2009-10	2010-11	
1.	P.I.U staff Quarters	5445583	14393201	8982426	807648	Construction of Govt. Staff Quarters
2.	Jafrabad Port Office Building work	2381058	214447	NIL	NIL	Construction of office building.
3.	Boys Hostel, Bhavnagar	13343212	27546407	17698689	325491	Cons. For Govt. education related Hostel building
4.	Construction of Staff Quarter for GSPHCL, Vidhyanagar	10394802	16518373	7116687	NIL	Construction of Govt. Staff Quarters, B-96 Vidyanagar
5.	GSPHCL, Botad	2885171	NIL	NIL	NIL	Construction of Govt. Staff Quarters.
6.	AMC, Ahmedabad	11527920	41476376	41431146	19185828	Construction of office building of Ahmedabad Municipal Corporation.
7.	AMC, Ahmedabad	2588278	15759049	29047545	NIL	Construction of Swimming Pool, Ahmedabad.
8.	GSPHCL, Amreli	NIL	9508519	41418802	7312898	Construction of Govt. Staff Quarters.
8.	GSPHCL, Padiyad	NIL	1350063	11024310	NIL	Construction of Govt. Staff Quarters.
9.	E-40/D-40 Quarter Work	NIL	12497	45920066	54779039	Construction of Govt. Staff Quarters.
10.	Construction of P.G.Hostel	NIL	NIL	1011194	47678234	Cons. For Govt. education related Hostel building.
11.	Shree Somnath Trust Work	NIL	14832559	1838525	NIL	Const. of Govt. Guest House.
12.	Shree Somnath Trust Work	NIL	14439642	28636764	8106078	Cons. Of Dining Hall of Govt. Guest House.
14.	Physiotherapy Hostel work	NIL	NIL	3852727	42303591	Cons. For Govt. education related Hostel building.
15.	Vishram Gruh, Botad	NIL	NIL	8331995	18724706	Construction of Vishram Gruh at Botad.
16.	Cons of teaching and non teaching class, valod	NIL	NIL	3782220	3782220	Construction of Govt. Staff Quarters
17.	Administrative building work, Bhavangar	NIL	NIL	NIL	5636034	Cons. Of Govt. corporate Office Building.
18.	GSPHCL, Umarala	NIL	NIL	NIL	3517525	Construction of Govt. Staff Quarters.
19.	Shri Arasuri Gabbar Work	NIL	NIL	NIL	7510291	Cons. Of Administrative Building.
20.	VIP Guest House, Somnath	NIL	NIL	NIL	15056315	Cons. Of Govt. Guest House.
	TOTAL	48566024	156051133	250093096	234725898	

From scrutiny of Contracts/Agreement and Audit Report for the financial year 2010 - 11 it appeared that the noticee had provided taxable service in relation to "Supply of Tangible Goods Service" and received Rs.5,40,000/-.



8. It appeared that the noticee had provided (i) Management, Maintenance or Repair Services (ii) Works Contract service, (iii) Commercial or Industrial construction service (iv) renting of immovable property service and (iv) Supply of Tangible goods Service as detailed below:

Sl.#	Type of service	Taxable value	Service tax demanded	Annexure to notice
1.	Management, Maintenance & repair	913059	111785	Annex-A1
2.	Works Contract	689436151	27404307	Annex-A2
3.	Industrial or Commercial Construction service	96827312	3536663	Annex-A3
4.	Supply of tangible goods	540000	55620	Annex-A4
5.	Renting of immovable property service	401722	45128	Annex-A5
	Total	788118244	31153503	

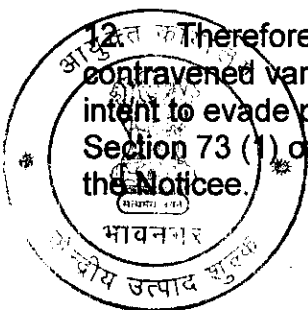
9. Therefore, it appeared that as per the provisions of Section 68 of the Act, the Noticee was liable for paying the Service Tax for the services provided by them. Further, it appeared that as per Section 67 of the Act, Service Tax on these services was leviable on the gross amount charged by the service provider. Therefore, it appeared that Service Tax at the appropriate rate on the services provided by the Noticee, amounting to **Rs. 3,11,53,503/-** as calculated & described in the **ANNEXURE-A** to this Notice was liable to be recovered under Section 73 of the Act along with interest under Section 75 of the Act.

10. It also appeared that as admitted by Shri Chintan P. Patel, Partner of the Noticee in his statement dated 02.03.2012, the Noticee had not obtained Service Tax Registration as required under Section 69 of the Act read with Rule 4 of the Service Tax Rules, 1994 ("hereinafter referred to as the Rules") and did not file any ST-3 Returns as prescribed under Section 70 of the Act read with Rule 7 of the Rules, and thereby suppressed the facts that they were liable for paying the Service Tax for the services provided under the categories of 'Management, Maintenance or Repair Service', 'Works Contract Service', 'Commercial or Industrial Construction Service', 'Renting of immovable Property services' and 'Supply of Tangible Goods Service' which appeared to have been done with an intent to evade payment of Service Tax.

11. From the above, it appeared that the Noticee had contravened the following provisions of the Finance Act, 1994 and the Rules framed thereunder with an intent to evade payment of Service Tax:-

- (i) Section 69 of the Act read with Rule 4 of the Rules in as much as they failed to apply for registration.
- (ii) Section 68 of the Act read with Rule 6 of the Rules in as much as they failed to pay Service Tax at the appropriate rate prescribed under Section 66 of the Act from time to time on the value of the taxable services provided by them during the period from October-2006 to 2010-11,
- (iii) Section 70 of the Act read with Rule 7 of the Rules in as much as they failed to assess the Service Tax payable on the value of taxable services received for providing various services as discussed hereinabove and to furnish Returns in Form ST-3 duly mentioning the details of taxable services provided by them during the period from October-2006 to March-2011.

12. Therefore, it appeared that since the Noticee had suppressed the facts and contravened various provisions of the Act and the Rules as discussed hereinabove with an intent to evade payment of Service Tax, extended period as contemplated under proviso to Section 73 (1) of the Act is invocable for recovery of Service Tax not levied and not paid by the Noticee.



13. From the above, it appeared that for the acts of suppression of facts of providing taxable services as mentioned hereinabove & liability of the Noticee to pay Service Tax on it and contravening various provisions of the Act and the Rules as discussed hereinabove with an intent to evade payment of Service Tax, the Noticee had rendered themselves liable to penalty under Section 78 of the Act. Similarly, for the failure to obtain Service Tax Registration in accordance with the provisions of Section 69 of the Act read with Rule 4 of the Rules and for non furnishing of ST-3 Returns prescribed under Section 70 of the Act read with Rule 7 of the Rules as discussed hereinabove, the Noticee appeared to have rendered themselves liable to penalty under Section 77 of the Act.

14. From the above, it also appeared that the Noticee admitted the facts of non-payment of Service Tax payable by them as per the provisions of Section 68 of the Act on the taxable services provided by them. Thus, it appeared that the Noticee was also liable to penalty under Section 76 of the Act for non-payment of Service Tax.

15. Therefore, the Noticee was called upon to show cause to the Commissioner, Central Excise and Service Tax, Bhavnagar as to why: -

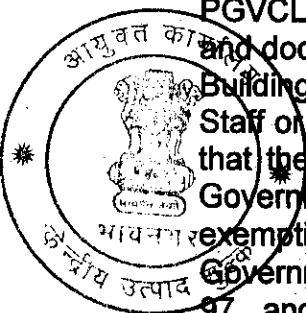
- (i) The Service Tax total amounting to Rs. 3,11,53,503/- (Rupees Three Crore Eleven Lakhs Fifty Three Thousands Five Hundred Three Only) (Including Edu.Cess and S.H.Cess) (calculation as shown in the ANNEXURE-A to this Notice) should not be demanded and recovered under proviso to Section 73(1) of the Finance Act, 1994 along with interest at the appropriate rate as applicable till the date of payment of service tax under Section 75 of the said Act.
- (ii) Penalty should not be imposed upon them under Section 76 of the Act for failure to assess Service Tax under Section 70 of the Act and make the payment of Service Tax payable within the period and in the manner prescribed under Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994.
- (iii) Penalty should not be imposed upon them under Section 77 of the Act for failure to obtain Service Tax Registration in accordance with the provisions of Section 69 of the Act read with Rule 4 of the Rules and for failure to file prescribed returns under Section 70 of the Act read with Rule 7 of the said Rules.
- (iv) Penalty should not be imposed upon them under Section 78 of the Act for suppression of fact of providing taxable services as mentioned hereinabove & liability of the Noticee to pay Service Tax on it and contravention of various provisions of the Act and the Rules as discussed hereinabove with intent to evade payment of Service Tax.

DEFENCE REPLY

16. The noticee submitted their reply by letter dated 26th July 2012. The detailed submissions with reference to each service were as under:

MANAGEMENT, MAINTENANCE OR REPAIR SERVICES

17.1 The noticee submitted that they had provided services in relation to repair and maintenance work to Government Agencies, viz., Gujarat State Police Housing Corporation (GSHPC) for repairing of staff quarters, Road and Building Division – Government of Gujarat (R & B Division) for annual maintenance contract of Road and to PGVCL for renovation of Government office building. It was clear from various contracts and document provided to department that the services were in relation to the Government Buildings used for Government office purposes or residential purposes of Government Staff or for providing civic amenities and non-commercial in nature. The noticee submitted that they were under genuine impression that services provided to Government or any Government Agency will not attract service tax. Till Budget, 2012-13 there was no exemption granted to maintenance and repair service provided to non-commercial Government buildings but in the current Budget, 2012-13 by introduction of New Sections 97 and 98, maintenance and repair service provided to any non-commercial



Government Organization and in relation to road were excluded with retrospective effect from 16th June 2005 from purview of service tax.

17.2 The noticee submitted that they had provided the services of repair and maintenance to only three parties:

1. To GSHPCL for repairing work of police staff quarters, maintenance and repair work of hospital building of police headquarters and of Dog Squad Building at Bhavnagar.
2. To PGMVCL, Bhavnagar for renovation of Government Office building.
3. To Road & Building Division for Annual Maintenance contract.

17.3 Hence, by virtue of recent amendment, no service tax can be levied on Maintenance or Repair service provided for Non-Commercial Buildings.

WORKS CONTRACT SERVICE

18.1 Noticee submitted that they had provided construction of various Government buildings and buildings for Trust such as Government Offices and structures for Ahmedabad Municipal Corporation (AMC), Residential Quarters for police (GSPHCL) as well as for staff members of Commissionerates of Health, Hostel buildings for various Government Colleges at Bhavnagar and Ahmedabad and other buildings for Somnath Trust, Ambaji Trust. The services provided by the noticee directly or indirectly to the Government building or to others were used for residential purposes or Government office purposes, for educational purpose,

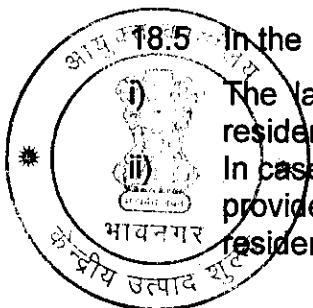
18.2 The noticee submitted that total twenty one different contract executed by the noticee were given on page no. 17 of the Show Cause Notice; that if service tax was chargeable on all the contracts then it should have been pointed out in show cause notice that which sub-clause of the definition of "Works Contract" as defined in the explanation is applicable to which contract. There was a lame allegation on the noticee that nature of services provided are covered within the scope of Works Contract Service and hence service tax was chargeable on all Twenty one contracts but there was no specification or finding in the show cause notice on which clause was applicable to which contract and how.

18.3 The noticee submitted that Works Contract category had different and distinct clauses and therefore it was imperative that the specific clause under which the demand made must be specified. Non specification of the sub clause was fatal to the demand.

18.4 Notwithstanding anything submitted above, the noticee submitted that out of twenty one contracts specified on page no. 17 of the SCN, eight contracts i.e. sr. no.1, 4, 5, 8, 8a, 9, 16 and 18 were in relation to construction of Residential quarters. Out of the same six were Police Residential Quarters for GSPHCL, one was for the Commissionerates of Health and rest one was also a government staff quarters at Valod. Therefore the noticee argued that it was construction of residential complex. The noticee submitted that as per the clause (iii) of the above definition of residential complex, if a residential unit was intended for **PERSONAL USE**, then it should be excluded from the service tax chargeability. Further, the term "personal use" was defined in explanation to definition of residential complex as permitting the complex for use as residence by another person on rent or without consideration.

18.5 In the instant case, the noticee submitted that,

The land was provided by the police department for the construction and then residential quarters are used for residential use of officers of police department , In case of construction of staff quarters for Commissionerate of Health, the land was provided by the Commissionerate of Health for the construction to noticee and then residential quarters are used for residential use of Staff Members and



- iii) Even in the case of staff quarters at Valod the land was provided by the R & B Department and then residential quarters were used for residential use of Staff Members.

18.6 In all the three cases the construction was made directly by engaging another person (noticee) and the construction of such complex was intended for personal use as residence by such person as per the explanation - (a). Therefore such constructions were covered by the exclusion of definition of "residential complex" and hence, service tax was not applicable at all. The noticee relied upon the case of **M/s. Khurana Engineering Ltd - 2011 (21) S.T.R. 115 (Tri. Ahmd.)**, **Sima Engg Constructions -2010-TIOL-1734-CESTAT-MAD**, **M/s Senthil Constructions, Southupakkam -2010-PST-187-(Commr. Appl.)-MAD** in support of their contention.

18.7 The noticee further submitted that the view on non taxability on residential complex constructed for personal use was not restricted for the Government or Semi-Government organizations. As per the definition of "personal use", even if the service receiver was a private company or industry who constructs staff quarters for residential purpose of its staff would be covered under the non-taxability clause of the definition of "Residential Complex". The noticee relied upon the case **M/s. Nitesh Estates Ltd- 2012- TIOL-283(CES. BANG)** in this regard.

18.8 The noticee submitted that out of total twenty one contracts, twelve contracts were in relation to construction of various Non - Commercial buildings. Out of that twelve contracts three contracts i.e. Sr. No. 2, 6 and 16 were in relation to construction of Government Offices, four contracts i.e. Sr. No. 11, 12, 19 and 20 were in relation to construction of various religious buildings for the Ambaji Temple Trust and for Somnath Temple Trust, two contracts i.e. Sr. No. 7 and 15 were in relation to construction of Government Structures for civil amenities and the rest three i.e. Sr. No. 3, 10 and 14 were in relation to Construction of Hostel buildings for the Government Colleges. The noticee submitted that as per clause (b) to Explanation to section 65 (105) (zzzza), service tax would be chargeable only if it is for construction of new building or civil structure **PRIMARILY FOR THE PURPOSES OF COMMERCE OR INDUSTRY**. In the instant case, noticee had executed the contracts for the construction of Port office building at Zafrabad for Gujarat Maritime Board (GMB), office building for Ahmedabad Municipal Corporation (AMC) and Government Corporate office at Bhavnagar. The noticee submitted that all the above buildings were not used for any commercial purposes, but these buildings were for civic amenities and used for serving public at large.

18.9 The noticee submitted that they had constructed Guest Houses, Dining Hall for guest house for Trusts like Somnath Trust and administrative office for Ambaji Trust. The noticee argued that that the primary intention of above said buildings was not for the Commerce or Industry. Since the applicability of service tax under this category depends on the nature of use of the constructed building or civil structure, the service tax would not be charged in the instant case.

18.10 Further, the noticee submitted that, the contract of Swimming Pool at Kankaria, Ahmedabad for AMC and Vishram Gruh at Botad were primarily done for civic amenities. Therefore, Service Tax would not be levied on these services.

18.11 Furthermore, the noticee had constructed various Government Hostel Buildings such as P.G. Hostel at Civil Hospital Campus, Ahmedabad and construction of other hostels at Bhavnagar. All the above said constructions were primarily for educational purpose. Hence, service tax would not be chargeable on these construction activities conducted by noticee.

18.12 The noticee submitted that in the definition itself it provided that service tax would be chargeable only if it was for construction of new building or civil structure **PRIMARILY FOR THE PURPOSES OF COMMERCE OR INDUSTRY**. In all the above discussed cases, primary intention was not for Commerce or Industry. Therefore, the Service Tax would not attract on all the contracts. The noticee submitted that Central Board of Excise



and Customs (CBEC) vide circular no. 79/9/2004-ST dated 17-09-2004 clarified at para 13.2 about the non-taxability of buildings or civil structures used for non-commercial or Government purpose. Therefore the noticee submitted that any construction of Government building used for residential purposes or of Government office purposes, or for providing civic amenities, educational facilities or infrastructural facilities were **non-commercial in nature** and hence service tax would not be levied.

COMMERCIAL OR INDUSTRIAL CONSTRUCTION SERVICE

19.1 The noticee submitted that they had constructed buildings and other civil structure for various Government departments such as earthquake Worker shed, Training center, Government Staff Quarters, Towers etc... The services provided by the noticee were used for residential purposes or for Government office purposes or for providing civic amenities and non-commercial in nature. However, on the basis of data provided by noticee, the department had raised demand under "Commercial or Industrial Construction Service" considering the following contracts as mentioned below:

1. Construction of Earthquake Worker Shed for Excel Corp Care Ltd. Gajod.
2. Construction of Government Administration Building, Training Center etc., provided to GMDC Ambaji Kam Bill.
3. Construction of Government Staff Quarters for GMDC Bharatnagar, Bhavnagar.
4. Construction of Government Office at Padava for BECL.

Construction of non-commercial Buildings

19.2 The noticee submitted two contracts i.e. Sr. No. 2 & 4 were in relation to construction of government administration building, Training center etc. for GMDC Ambaji, and BECL at Padava respectively. They argued that for both parties noticee had constructed Government Offices or Training center which are non – commercial in nature.

19.3 As per clause (i) of the definition of the service, the usage of the construction was the key element to decide the leviability of Service Tax under "Commercial or Industrial construction Service". The noticee submitted that the construction of Government Offices or Training center could not be considered for commercial or industrial purpose.

19.4 Further, noticee submitted that, the intention behind the construction of Earth Quake Shed was not for the Commerce or Industry. Since the applicability of service tax under this category depended on the nature of use of the constructed building or civil structure, the service tax would not be charged in the instant case.

19.5 The noticee further submitted that as mentioned above in Sr. No. 3 they had constructed the residential staff quarters, could not fall under the category of "commercial or industrial construction service, but would only fall within the category of Construction of Residential Complex Service. The noticee submitted that as earlier discussed, construction of residential staff quarters by any person were covered by the exclusion of definition of "residential complex" and hence, service tax was not applicable. As per the clause (iii) of the definition of the "Residential Complex", if a residential unit was intended for PERSONAL USE, then it should be excluded from the service tax chargeability. Further, the term "personal use" was defined in explanation to definition of residential complex as permitting the complex for use as residence by another person on rent or without consideration. The noticee submitted that the land was provided by GMDC, Bhavnagar for the construction of quarters and then residential quarters were used for residential use of staff members of GMDC. The noticee relied upon the case of **M/s. Khurana Engineering Ltd -2011 (21) S.T.R. 115 (Tri. Ahmd.)**, **Sima Engg Constructions -2010-TIOL-1734-CESAT-MAD**, **M/s Senthil Constructions, Southupakkam -2010-PST-187-(Commr. Appl-MAD)** and **M/s. Nitesh Estates Ltd- 2012- TIOL-283(CES. BANG)** in support of their contention.