आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009

फ़ोन नंबर./ PHONE No.: 079-2754 4599 फैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO.STC/15-20/OA/2020 DIN-20211264WT00003353D7

आदेश की तारीख़ / Date of Order :20.12.2021

जारी करने की तारीख़ / Date of Issue : 23.12.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या / AHM-EXCUS-002-COMMR– 43 /2021-22

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR– 43/2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए 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 शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

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

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

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

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

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

M/s Shree Swaminaray Infrastructure Pvt. Ltd., situated at 1A, Amantran Bunglows, Aarohi Club road, Bopal, Ahmedabad-380 058 were issued SCN F. No. VI/1(b)Tech-37/SCN/Swaminarayan Infra/2019-20 dated 17.07.2020 by the Commissioner, Central Goods and Service Tax (Audit), Ahmedabad.

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

M/s Shree Swaminarayan Infrastructure Pvt. Ltd., situated at 1A, Amantran Bunglows, Aarohi Club Road, Bopal, Ahmedabad-380 058('hereinafter referred to as the 'assessee') have been allotted Service Tax Registration No AAJC6549NSD002. The assessee were registered for multiple services namely Mining of minerals, oil or gas service, Supply of tangible goods service, Site formation and clearance, excavation, earth moving and demolition service, Security/detective service, Business support service, Manpower recruitment/supply agency service, Construction of commercial complex services other than residential complex service, Transport of goods by road, Legal consultancy service and Works contract service.

2 During the course of audit of the records of the assessee, the following objections were raised:

A. Non payment of service tax on income shown under the head 'contingent income'

3 The assessee had shown income as 'contingent income' in their books of accounts for the years 2016-17 (Rs 11,19,00,429/-) and 2017-18 (upto June 2017) (Rs 3,42,90,584/-). The assessee had provided the relevant ledger relating to 'contingent income', which showed that the income was booked in respect of RA Bill Nos 32 to 38. The narration in respect of RA bill No 32 is as under:

"Being amount credited for over burden work at Bina site-UP as per Bill No RA-32"

4 Similar narrations were mentioned for the other RA Bill Nos 33 to 38. As the assessee had not paid the service tax on the income, a query memo dated 04.04.2019 was raised to the assessee for conveying the objection of the department. The assessee, vide letter dated 23.4.2019, have contended as below:

The income pertains to the work done during the period from December 2016 to May2017. There was a dispute between them and GSCO (service receiver) with regard to the quality of work being done on site. The quantity of work done was not approved by GSCO and they had, therefore, not raised invoices for these uncertified

work. Accordingly, they had booked a matching income as 'contingent income' in their Profit and Loss Account. Since they could not debit GSCO's account in their books, they have booked it as 'contingent assets' in their Balance Sheet.

- As per point of taxation rules, one was required to issue an invoice within 14/30 days from the date of completion of service. Further it has been stated in the Board's Circular No 144/13/2011-ST dated 19.7.2011 that the service shall be deemed to be completed not just on performance of its physical part, but also after the acts of measurement of the completion and quality testing thereof are over. It has been argued that their services have neither been measured by the client nor have they been tested for quality. As these vital aspects were not confirmed by their client, they had not raised any invoice on their customers.
- Out of the total amount shown as contingent income amounting to Rs 14,61,91,013/-, the amount of Rs 8,64,86,300/- was 67 be towards free supply of diesel received from GSCO and remaining Rs5,97,04,713/- was shown to be towards the uncertified work, for which they had made provision of income. They had not paid service tax on the amount shown for diesel, as diesel was a free supply during the provision of mining services and therefore the same was not includable in valuation for the purpose of service tax. It was argued that as the point of taxation did not arise because the service was not completed as per the Circular dated 19.7.2011, they had not paid the tax for the remaining value of uncertified work.

5. On going through Note 2.6.5 of Notes to financial statement for the year 2016-17 dealing with the disclosure regarding accounting policies in respect of revenue recognition, the noting was found to say that "Due to dispute with GSCO (Principal Service Receiver), company had considered revenue disclosed in 26AS as income. This disputed income amounting to Rs.11,19,00,429/- had been debited as contingent assets instead of GSCO. Provision of Service Tax on this was not being made."The 26AS of the assessee was examined. It was observed that GSCO has deposited TDS on the amounts paid to the assessee for the year 2016-17, in respect of RA Bill Nos 32 to 36 on contingent income, details are tabulated in Table-I, as under:

Table-I (Rs in actual)

26 AS			Ledger of Contingent Income	
Transaction Date	Amount Paid	TDS	RA Bill No.	Contingent Income
01-Mar-17	35164522	175823	32	35159666
10-Mar-17	32411947	162060	33	32412227
15-Mar-17	14574710	72874	34	14092932
21-Mar-17	30334253	151671	35 & 36	30235604
Total	112485432	562428		111900429

6 It appeared that the service recipient had paid TDS based on the invoices issued by the assessee and not on a lumpsum provision made in their books of accounts. It, therefore, appeared that the assessee had issued invoices based on which it had booked income in its books of accounts. Accordingly, the contentions made on this count by the assessee did not appear to be correct and legal.

7 The assessee contended in their reply dated 23.4.2019, that the amounts were only contingent in nature. Accounting Standard 29 issued by the Institute of Chartered Accountant of India, which deals with the "Provisions, Contingent Liabilities and Contingent Assets", also provides that an enterprise should not recognise a contingent asset. It was usually disclosed in the report of the approving authority (Board of Directors in the case of a company, and, the corresponding approving authority in the case of any other enterprise), where an inflow of economic benefits was probable. The assessee had shown the amounts in their income statement, it appeared that the amounts were not contingent incomes. Accordingly, the arguments made by the assessee on this count did not appear to be correct and legal.

8. The assessee further contended in their reply dated 23.4.2019, that the value of free supply diesel would not be included for the purpose of service tax. Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 ('Valuation Rules') says that all expenditure or costs incurred by the service provider in the course of providing taxable service, shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service. It appeared that the assessee was paying the cost of diesel to the service recipient on a regular basis as can be seen from the relevant ledger. Out of the value of Rs 18,65,40,136/- of diesel supplied by the service recipient, the assessee had made a payment of Rs.12,16,91,413/- till 31.3.2017. The entire amount had been booked as expenses in the income statement. It appeared that the assessee had incurred the cost of diesel and therefore, value was needed to be included for the purpose of charging service tax.

9. The assessee had provided services to GSCO for over burden work at sites. The assessee had issued RA bills for the services provided to GSCO. Against this service, the assessee had received a consideration from them which had been reflected as contingent income in their financial records. It, therefore, appeared that the activity carried out by the said assessee fell within the meaning of 'service' as defined under the provisions of Section 65B(44) of the Act. It also appeared that the entire income shown by the assessee in their financial statements would form the taxable value for the purpose of charging service tax as per the provisions of Section 67(i) of the Act read with Rule 5(1) of the Valuation Rules.

10 It appeared that the assessee had contravened the provisions of Section 67 of the Finance Act,1994 read with Rule 5(1) of the Valuation Rules, as they had failed to include gross amount of Rs 8,64,86,300/- as consideration for the purpose of payment of service tax. Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 ('Rules') as they had failed to pay service tax at the rate specified in Section 66B in such manner and within such period as may be prescribed. Section 70 of the Finance Act,1994 read with Rule 7 of the Service Tax Rules,1994 as the assessee had failed to assess their tax liability properly and failed to file proper returns as prescribed.

11 It appeared that the assessee had not disclosed to the department that they had provided services to their customers on which income was earned by them and they had booked this income as 'contingent income'. They had not informed that they were providing a taxable service falling within the definition of 'service' as envisaged under the provisions of Section 65B(44) of the Act. They had shown the entire consideration as contingent income in their financial records but had not shown the same consideration as receipt in their ST3 returns, before the audit objection was made on the same. Therefore, it appeared that they had suppressed the material facts of receiving a consideration on the services provided by them to their customers in their ST3 returns and had contravened the provisions of the Act and the Rules made thereunder, with an intent to evade the payment of service tax.

12 The assessee had shown an income of Rs 11,19,00,429/- for the year 2016-17 and Rs 3,42,90,584/- for the period from April 2017 to June 2017, and service tax not paid amounting to Rs 2,19,28,652/- (Rs 1,67,85,064/- for the year 2016-17 and Rs 51,43,588/- for the period from April 2017 to June 2017, was liable to be demanded and recovered from the assessee, under the proviso to Section 73(1) of the Act by invoking the extended period of time of five years. As the assessee had not paid the service tax within the stipulated time, interest was to be charged and recovered from them under the provisions of Section 75 of the Act. It appeared that by the act of not disclosing the amount of consideration received on account of the services provided by the said assessee and wrongly showing them as contingent income in their financial records, the assessee had suppressed the material facts and contravened the provisions of the Act and the Rules made thereunder, with an intention to evade the payment of service tax, the assessee had made themselves liable for penal action under the provisions of Sections 78(1) of the Act.

B. Non reversal of Cenvat Credit as per Rule 4(7) of the Cenvat Credit Rules, 2004

13 On verification of Cenvat Credit availed by the assessee, it was noticed that the assessee had availed Cenvat Credit on bills received from service providers for which the payment was not made to the service provider within 3 months from the date of invoice.

14 The assessee had wrongly availed Cenvat credit and had not made the payment of service tax within 3 months from the date of issue of the bills, as tabulated in Table II, below. The 1st proviso to Rule 4(7) of the Cenvat Rules mandates that the assessee could only avail cenvat credit after payment of service tax. Further, the 2nd proviso to Rule 4(7) of the Cenvat Rules says that the assessee had to reverse an amount equal to the cenvat credit availed if the payment of service tax had not been made within 3 months from the date of issue of invoice. It appeared that the assessee had not reversed an amount equal to the cenvat credit availed by them, even though the payment of service tax was not made within the prescribed time, as mandated under the provisions of Rule 4(7) of the Cenvat Rules. The details of the bills alongwith its ledgers, submitted by the assessee, are tabulated as under,

Table II

No	Name of the Service provider	Bill No/Date	Date of credit availed	Bill amount/Basic amount (Rs)	Credit amount (Rs)
1	Arasibhai Kunabhai Suva	RA-02/9.3.2017	9.3.2017	4648900	674091
2	Balvant sinh Dipsinh Jadeja	RA-02/8.3.2017	8.3.2017	3837500	556438
3	Chhaganbhai M Suva	RA-02/9.3.2017	9.3.2017	3970300	575693
4	Digubha J Jadeja	RA-02/9.3.2017	9.3.2017	3763900	545765
5	Dilubha B Jadeja	RA-02/8.3.2017	8.3.2017	4236100	614234
6	Hemantsang V Jadeja	RA-02/9.3.2017	9.3.2017	4034133	584949
7	Ranjitsinh Viraji Gohil	RA-02/8.3.2017	8.3.2017	3830367	555402
8	Sardarsang M Jadeja	RA-02/8.3.2017	8.3.2017	3742500	542662
9	Shree Swaminarayan Earth Movers	RA-02/8.3.2017	8.3.2017	4980107	722115
			Total		5371349

15. The query memo was issued to the assessee on 4.4.2019. The assessee vide letter dated 23.4.2019 contended that they had fulfilled the conditions envisaged in Rule 4(7) of the Cenvat Rules. The sub-contractors listed in the objection were their associated enterprise, as defined in the Finance Act, 1994 as well as the Income Tax Act, 1961. Shree Swaminarayan Earth Movers is a proprietary concern headed by Mr. Dhaval Vadher. The other persons listed in the objection were their shareholders. As per Board's Circular No 122/3/2010-ST of 30.4.2010, that payment was deemed to be made as soon as the entry in the books of accounts was made, in case of associated enterprises. Accordingly, they claimed that they were eligible for the cenvat credit under Rule 4(7) of the Cenvat Credit Rules.

16. Out of the nine bills, one bill in respect of M/s. Balvantsinh Dipsinh Jadeja issued on 08.03.2017 amounting to Rs.44,13,125/- involving CENAVT of Rs.5,75,626/- was taken up for discussion by the audit party;

Ledger account of "M/s Balavantsinh Dipsinh Jadeja" (Abstract only) submitted during the course of audit read as follows :

Date	Particulars	Vch Type	Vch No	Debit	Credit
08-03-2017	By Service Tax (Input) Account	Journal	RA-2		5,75,626
	To Closing Balance			5,75,626	

When, the assessee were requested to provide the payment details against the above RA bill, the assessee re-submitted the following modified ledger account.

Date	Particulars	Vch Type	Vch No	Debit	Credit
08-03-2017	By Service Tax (Input) Account	Journal	RA-2		5,75,626
08-03-2017	By Expenditure from Operation				38,37,500
08-03-2017	To Fuel Consumption Accounts			38,37,500	
	To Closing Balance			5,75,626	

17. The assessee submitted vendor ledgers containing certain adjustments so as to claim the fulfillment of the requirement of Rule 4(7) of the Cenvat Rules. The ledgers of vendors submitted by the assessee during the course of audit did not contain the above said adjustments, though said ledgers were for the period upto 31-03-2017. After the audit objections, the assessee had provided modified ledgers for the period upto 31.3.2017 and new adjustment entries have been shown in the ledgers. The adjustment entries passed by the assessee in the month of March 2017, as shown above, were carried out after the audit objections were communicated. Further, the journal entries were passed in such a way that it did not affect the values contained in its audited financial statements and at the same time, they could avoid the reversal of cenvat credit under the provisions of Rule 4(7) of the Cenvat Rules. Therefore, it appeared that the modified entries submitted by the assessee were only an afterthought. The set of all these journal entries passed by them after the audit objections were communicated are as under:

Expenditure from Operation A/c Dr.	Rs 3,70,43,806
To Various individual Vendors A/cs	Rs 3,70,43,806
Various individual Vendors A/c Dr.	Rs 3,70,43,806
To Fuel Consumption Accounts	Rs 3,70,43,806
Fuel Consumption Accounts Dr.	Rs 3,70,43,806
To Expenditure from Operation A/c	Rs 3,70,43,806

The 3rd journal entry were passed to nullify the effect of the first 2 journal entries. From these journal entries it was found that, the net effect of above entries is "NIL" as shown in Table III, below:

Table III

Ledger Account	Total Debited by Rs.	Total Credited by Rs.	Net Effect
Expenditure from Operation Account	3,70,43,806	3,70,43,806	Nil
Fuel Consumption Account	3,70,43,806	3,70,43,806	Nil
Vendor Accounts	3,70,43,806	3,70,43,806	Nil

18. It also appeared that initially, instead of the total value of bill (i.e. value of service tax thereon), only service tax payable to the vendors was credited to the ledger of respective vendors. On the other side, in case of RA bills received earlier, they were duly accounted for i.e. value of service plus service tax payable thereon, both, were credited to the ledger of vendors. The assessee had not deposited the TDS which shows that it did not account for the basic value of invoices on which the cenvat credit was availed, in terms of the Income Tax, 1961. Accordingly, it appeared that the modified entries submitted by the assessee were only an afterthought. The arguments made by the assessee were not proper, correct and legal.

19. It appeared that assessee had suppressed the material facts from the department for not making payments to their service providers, even though they were aware, that they had not made payments to their services providers, they had availed and utilized the cenvat credit. It appeared that they had also not reversed an amount equal to the cenvat credit as mandated under the provisions of Rule 4 (7) of the Cenvat Rules. It also appeared that they had tried to provide modified adjustment entries to their ledgers after the audit objections were pointed out to them and in turn had tried to nullify the effect of the entries. All these contraventions had been made by the assessee to wrongly avail cenvat credit and evade the reversal of cenvat credit, as mandated under the provisions of Rule 4 (7) of the Cenvat Credit Rules. It appeared that an amount equal to the cenvat credit to the tune of Rs 53,71,349/- was recoverable from the assessee, under the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules. As the assessee had failed to reverse an amount equal to the cenvat credit availed, they were liable to pay interest, under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules. It appeared that the assessee had suppressed the material facts from the department and had contravened the provisions of the Act and the Rules made thereunder. They were liable for penalty under the provisions of Section 78 (1) of the Act read with the provisions of Rule 15(3) of the Cenvat Credit Rules, 2004.

20 As per Board's Instruction No 1080/09/DLA/MISC/15 dated 21.12.2015 and Instruction No 1080/11/DLA/CC Conference/2016 dated 8.7.2016, pre consultation with the adjudicating authority had been made mandatory before issuance of a show cause notice involving an amount of over Rs 50 lacs. Accordingly, a communication was made to the assessee fixing the date for pre-consultation discussion on 6.1.2020. Nobody turned up for the discussions. A communication was made by the Joint Commissioner of Central Tax, Audit Commissionerate, Ahmedabad on 2.3.2020 to M/s GSCO Infrastructure Pvt. Ltd., Chandigarh, Copies of invoices issued by the assessee to them, in respect of the RA Bill Nos 32 to 38 were requested. They were also asked to provide the payment details made against the RA Bll Nos 32 to 38. No reply was received from them.

21. Therefore, a Show Cause Notice dated 17th July,2020 was issued to M/s Shree Swaminarayan Infrastructure Pvt Ltd, 1 A, Amantran Bunglows, Aarohi Club Road, Bopal, Ahmedabad 380058 by the Commissioner, Central Goods and Service Tax, Audit, Ahmedabad, asking them as to why:

i. service tax amounting to Rs 2,19,28,652/- (Rupees Two crores nineteen lacs twenty eight thousand six hundred fifty two only), not paid by them on the contingent income, should not be demanded and recovered from them, under the proviso to Section 73(1) of the Act;

ii. the amount equal to the cenvat credit wrongly availed amounting to Rs 53,71,349/- (Rupees Fifty three lacs seventy one thousand three hundred forty nine only)(as per Table II above), should not be disallowed and recovered from them, under the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules;

iii. penalty should not be imposed on them, under the provisions of Section 78(1) of the Act against the proposed demand at (i) above;

iv. penalty should not be imposed on them, under the provisions of Section 78(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules against the proposed demand at (ii) above;

v. interest should not be charged from them, under the provisions of Section 75 of the Act against the proposed demand at (i) above; and

vi. interest should not be charged from them, under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules against the proposed demand at (ii) above.

22. DEFENCE REPLY:

The assessee vide letter dated 25.10.2021 received on 01.11.2021 in the Commissionerate submitted their written submission. The assessee vide their submission have denied all the allegations, averments and contentions raised in the SCN issued against them, as if they were all specifically and individually dealt with and traverse, save and except what have been expressly admitted by them. They have submitted that the said SCN was not legally tenable as the same was based upon presumptions not permitted by law and inferences not permitted by facts. They have submitted that they have not contravened any of the provisions of the Act.

The assessee have submitted that, they were an organization formed under the Companies Act, 1956 and were into the business of providing Mining and Site formation services to their clients. They had centralized service tax registration No. AAJCS6549NSD002 since March,2011 at Ahmedabad office. They have submitted that during the courses of Audit, there were two issues highlighted by the department. One was service tax not booked and paid on Contingent income accounted for in 2016-17 and Apr-Jun 2017 and the other was for wrong availment of CENVAT credit as it was alleged that they had not made payment to the vendor within 3 months as per conditions prescribed in Rule 4(7) of CENVAT Credit Rules. They had submitted reply on these two issues vide their letter dated 23/04/2019 to the audit . They have submitted that despite giving detailed reply, they had been issued FAR-CTA/04-134/CIR-VII/AP-43/2017-18 dated 03.07.2019 demanding the service tax on contingent income and reversal of wrong availment of CENVAT credit without discussing their detailed reply dated 25/04/2019. They have submitted the grounds based on which the service tax shall not be demanded.

a) <u>The reason for non payment of Service tax on Contingent Income:</u>

The assessee have submitted that they had executed a contract in 2015 with GSCO Infrastructure Pvt. Ltd., (GSCO) for removing overburden from Coal Mine. Such contract was classified under Mining Services, wherein per cubic mtr rate for removal was fixed at Rs. 78.32. This rate included Diesel, transportation charges, loading

unloading charges and other miscellaneous charges for removing the overburden and dump the same at designated place. The contract had mentioned that the diesel rate was fixed at Rs.66.66 per ltr for deriving the above per cubic mtr rate. In addition, the contract also mentioned that it was responsibility of GSCO to provide them diesel. They have submitted that based on diesel rate mentioned separately in the contract and having responsibility for diesel arrangement with GSCO, it was proved that though diesel was having major cost factor in their rate, they were not having control or were being benefitted due to price variation of diesel. They have submitted that, in the contract the base rate for diesel was Rs.66.66 per ltr which meant that any escalation or de-escalation in diesel rate was to be borne by GSCO. They have submitted that, they were concerned only with their rate after deducting diesel price. Rate was kept inclusive of all costs including diesel.They have submitted that, as the mine was given to GSCO by National Coalfields Ltd (NCL) which was a government company, diesel was invariably purchased by GSCO and given to assessee. The assessee submitted that due to funding constraints at the end of GSCO, the assessee had paid the amounts to GSCO for buying diesel. They have submitted that, as per contract terms, even though their rate was inclusive of diesel, GSCO was to provide them diesel and for such diesel purchased by GSCO, either they had to pay them through Cheque or alternately they had to deduct it from their Monthly bill receivables from GSCO towards rendering of Mining Services.

The assessee submitted that they had raised proper invoices till RA-31 for work done till the period of Nov-16. Even though diesel was provided by GSCO, they had been raising the invoices with rate as agreed in their contract i.e. including Diesel, transportation charges, loading unloading charges and other charges miscellaneous charges and also discharged due Service tax. Bills till RA- 31 were duly approved by GSCO and they had paid due taxes on the same and there was no dispute with regards to them. They further submitted that during the period starting Dec 2016 to May 2017 disputes arose between them and GSCO with regards to the quality of work being done on site; their work done quantities were not approved by GSCO. They have submitted that due to fear of getting blacklisted for other projects they kept doing work till May 2017 and then

stopped work at site. They have submitted that as per contract, GSCO had issued diesel to them for the period Dec 2016 to May 2017 worth Rs. 8,64,86,300/-. The assessee submitted that they had incurred expenses in their books for executing uncertified work for the said period. As per the Accounting Standards mandating matching concept they were required to make a provision in their books of a matching income even though they had not raised invoices for the same. They have submitted that since their disputes were not resolved and are still not resolved, they had followed a prudent accounting policy and had booked a matching income as Contingent income in their P&L Account and not as Mining Services. Further, GSCO had not approved their work done quantity and they could not debit GSCO's account in their books and therefore they had booked it as Contingent Asset in their Balance Sheet. The assessee submitted that as per Point of taxation rules, one was required to issue an invoice within 14/30 days from the date of completion of service, disputes were arising as to how to decipher as to when the service was completed. They have submitted that Representations were made to the CBEC for clarification regarding completion of service, and CBEC had issued a clarification vide Circular no. 144/13/2011-ST dated 18.07.2011. They have submitted that as per Board's clarification, vide the above circular service shall be deemed complete not just on performance of its physical part but also after the acts of measurement of the completion and quality testing thereof are over. In facts of their case, services have neither been measured by the client nor have they quality tested the same, which in their work was called 'Certification of work done'. The assessee had submitted that as these 2 vital aspects were not confirmed by their client, they had not raised any invoice on GSCO, and they had not issued any invoice after RA31. The assessee submitted that demand for Service Tax in SCN are as under:

Period	Contingent Income	Service Tax thereon
2016-17	11,19,00,429	1,67,85,064
April to June,17	3,42,90,584	51,43,588
Total	14,61,91,013	2,19,28,652

The assessee submitted that, they were having break up of Rs.14,61,91,013/- in two parts. One is towards Diesel and rest is towards uncertified work. They had not paid service tax on both these values due to the following reason. (i) **Rs. 8,64,86,300/-**

towards diesel outstanding payable to GSCO, their contracted rate was inclusive of diesel wherein either they had to pay for diesel to GSCO or diesel value was to be deducted from their monthly billing. Diesel was free supply by their Principal GSCO during provision of mining service. The assessee had relied upon the judgment in the case of M/S Karamjeet Singh & Co. Ltd. v/s C.C.E. & S.T., Raipur 2018 (9) TMI 1511 - CESTAT New Delhi. They have submitted that this verdict has been upheld by Hon'ble Supreme Court in the case of C.C.E. &S.T., Raipur v/s Karamjeet Singh &Co. Ltd. 2018 (7) TMI 442 - SUPREME COURT OF INDIA. They have submitted that the said judgments are based on the landmark judgment in the case of Commissioner of Service Tax v/s M/S. Bhayana Builders (P) Ltd. etc. 2018 (2) TMI 1325 - SUPREME COURT OF INDIA. The assessee have submitted that considering the settled judgment, they had not considered the value of the same in discharging service tax liability. (ii) Rs.5,97,04,713/- was towards Uncertified Mining work done. They have submitted that due to the ongoing dispute with regards to quality of service, GSCO had not approved their work and accordingly the services were not completed in nature for the period Dec-16 to May- 17, and accordingly invoices were not raised by them for this period as point of taxation did not arise for the said value because services were not completed with reference of Circular no. 144/13/2011-ST dated 19.07.2011. They have also submitted the self-certified documents Ledgers of GSCO and GSCO (Fuel), Contingent Income and Contingent Asset in addition to documents submitted earlier. They have submitted a Chartered Accountant Certificate substantiating the fact that RA bills after RA 31 had not been issued, that work after RA 31 has not been certified by GSCO and that Rs. 8,64,86,300/- was toward supply of diesel by GSCO.

The assessee have submitted that based on facts, submission made by them, documents submitted by them, circular issued by CBEC and judicial pronouncement by Apex court of India, they were of the belief that service tax was not to be paid on free supply of diesel in the mining activity by the assessee. Further, just for mere provisioning of income and booking the amount as contingent income in their financial accounts they were not required to pay Service Tax on that contingent income.

The assessee further submitted that the adjudicating authority during the Pre-SCN consultation and thereafter was of the view that Point of Taxation for work done by them

for GSCO had already arisen and they have to pay service tax on it based on the following grounds; That they had booked income in contingent income ledger with narration "Being amount credited for over burden work at Bina Site-UP as per Bill No. RA-32"; that GSCO had deducted TDS on such income hence they had approved and accepted the invoices; that as per AS-29 "Provisions, contingent liabilities and Assets" was pertaining only to report of the approving authority. It's not concerned with income booked in Profit and loss and the value of diesel shall be added as per Service tax determination of Value Rules, 2006. The assessee have submitted that they had not booked income with such a narration that they had never submitted ledger having such narration. They have booked income with narration "Being income booked as provisional basis". They have submitted that this was unapproved/ uncertified income which had been entered on credit side of P&L just for matching expenses with Income. Had it not been booked on credit side, their P&L would not have given correct picture and would have shown a Net loss. They submitted that accordingly considering contingent income based on the narration's ground was illogical in nature.

They have further submitted that GSCO had deducted TDS on such Income and therefore Service tax had become payable. They submitted that they had already mentioned in their reply that there was dispute between them and GSCO with respect to quality and quantity of work because of which they were not approving or accepting their work done invoice. They have submitted that despite of their various reminders they were not accepting or approving the work done. The assessee have submitted that just because GSCO deducted TDS but had not accepted their work done, does not tantamount to the fact that it was confirmed income. The assessee have submitted that para-7 of SCN was self-explanatory in the sense that the authority issuing SCN was not sure of the facts and entire allegation was based purely on conjecture. It is a settled law that tax was not payable on allegations based on pure speculation. They have submitted that the Pre-SCN consultation adjudication authority was of the view that "Contingent" word was related to AS-29, which has relevance only for Report to be taken from Management Authority, the assessee have submitted that they had chosen the word "Contingent" based on the dictionary meaning which means, occurring of some event based on the chance of other event. In their case, Income was to be confirmed only, when and if GSCO approved the work done, hence income of work done was contingent

in nature. Based on that ground they had named it as Contingent Income. The assessee have submitted that Statutory Auditor had written the following in the Notes to Accounts under the head Revenue Recognition:

"F.Y.2016-17

2.17.4 Due to dispute with GSCO (principal service receiver), company has considered revenue disclosed in 26AS as income. This disputed income amounting to Rs.111900429/- has been debited as contingent assets instead of GSCO. Provision of service tax on this is not being made

F.Y.2017-18

2.6. *7 Due to dispute with GSCO (principal service receiver), company has considered revenue based service provided as income. This disputed income amounting to Rs. 34290584/- has been debited contingent assets instead of GSCO. Provision of service tax on this is not being made."*

They have submitted that above disclosures by them and Statutory Auditor proves that the said income was not towards rendering of services which had been completed but these were towards a dispute and were contingent in nature.

They have further submitted that SCN had taken a view that value of diesel shall be Included in the taxable value by Ignoring the judgment of M/S Karamjeet Singh & Co. Ltd. v/s C.C.E. & S.T., Raipur 2018 (9) TMI 1511 - CESTAT New Delhi. That the verdict of the said judgment had been upheld by the Hon'ble Supreme Court in the case of C.C.E. & S.T., Raipur v/s Karamjeet Singh & Co. Ltd. 2018 (7) TMI 442 - SUPREME COURT OF INDIA.

They have further relied upon the following judgments that diesel cannot be added for valuation purpose;

UNION OF INDIA AND ANR. VERSUS M/S. INTERCONTINENTAL CONSULTANTS AND TECHNOCRATS PVT. LTD. 2018 (3) TMI 357 - SUPREME COURT

M/S BHAYANA BUILDERS (P) LTD. & OTHERS VERSUS CST, DELHI & OTHERS. 2013 (9) TMI 294 - CESTAT NEW DELHI (LB)

Above judgment of Larger Bench was affirmed by the Supreme Court in the case of COMMISSIONER OF SERVICE TAX ETC. VERSUS M/S. BHAYANA BUILDERS (P) LTD. ETC 2018 (2) TMI 1325 - SUPREME COURT

b) Non reversal of CENVAT as per Rule 4(7) of the CENVAT Credit Rules, 2004.

The assessee have submitted that the SCN issuing authority had ignored reply submitted by them. They have submitted in their reply to query memo, that conditions as prescribed under Rule 4 (7) of the CENVAT Credit Rules, 2004 had been duly complied by them in totality as all the sub-contractors as per list mentioned in query memo were their Associated enterprise as defined in the Finance Act, 1994 read with Income Tax Act, 1961. They have submitted that all the parties mentioned in the Show Cause Notice point no. 19 are either their shareholders whereby they have invested in shares of their company and therefore are 'Associated enterprise' as defined and in case of Shree Swaminarayan Earthmovers it was a proprietary concern of Mr. Dhaval Vadher who was son of the director of SSIPL. They have submitted that all the individuals and parties are Associated Enterprise for their company.

They have further submitted that CBEC had issued Circular NO.122/03/2010-ST dated 30.04.2020 clarifying the issue relating to availment of Cenvat credit in case of associate enterprises. They have submitted that clarification is linked with the definition of 'Gross Amount Charged" under section 67 of Finance Act, 1994. The definition of 'Gross Amount Charged' is as under:

> *(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise].]*

The assessee have submitted that definition provides that in case of associated enterprises gross amount charged shall include any form of payment by way of any amount credited or debited in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise. Hence it would mean that in case of associated enterprise payment includes book entries as well.

They have submitted that on the basis of above, in case of associated enterprises the payment is deemed to be made as soon as the entry is made in books and accordingly conditions of Rule 4 (7) are complied with and Cenvat credit of Invoice of associated enterprises can be availed on accrual basis considering mere book adjustment of debit/credit as payment under Rule 4(7) of Cenvat Credit Rules, 2004. They have submitted that the SCN issuing authority had totally ignored submission and directly jumped to the conclusion that they had not reversed CENVAT under Rule 4(7) of CENVAT credit rules, 2004. Further, they have submitted that, the authority had alleged that they had entered some additional entries in vendor's ledgers after submitting ledger during Audit. They have submitted that they had not made any changes in books of accounts. That whatever work was performed by their subcontractor, ultimate expenses were borne by them. Hence, they had incurred the expenditure on behalf of their sub-contractor and the same had to be recovered from sub-contractor so ultimate effect of the expenses shall be nil. Only service tax payable to the sub-contractor entry shall be outstanding as payable. It had no financial impact on Income as well as expenditure of Profit and loss account, said entry was maintained in separate expense ledger. When officers questioned as to how service tax was being accounted, for ease of understanding they had submitted their complete ledger including expense and tax details to the officials with their consent, which was now being used against them. They had not entered or accounted something which didn't exist. They have further submitted that this allegation was never brought to their notice and they were not given a chance to clarify. They did the same in good faith and for better understanding. They submitted that, as can be evidenced from the ledgers, there was no financial impact whatsoever. They have submitted that based on above grounds they had not misguided or suppressed anything from the audit team. Whatever had been done during the audit had

been thoroughly communicated and they had tried to make them (the officers of Audit) understand the facts with legal grounds. The Show Cause Notice was issued with an intention to demand tax on baseless grounds.

The assessee have submitted that penalty under Section 78 cannot be imposed on them. That for levying penalty u/s. 78 as alleged by the SCN there has to be suppression of facts with an intent to evade payment of taxes. They have submitted that in the explanation above, they have clearly stated without any ambiguity that; they had already filed returns and had never intended to evade or not pay due taxes; that only two paras were unsettled in FAR, which shows that they were not intending to evade or suppress the tax. They had contested the unsettled para just because the income was not taxable and CENVAT was not legally reversible as per Law. They have further submitted that SCN completely fails to prove its allegation that they had suppressed the facts **with intent** to evade payment of taxes. Merely suppression of facts cannot invoke penalty u/s 78, there has to be an element of intent to evade which had nowhere been discussed and was least proven in the SCN. As there was no element of suppression of facts with intent to evade payment of taxes, penalty under section 78 cannot be levied.

The assessee has relied upon the following judicial pronouncement in support of their contentions;

CCE, Jalandhar v. United Plastomers 2008-TIOL-262-HC P&H-ST.

In Rashtriya Ispat Nigam Ltd. v. CCE 2002-TIOL-116-CESTAT BANG, followed in CCE v. Gaurav Mercantiles Ltd. 2005 (190) ELT 11(Bom.),CCE v. UC of India [2006] 3 STT 104 (Kol. - CESTAT),,CCE v. Shree Bilimore Modh Ganchi Samasta Panch [2006] 3 STT 335 (Mum. - CESTAT),

The assessee have relied upon the following citations/ judgments. In support of their contentions that, If service tax and interest is paid before SCN, penalty is

not payable

Heera Metals Ltd. v. CST [2006] 5 STT 300 (Kol. - CESTAT).
CCE v. Sujata Star Tele Club [2006] 3 STT 78 (Kol. - CESTAT).
Greenply Industries Ltd. v. CCE [2006] 4 STT 188 (New Delhi CESTAT).
IAB Photoes (CBE) (P.) Ltd. v. CCE [2006] 5 STT 305 (ChennaiCESTAT).
Sieger Spintech Equipments (P.) Ltd. v. CCE [2006] 5 STT 377 (Chennai - CESTAT).
KMR Marriage Hall v. CC& CE [2007] 8 STT 378 (Bang. - CESTAT),
Creative Hotels (P.) Ltd. v. CCE [2007] 9 STT 451 (Mum. - CESTAT),
GEM Star Enterprises v. CCE&C [2007] 11 STT 335 (Bang. - CESTAT).

The assessee have further submitted that in the case of **Union of India Vs M/s Rajasthan Spinning & Weaving Mills 2009-TIOL-63-SC-CX** the honourable Supreme Court held that as far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "misstatement or suppression of facts" which means with the intent to evade duty". The next set of words "Contravention of any of the provisions of the Act or Rules" are again qualified by immediately fo!lowing words "with intent to evade payment of duty". It is therefore, not correct to say that there can be suppression or mis-statement of facts, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to section 11A. Misstatement or suppression of facts must be "wilful." (Emphasis added"). They have submitted that they accept their liability of service tax but there was no bad intent or wilful suppression for non payment of service tax as they were not aware about the same, and if they would have made the payment then they would have been entitled to CENVAT credit of the same and therefore the issue was Revenue Neutral.

In the case of Anand Nishikawa Co. Ltd. v. CCE, Meerut 2005-TIOL-118-SC CX, Court has observed: " ... *we find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to wilful suppression. There must be* some *positive act from the side of the assessee to find wilful suppression."*

They have further submitted that extended period of limitation cannot be

applied in their case, they have relied upon the case of **CCE, CHANDIGARH *vs.* PUNJAB LAMINATES (P.) LTD. 2006-TIOL-109- SC-CX .** The above case law was on Section 11A of the Central Excise Act, 1944 which was similar to section 73 of the Finance Act, 1994, hence the case was relevant for their cause.

The assessee have submitted that, In view of the above elaborate discussion and the quoted decision of the Honorable Supreme Court & Tribunals, they have comprehensively proved that there was no failure on their part hence imposition of penalty was not warranted and impugned notice to show cause may be dropped. They have further submitted that in light of the foregoing grounds, submissions, expositions, statutory provisions as well as judicial decisions, the subject show cause notice be vacated.

23. PERSONAL HEARING:

Personal Hearing was granted to the noticee on 22.11.2021. Shri Nitesh Jain, Chartered Accountant appeared for personal hearing on behalf the assessee. They have tendered an executive summary dated 22.11.2021 pertaining to the subject case. They have also referred to their earlier written submission dated 01.11.2021, wherein each and every aspect pertaining to the subject demand has been explained/defended/contented. They have lastly requested to decide the case on merits and do justice to them.

24. DISCUSSION & FINDINGS:

I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 01.11.2021, documents submitted on the date of personal hearing and oral submission made by the assessee during the personal hearing.

24.1. On going through the SCN, I find that assessee was audited by the Audit Commissionerate for the period of October,2013 to June,2017 and the SCN was issued on the basis of Final Audit Report No.2103/2018-19 dated 03.07.2019. I find that the SCN has alleged that the assessee had shown income as 'contingent income' for the years 2016-17 (Rs 11,19,00,429/-) and 2017-18 (upto June 2017) (Rs 3,42,90,584/-) in their books of accounts i.e. Balance Sheet/Trial Balance Sheet. The income was booked in respect of RA Bill Nos 32 to 38. The assessee thereafter was asked to provide the copies of RA Bills from 32 to 38, but the noticee had not provided the copy of the bills to the audit team. On verification of records, it

was found that the assessee had booked the amount of RA Bills 32 to 38 as contingent income in their books of account , but they had not paid service tax on the contingent income. Further, it was noticed that they had also availed CENVAT credit on receipt of invoices of various service providers but the payment was not made to the service provider within 03 months from the date of invoice, as per Rule 4(7) of CCR,2004.

24.2 I observe that the assessee has vehemently contested the charges levelled against them in their written defence submission dated 01.11.2021. They have stated that the SCN was not legally tenable as the same has been issued upon presumption not permitted by law and inference not permitted by facts. They have submitted, that they had replied to audit vide letter dated 23/04/2019. They have submitted that despite giving detailed reply, they had been issued FAR-CTA/04-134/CIR-VII/AP-43/2017-18 dated 03.07.2019 demanding the service tax on contingent income and reversal of wrong availment of CENVAT credit without discussing their detailed reply of dated 23/04/2019.

24.3 I find that the assessee have submitted the following grounds based on which the service tax was not be demanded and the demand for the same was incorrect and unsusitanable. The assessee have submitted that they had executed a contract in 2015 with GSCO Infrastructure Pvt. Ltd (GSCO), for removing overburden from Coal Mine. The activity and such contract was classified under the ambit of Mining Services, wherein per cubic mtr rate for removal was fixed at Rs. 78.32. That this rate included Diesel, transportation charges, loading unloading charges and other miscellaneous charges for removing the overburden and to dump the same at designated place. In the contract, the diesel rate was fixed at Rs.66.66 per ltr for deriving the above per cubic mtr rate. It was the responsibility of GSCO to provide diesel to the assessee. The assessee have submitted that based on diesel rate mentioned separately in the contract and having responsibility of diesel arrangement with GSCO, diesel was having major cost factor in their rate and they were not having any control or were being benefitted due to price variation of diesel. They have stated that in the contract, the base rate for diesel is Rs.66.66 per ltr, any escalation or de-escalation in diesel rate was to be borne by GSCO. The assessee have submitted that, they were concerned with their rate after deducting diesel price. Rate was kept inclusive of all costs including diesel. The assessee have submitted that due to funding constraints at the end of GSCO they had paid the amounts

to GSCO for buying diesel. They have submitted that, as per contract terms, even though their rate was inclusive of diesel, GSCO was to be provide them diesel and for such diesel purchased by GSCO, either they had to pay them through Cheque or alternately deduct from their Monthly bill receivables from GSCO towards rendering of Mining Services. The assessee have submitted that they had raised invoices till RA-31 for work done till Nov-16. Even though diesel was provided by GSCO, they had been raising the invoices with rate as agreed in their contract i.e. including Diesel, transportation charges, loading unloading charges and other charges miscellaneous charges and also discharged due Service tax. Bills till RA- 31 were duly approved by GSCO and they had paid due taxes on the same and there was no dispute with regards to them. The assessee have further submitted that for the period December, 2016 to May, 2017 disputes arose between them and GSCO, vis-à-vis the quality of work being done on site; that their work done pertaining to quantities were not approved by GSCO. For fear of getting blacklisted for other projects, they however kept doing work till May 2017 and then stopped work at site. They have submitted that as per contract, GSCO had issued diesel to them for the period Dec 2016 to May 2017 worth Rs. 8,64,86,300/-. The assessee have further submitted that they had incurred expenses in their books for executing uncertified work for the said period. The assessee have also submitted that , GSCO had not approved their work done pertaining to quantity, and that they could not debit GSCO's account in their books and therefore they had booked the same as Contingent Asset in their Balance Sheet. They have submitted that as per Board's clarification in circular No. 144/13/2011-ST dated 18.07.2011, service shall be deemed complete not just on performance of its physical part but also after the acts of measurement of the completion and quality testing thereof are over. In their case, services had neither been measured by the client nor had they quality tested the same, which in their work was called 'Certification of work done'. The assessee have submitted that, they had not raised any invoice to GSCO, that they had not issued any invoice after RA31. The assessee have submitted that demand of Service Tax in the SCN on contingent income of Rs.14,61,91,013/- was in two parts. The break up of Rs.14,61,91,013/- was in

two parts, One part was towards Diesel and rest was towards uncertified work. They had not paid service tax on both these values due to the reason that (i) that of the Rs. 8,64,86,300/- towards diesel outstanding payable to GSCO, their contracted rate was inclusive of diesel wherein either they had to pay for diesel to GSCO or diesel value was to be deducted from their monthly billing. Diesel had to be free supplied by their principal GSCO during provision of mining service and (ii) and Rs.5,97,04,713/- was towards Uncertified Mining work done.

24.4 They have submitted that due to the ongoing dispute with regards to quality of service, GSCO had not approved their work and accordingly the services were not completed in nature for the period Dec-16 to May- 17, and accordingly invoices were not raised by them for this period as point of taxation did not arise for the said value because services was not completed with reference of Circular no. 144/13/2011-ST dated 19.07.2011 issued by the CBEC.

25. In respect of non reversal of CENVAT as per Rule 4(7) of the CENVAT Credit Rules, 2004. The summery of the defense/contention raised by the assessee is as follows:

25.1 The assessee have submitted that SCN issuing authority had ignored reply submitted by them. They have submitted that, the conditions as prescribed under Rule 4 (7) of the CENVAT Credit Rules, 2004 had been duly complied by them in totality as all the sub-contractors as per list mentioned in query memo were their Associated enterprise as defined in the Finance Act, 1994 read with Income Tax Act, 1961. They have also submitted that all the parties mentioned in Show Cause Notice point no. 19 were either their shareholders whereby they had invested in shares of their company and therefore were 'Associated enterprise' as defined and in case of Shree Swaminarayan Earthmovers, it was a proprietary concern of Mr. Dhaval Vadher who was son of the director of SSIPL. They have submitted that all the individuals and parties are Associated Enterprise for their company. They have relied upon the CBEC Circular No.122/03/2010-

ST dated 30.04.2020 clarifying the issue relating to availment of Cenvat credit in case of associate enterprises. They have submitted that clarification is linked with the definition of 'Gross Amount Charged" under section 67 of Finance Act, 1994.

25.2 The assessee have further, submitted that penalty under Section 78 cannot be imposed on them. For levying penalty u/s. 78 as alleged in the SCN there had to be suppression of facts with intent to evade payment of taxes. They have submitted that, they had clearly stated without any ambiguity to the audit them that they had already filed returns and never intended to evade or not pay due taxes. They have submitted that they had contested the unsettled para on merit because the income was not taxable and CENVAT was not legally reversible as per Law. There was no element of suppression of facts with an intent to evade payment of taxes and therefore penalty under section 78 cannot be imposed on them.

26. Now perusing all the records pertaining to the subject case, I find that, it is an undisputed facts that the noticee was engaged in providing/receiving multiple taxable services i.e. Mining of minerals, oil or gas service, Supply of tangible goods service, Site formation and clearance, excavation, earth moving and demolition service, Security/detective service, Business support service, Manpower recruitment/supply agency service, Construction of commercial complex services other than residential complex service, Transport of goods by road, Legal consultancy service and Works contract service. I find that audit of the records of the assessee was carried out by the Central Goods & Service Tax (Audit), Ahmedabad. The following objection was raised by the audit. i) Non payment of Service tax on income shown under the head 'contingent income' and ii) Non reversal of CENVAT credit as per Rule 4(7) of the Cenvat Credit Rules,2004.

26.1 I find that assessee had shown income as 'contingent income' in their books of accounts for the Year 2016-17 Rs.11,19,00,429/- and 2017-18 (up to June,2017) Rs.3,42,90,584/-. The income was booked in respect of RA Bill NOs 32 to 38. On query memo being issued to the assessee, they had contended that, the income pertained to the work done during the period from December 2016 to May 2017. That there was a dispute between

assessee and GSCO (service receiver), regarding quantity of work done which was not approved by GSCO and they had, therefore, not raised any invoices for these uncertified work. They had however booked a matching income as 'contingent income' in their Profit and Loss Account. They have contended that as per point of taxation rules, one was required to issue an invoice within 14/30 days from the date of completion of service. That as per Board's Circular No 144/13/2011-ST dated 19.7.2011 Service shall be deemed to be completed not just on performance of its physical part, but also after the acts of measurement of the completion and quality testing thereof are over. That their services had neither been measured by the client nor had they been tested for quality. They had also not raised any invoice to GSCO. Out of the total amount shown as contingent income amounting to Rs 14,61,91,013/-, the amount of Rs 8,64,86,300/- was towards free supply of diesel received from GSCO and remaining Rs. 5,97,04,713/- was towards the uncertified work, for which they had made a provision of income. It has been stated by the noticee that they had not paid service tax on the amount shown for diesel, as diesel was a free supply during the provision of mining services and therefore the same was not includable in valuation for the purpose of service tax.

26.2 I find that service recipient had paid TDS based on the invoices issued by the assessee and had not made a lumpsum provision in their books of accounts, therefore the contentions made by the noticee do not appear to be correct and acceptable. I find that accounting Standard 29 as issued by the Institute of Chartered Accountant of India which deals with the "Provisions, Contingent Liabilities and Contingent Assets", also provide that an enterprise should not recognise a contingent asset. It was usually disclosed in the report of the approving authority (Board of Directors in the case of a company, and, the corresponding approving authority in the case of any other enterprise), where an inflow of economic benefits was probable. Further, I find that assessee has relied upon the Boards circular no.144/12/2011-ST dated 18.07.2011 to claim and butress their arguments that their service had not been completed. However, I am of the view that in the said circular it has been clearly mentioned that "*However, such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice*". In the instant case it is amply evidenced that the amount had been booked as contingent income in the assessee's financial accounts and more pertinently , GSCO also had deducted TDS on the said amount. These two incontrovertible facts taken together proves that the service had been completed by the assessee. Further, audit was conducted on 06,14

&15.03.2019, and the period of dispute was 2016-17 & 2017-18 (upto June,2017), and there was abnormal delay in issuance of invoices. The assessee had shown the amounts in their income statement, hence, the amounts were not contingent incomes. Further, I find that the assessee was paying the cost of diesel to the service recipient on a regular basis. Out of the value of Rs 18,65,40,136/- of diesel supplied by the service recipient, the assessee had made a payment of Rs 12,16,91,413/- till 31.3.2017. The entire amount has been booked as expenses in the income statement. It basically proves that the assessee had incurred the cost of diesel and therefore, its value needs to be included for the purpose of charging service tax.

26.3 I find that service has been defined under Section 65B(44) of the Finance Act,1994, which reads as under;

> ***'service' means any activity carried out by a person for another for consideration, and includes a declared service'***
>
> Taxable service has been defined under Section 65B(21) of the Finance act,1994, which reads as under;
>
> *"taxable service" means any service on which service tax is leviable under section 66B"*

26.4 I find that assessee had provided services to GSCO, they had issued RA bills for the services provided by them to GSCO. The assessee had received a consideration from GSCO, which had been reflected as contingent income in their financial records. The activity carried out by the said assessee clearly falls within the meaning of 'service' as defined under the provisions of Section 65B(44) of the Finance Act,1994. The entire income had been shown by the assessee in their financial statements would forms the taxable value for the purpose of charging service tax as per the provisions of Section 67(i) of the Act read with Rule 5(1) of the Valuation Rules.

26.5 I find that the assessee had relied upon the Hon'ble CESTAT, New Delhi judgment in the case of Karamjeet Singh & Co. Ltd. v/s C.C.E. & S.T., Raipur 2018 (9) TMI 1511 - CESTAT New Delhi. I find that case of Karamjeet Singh & Co. Ltd. v/s C.C.E. & S.T., Raipur is not at all applicable in the instance case, as it was for the period 01.03.2008

to 31.03.2012, which means it was prior to the amendment to Section 67 vide Finance Act,2015, where by clause (a) which deals with 'consideration" was suitably amended to include reimbursable expenditure of cost.

26.6 I find that GSCO had deposited TDS on the amounts paid to the assessee for the year 2016-17, in respect of RS Bill Nos.32 to 36 and the same had been reflected in Form 26AS of the assessee. The GSCO had paid TDS on the bases on the invoices issued by the assessee and not on the basis of a lumpsum provision made in the assessee books of accounts. The assessee had issued invoices on which they had booked income in their books of accounts.

26.7 I find that that the value of free supply diesel would be included for the purpose of service tax. Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 ('Valuation Rules') says that all expenditure or costs incurred by the service provider in the course of providing taxable service, shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service. The assessee was paying the cost of diesel to the service recipient on a regular basis, the amount had been booked as expenses in the income statement. The assessee had incurred the cost of diesel and therefore, its value was to be included for the purpose of charging service tax.

27. I find "consideration" has been substituted in clause (a) of the Finance Act,1994 by the Finance Act,2015, w.e.f. 14.05.2015. Prior to its substitution clause (a), consideration read as under;

> (a) "Consideration" includes any amount that is payable for the taxable services provided or to be provided.

After, the substitution of clause (a) of the Finance Act,1994 clause (a), consideration reads as under;

(a)"consideration" includes —

(i) any amount that is payable for the taxable services provided or to be provided; (ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of

providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.

28. I rely upon the Hon'ble Supreme Court judgment in the case of of Union of India and anr. Vs. Intercontinental Consultants and Technocrafts Pvt. Ltd., wherein the Hon'ble Court had held that;

> *"29. In the present case, the aforesaid view gets strengthened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of taxable services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus, only with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax. Though, it was not argued by the learned counsel for the Department that Section 67 is a declaratory provision, nor could it be argued so, as we find that this is a substantive change brought about with the amendment to Section 67 and, therefore, has to be prospective in nature."*

29. Therefore, I hold that the assessee is liable to pay the service tax of Rs. 2,19,28,652/-under the proviso to Section 73(1) of the Finance Act, 1944 as proposed and demanded in the subject SCN. I also find that the provisions of Section 75 of the Finance Act, 1944 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate. I thus hold that the assessee is also liable to pay the interest on Service Tax of Rs. 2,19,28,652/-.

30. Now coming to the second issue which is pertaining to non reversal of Cenvat Credit as per Rule 4(7) of the Cenvat Credit Rules,2004. I find that the assessee had availed Cenvat Credit on bills received from service providers for which the payment was not made to the service provider within 3 months from the date of invoice. Rule 4(7) of the Cevnat Credit Rules,2004 provides that ;

"(7) The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received"

*[**Provided** that in respect of input service where whole or part of the service tax is liable to be paid by the recipient of service, credit of service tax payable by the service recipient shall be allowed after such service tax is paid :*

***Provided** further that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9 is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service, except an amount equal to the CENVAT credit of the tax that is paid by the manufacturer or the service provider as recipient of service, and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules"*

30.1 I find that the assessee had wrongly availed Cenvat Credit and had not made the payment of service tax within 3 months from the date of issue of the bills. The 1st proviso to Rule 4(7) of the Cenvat Rules mandates that the assessee could only avail cenvat credit after payment of service tax and 2nd proviso to Rule 4(7) of the Cenvat Rules says that the assessee had to reverse an amount equal to the cenvat credit availed if the payment of service tax had not been made within 3 months from the date of issue of invoice. The assessee had not reversed an amount equal to the cenvat credit availed by them, even though the payment of service tax was not made within the prescribed time, as mandated under the provisions of Rule 4(7) of the Cenvat Rules.

30.2 I find that the assessee has contended that they had fulfilled the conditions envisaged in Rule 4(7) of the Cenvat Rules. The sub-contractors listed in the objection were their associated enterprise, as defined in the Finance Act, 1994 as well as the Income Tax Act, 1961. Shree Swaminarayan Earth Movers is a proprietary concern headed by Mr Dhaval Vadher. The other persons listed in the objection were their shareholders. They have stated that as per Board's Circular No 122/3/2010-ST of 30.4.2010 payment was deemed to be made as soon as the entry in the books of accounts was made, in case of associated enterprises. The

assessee have therefore claimed that they were eligible for the cenvat credit under Rule 4(7) of the Cenvat Credit Rules.

30.3 I find that bill issued by M/s Balavantsinh Dipsinh Jadeja dated 8-3-2017 amounting to Rs 44,13,125/- and involving a cenvat credit of Rs 5,75,626/- was taken for the scrutiny by the audit party, with the ledger account submitted during the course of audit, which reads as under;

Date	Particulars	Vch Type	Vch No	Debit	Credit
08-03-2017	By Service Tax (Input) Account	Journal	RA-2		5,75,626
	To Closing Balance			5,75,626	

30.4 I find that assessee was requested by the audit party to provide the payment details against the above RA bill and the assessee had re-submitted the modified ledger account, which reads as under;

Date	Particulars	Vch Type	Vch No	Debit	Credit
08-03-2017	By Service Tax (Input) Account	Journal	RA-2		5,75,626
08-03-2017	By Expenditure from Operation				38,37,500
08-03-2017	To Fuel Consumption Accounts			38,37,500	
	To Closing Balance			5,75,626	

30.5 I find that assessee had submitted vendors ledgers containing certain adjustments so as to fulfill the requirement of Rule 4(7) of the Cenvat Rules. The ledgers of vendors submitted by the assessee during the course of audit did not contain the above said adjustments, though the said ledgers were for the period upto 31-03-2017. On objections being raised by the audit, the assessee had provided modified ledgers for the period upto 31.3.2017 and new adjustment entries had been shown in the ledgers. The adjustment entries passed by the assessee in the month of March 2017, as shown, were carried out after the audit objections were communicated to the assessee. The journal entries were passed in such a way that it did not affect the values contained in its audited financial statements and at the same

time, they could avoid the reversal of cenvat credit under the provisions of Rule 4(7) of the Cenvat Rules.

30.6 I find that assessee had submitted vendors ledgers containing certain adjustments so as to claim the fulfillment of the requirement of Rule 4(7) of the Cenvat Rules. I find that the ledgers of vendors submitted by the assessee during the course of audit did not contain the above adjustments, though the ledgers were for the period upto 31-03-2017. On objection being raised by the audit, the assessee had provided modified ledgers for the period upto 31.3.2017 and new adjustment entries had been shown in the ledgers. The adjustment entries passed by the assessee in the month of March 2017, were carried out after the audit objections were communicated .The journal entries were passed in such a way that it did not affect the values contained in its audited financial statements and at the same time, they could avoid the reversal of cenvat credit under the provisions of Rule 4(7) of the Cenvat Rules. I therefore cannot help but hold that the modified entries submitted by the assessee were only an afterthought. The set of journal entries passed by the assessee after the audit objections were communicated are as under:

Expenditure from Operation A/c Dr.	Rs 3,70,43,806
To Various individual Vendors A/cs	Rs 3,70,43,806
Various individual Vendors A/cs Dr.	Rs 3,70,43,806
To Fuel Consumption Accounts	Rs 3,70,43,806
Fuel Consumption Accounts Dr.	Rs 3,70,43,806
To Expenditure from Operation A/c	Rs 3,70,43,806

I find that 3rd journal entry was passed to nullify the effect of the first 2 journal entries.

From these journal entries, it may be observed that the net effect of above entries is "NIL" as shown in Table given below:

Ledger Account	Total Debited by Rs.	Total Credited by Rs.	Net Effect
Expenditure from Operation Account	3,70,43,806	3,70,43,806	Nil
Fuel Consumption Account	3,70,43,806	3,70,43,806	Nil
Vendor Accounts	3,70,43,806	3,70,43,806	Nil

30.7 I find that instead of the total value of bill (i.e. value of service + service tax thereon), only service tax payable to the vendors was credited to the ledger of respective vendors. On the other side, in case of RA bills received earlier, they were duly accounted for i.e. value of service plus service tax payable thereon, both, were credited to the ledger of vendors. The assessee had not deposited the TDS which shows that it did not account for the basic value of invoices on which the cenvat credit was availed, in terms of the Income Tax Act, 1961. The modified entries submitted by the assessee were only an afterthought. I also find that assessee had not made payments to their services providers, they had availed and utilized the cenvat credit. They had not reversed an amount equal to the cenvat credit as mandated under the provisions of Rule 4(7) of the Cenvat Rules. The assessee had tried to provide modified adjustment entries of their ledgers after the audit objections were conveyed to them and in turn had tried to nullify the effect of the entries. The assessee had wrongly availed cenvat credit and has evaded the reversal of cenvat credit, as mandated under the provisions of Rule 4(7) of the Cenvat Rules. I find that amount equal to the cenvat credit to the tune of Rs 53,71,349/- is recoverable from the assessee, under the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules. As the assessee had failed to reverse an amount equal to the cenvat credit availed, they are liable to pay interest, under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules. The assessee had suppressed the material facts from the department and contravened the provisions of the Act and the Rules made thereunder. They are thus liable for penalty under the provisions of Section 78(1) of the Act read with the provisions of Rule 15(3) of the Cenvat Rules, 2004.

31. On going through the various judgments/ decisions cited by the assessee in their support I am of the considered opinion that they are not applicable to the facts and circumstances of this case.

32. Further, I find that invoking extended period of limitation has been discussed in the SCN at length and the same has been contested by the assessee in their submissions. It is

my considered view that the Government has, from the very beginning, put in place mechanism of trust-based compliance on the part of manufacturers/ supplier of goods/ output service providers/ taxpayers and accordingly, measures such as self-assessment etc., based on mutual trust and confidence have been put in place. In the spirit of mutuality of trust and transparent tax administration with reduced compliance burden vis-à-vis rules & procedures the government has consciously promoted the industries interest. Further, a manufacturer/ supplier of goods/ service provider/ taxpayer is not required to maintain any statutory or separate records under the provisions of the Finance Act, 1994 and Rules made thereunder, as considerable amount of trust is placed on them and private records maintained by them, for their normal business purposes, are accepted, practically for all the purposes. All these operate on the basis of expectation of honesty, truthfulness and due diligence on the part of the assessee. Therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on them. From the evidences, it is observed that the assessee had knowingly suppressed the fact of receiving income under the head 'contingent income' in their financial books of account and had taken wrongful Credit which was inadmissible to them. This deliberate act of suppressing income and availment of wrongful credit under Finance Act, 1994 was in utter disregard to the requirements of law and was clearly breach of trust reposed on them and is certainly not in tune with Government's efforts in the direction to create a voluntary tax compliance regime.

33. Further, it is observed that the assessee was fully aware about the fact that the amount booked in their financial accounts was taxable under the Service Tax and had taken wrong credit which was not admissible to them. However, in spite of knowing the abovementioned facts and position; they chose not to pay the said applicable dues related to Service Tax. This had been done to escape from the eyes of the department with intent to evade the payment of dues related to Service Tax under the Finance Act, 1994. This fact of non-payment of dues related to Service Tax would have remained unnoticed, had the audit Officers not raised these issues while auditing the assessee. These acts on the part of the assessee

tantamounts to willful suppression, concealment and mis-statement of facts, with intent to evade the payment of dues related to Service Tax.

34 In view of the above discussions and findings, the invoking of extended period of limitation under Section 73 of the Finance Act, 1994 is sustainable and the plea of the assessee that the show cause notice is not legally tenable as the same was based upon presumption not permitted by law and inferences not permitted by facts is not acceptable and the decisions/ judgements cited by the assessee are not relevant to the facts and circumstances to the present case. I am of the considered view that the SCN had correctly invoked the extended period of limitation. In view of the facts and circumstances of the case.

35. In this regards I would like to mention here that in the case of *Mahavir Plastics Vs CCE, Mumbai reported at 2010 (255) ELT 241 (T),* it has been held that if facts are gathered by the department in subsequent investigation, extended period can be invoked. In the case of *Lalit Enterprises reported at 2009 (23) STR 275 (T),* it was held that extended period is invokable when department came to know of service charges received by appellant on verification of his accounts. The said views have also been endorsed by the Hon'ble Apex Court in the case of *Rajasthan Spinning and Weaving Mills/* High Court of Gujarat at Ahmedabad in *Tax Appeal No. 338 of 2009* in the case of *Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd.* dated 22.04.2010 regarding applicability of the extended period in different situations.

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

> ***"SECTION 78. Penalty for failure to pay service tax for reasons of fraud, etc. —***
>
> *(1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder*

with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the 24 date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined :

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

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

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

The Hon'ble High of Karnataka at Bangalore in the case of Motor World (2012(27)STR225(Kar.)) has held that;

Penalty - Imposition of - "Reasonable cause" for failure to comply with stipulations of Sections 76, 78, 79 and 80 of Finance Act, 1994 - It means honest belief founded upon reasonable grounds, of existence of state of circumstances, assuming them to be true, would reasonably lead any ordinarily prudent and cautions man, to come to conclusion that same was right thing to do - Initial burden to show it is on the assessee - Thereafter, adjudicating authority has to consider it - Only if it found to be frivolous, without substance or foundation, question of imposing penalty arises. *[para 13]*

(emphasis supplied)

In view of the above, I hold that the assessee has suppressed the material facts with intent to evade the payment of duty by not reversing the wrongly availed and utilized Cenvat credit of Rs.53,71,349/- and accordingly contravened the provisions of Rule 3(1) and Rule 2(k) of the Cenvat Credit Rules, 2004 which makes them liable to reverse/ pay the same

under the provisions of Section 73(1) of the Finance Act, 1994 read with provisions of rule 14(1)(ii) of the Cenvat credit rules, 2004. The assessee has also rendered themselves liable to pay interest on the inadmissible credit of Rs. 53,71,349/- under section 75 of the Finance Act, 1994. They have also rendered themselves liable for penalty under the provisions of Section 78(1) of the Finance Act, 1994 read with Rule 15 of the Cenvat Credit Rules, 2004.

38. Further, in view of the discussion as aforementioned in the forgoing paras, I hold that the assessee has failed to pay the service tax on the taxable income by suppressing the facts from the department by contravening the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and Section 67(1) of the Finance Act, 1994 read with Rule 5(1) of the Service Tax Rules, 1994. The Service Tax totally amounting to Rs. 2,19,28,652/- is recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 and they have also rendered themselves liable to pay interest under section 75 of the Finance Act, 1994. They have further rendered themselves liable for penalty under the provisions of Section 78 (1) of the Finance Act, 1994.

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

(i) I confirm the demand of service tax of Rs. 2,19,28,652/- (Rupees Two Crores Nineteen Lakh Twenty Eight Thousand Six Hundred Fifty Two only), not paid on the contingent income, and order to recover from the assessee under the proviso of Section 73(1) of the Finance Act, 1994.

(ii) I disallow the Cenvat Credit amounting to Rs. 53,71,349/- (Rupees Fifty Three Lakh Seventy One Thousand Three Hundred Forty Nine only), wrongly availed and utilized by them and I order to recover the same from the assessee under the proviso of Section 73(1) of the Act read with the provisions of Rule 14 (1)(ii) of the Cenvat Credit Rules, 2004.

(iii) I hereby impose the penalty of Rs. 2,19,28,652/- (Rupees Two Crores Nineteen Lakh Twenty Eight Thousand Six Hundred Fifty Two only) on the assessee under the provisions of Section 78 (1) of the Finance Act,

1994 for suppressing the facts and contravention of statutory provisions with the intent to evade payment of service Tax on the service tax amount demanded at (i) above; If the service tax amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the Service Tax amount, provided if such penalty is also paid within such period of 30 days.

(iv) I impose penalty of Rs. 53,71,349/- (Rupees Fifty Three Lakh Seventy One Thousand Three Hundred Forty Nine only) under section 78(1) of the Finance Act, 1994 read with Rule 15 of the Cenvat Credit Rules, 2004 on the demand at (ii) above. If the cenvat credit amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the Service Tax amount, provided if such penalty is also paid within such period of 30 days.

(v) I hereby order to charge Interest at the appropriate rate under Section 75 of the Finance Act, 1994, and to recover from the assessee on the service Tax demanded at (i) and (ii) above;

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

By Regd. Post AD./Hand Delivery
F.No. STC/15-20/OA/2020

Date:20.12.2021.

To
M/s. Shree Swaminarayan Infrastructure Pvt. Ltd.,
1 A, Amantran Bunglows,
Aarohi Club Road,
Bopal,
Ahmedabad-380 058.

Copy for information to:

1 The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
2 The Commissioner, CGST (Audit), 3rd Floor, GNFC Info Tower, Nr. Pakwan Cross Road, S.G. High Way, Bodakdev, Ahmedabad-380 054.
3 The Assistant Commissioner, CGST &C.Ex., Division-VII, Ahmedabad North.
4 The Superintendent, Range-I, Division-VII, Ahmedabad North.
5 The Superintendent (System), CGST, Ahmedabad North for uploading on website.
6 Guard File