


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- aaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO. STC/15-233/OA/2021 DIN : 20220864WT0000333ADB

आदेश की तारीख / Date of Order : 16.08.2022

जारी करने की तारीख / Date of Issue : 17.08.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 15 /2022-23

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)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 15 /2022-23

M/s. Mukesh Ramlal Purohit, Flat 201, Tower -4, Devnandan Infinity, Nr. Devam-2, Motera, Ahmedabad-380 005, were issued SCN No. STC/15-233/OA/2021 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S. MUKESH RAMLAL PUROHIT , ARE AS FOLLOWS:

M/s. Mukesh Ramlal Purohit, Flat 201, Tower -4, Devnandan Infinity, Nr. Devam-2, Motera, Ahmedabad-380 005 (hereinafter referred to as the 'assessee' for the sake of brevity) were engaged in providing taxable services. It also appeared that the assessee having PAN No. AMWPP5358E, was not registered with Service Tax Department.

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

3. It appeared that as per the information received from the Income Tax Department, the said assessee had earned substantial amount of service income from "sales of service" (as per ITR/Form 26AS) during FY 2015-16 and 2016-17, however, assessee had not obtained the service tax registration and had not paid service tax thereon.

4. It appeared that w.e.f. 01.07.2012, the negative list regime come in to existence under which all services were taxable, and only those services that were mentioned in the negative list were exempted. It appeared that the activities carried out by the assessee for a consideration were falling under the definition of service and the said services appeared to be not covered under the negative list of services provided under Section 66D of the Finance Act, 1994 as well as not covered under exemption notification. Hence, the said services provided by the assessee, appeared to be subject to service tax under Section 66B of the Finance Act, 1994.

5. It appeared that, the service tax liability was to be ascertained on the basis of income from sale of service mentioned in the ITR Return or Form 26AS filed by the assessee with the Income Tax Department. Therefore, the figures/data provided by the Income Tax Department were considered to be

total taxable value in terms of Section 67 of the Finance Act, 1994 for ascertaining the service tax liability of the assessee. By considering the "sales of services under Sales/ Gross Receipts from services (Value from ITR/Form 26AS)" as provided by the income tax department, the service tax liability for FY 2015-16 and 2016-17 was calculated as under:

Sr.No.	Financial Year	Total Value for TDS (including 194C,194Ia,194Ib,194J,194)	Service Tax Rate	Service Tax payable
01.	2015-16	84935059.739	14.5%	12315584/-
02.	2016-17	86557999.75	15%	12888753/-
				25204337/-

Therefore, it appeared that the said assessee had not paid service tax to the extent of Rs. 2,52,04,337/- (including Cess) on the Gross receipts from Services.

6. As per Section 68 of the Finance Act, 1994 every person liable to pay service tax shall pay service tax at the rate specified in Section 66B in such manner and within such period which is prescribed under Rule 6 of the Service tax Rules 1994.

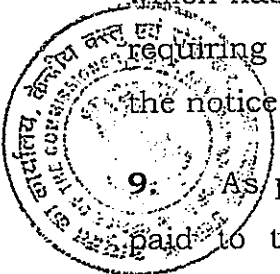
7. As per the provisions of Section 70 (Furnishing of Returns) of the Finance Act, 1994:

"(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.

(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed."

8. As per the provisions of Section 73(1) of the Finance Act, 1994 where any Service Tax has not been levied or paid or has been short levied or short paid by reasons of willful mis-statement or suppression of facts with intent to evade payment of Service Tax, the Central Excise Officer may within five years from the relevant date, serve a notice on the person chargeable with Service Tax which has not been levied or paid or which has been short levied or short paid requiring him to show cause why he should not pay the amount specified in the notice.

9. As per Rule 6 of the Service Tax Rules, 1994, the Service Tax shall be paid to the credit of the Central Government by 5th day of the month,



immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that the assessee shall submit their Service Tax returns in the form ST-3 within the prescribed time.

10. As per Section 69(1) of the Act, every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise. Further, as per Section 69(2) of Finance Act, 1994, any service provider, whose aggregate value of taxable service in a financial year exceeds Rs.9 lakhs is required to take Registration. Further, according to Notification No. 33/2012 -ST dated 20.06.2012, Central Government had exempted taxable service of aggregate value not exceeding ten lakh rupees in preceding year from the whole of the Service Tax leviable thereon under Section 66B of the Finance Act, 1994. Therefore, it appeared that the assessee was required to obtain Service tax Registration and comply with the service tax laws accordingly.

11. From the documentary evidence available at the relevant time, it appeared that the said assessee had failed to pay/deposit Service Tax to the extent of Rs. 2,52,04,337/- (including Cess) which was arrived at on the basis of "Sales /Gross Receipts from Services (ITR/Form 26AS)" during the Financial Year 2015-16 and 2016-17. The said non payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 2,52,04,337/- (including Cess) worked out on value of Rs.17,14,93,059 /- and therefore, the said Service Tax was required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

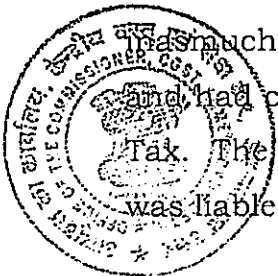
12. Therefore, it appeared that the said assessee had (i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 returns and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994; (ii) Failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994; (iii) Failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they had not paid service tax as worked out in the Table for Financial Year 2015-16 and 2016-17; (iv) contravened the provisions of Section

68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 which appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (vi) made themselves liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994; (vii) contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them (viii) contravened the provision of section 69 in as much as they did not obtain the service tax registration.

13. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value, that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 and 2016-17. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them, and thereby not paid/deposited Service Tax thereof to the extent of Rs. 2,52,04,337/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the assessee which were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

14. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (at such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appeared that the said assessee had not-paid Service Tax of Rs. 2,52,04,337/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 ibid not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994

in as much as the said assessee had suppressed the facts from the department and had contravened the provisions with an intent to evade payment of Service Tax. The said assessee had not discharged their Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.



15. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax and they appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of Service Tax as discussed in the foregoing paras and therefore, the Service Tax amounting to Rs. 2,52,04,337/- (inclusive of Cess) not paid was required to be demanded and recoverable from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

16. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time.

17. In addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appeared that the said assessee had willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of Service Tax thus rendering them liable for penalty under Section 78 of the Finance Act, 1994.

18. Therefore, Show Cause Notice dated 23.04.2021 was issued to the assessee asking them as to why:

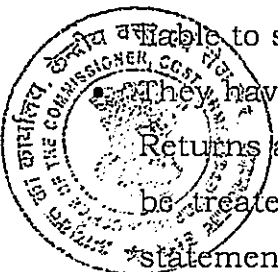
- (i) Service Tax of Rs. 2,52,04,337/- which was not paid for the financial year 2015-16 & 2016-17, should not be demanded and recovered from them under proviso to sub-section (1) of Section 73 of the Finance Act, 1994.
- (ii) Service Tax liability not paid during the Financial Year 2017-18 (up to June, 2017), ascertained in future, should not be demanded and recovered from them under proviso to sub-section (1) of Section 73 of the Finance Act, 1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;
- (iv) Penalty under the provisions of Section 77(1)(a), 77(1)(c) & 77(2) of the Finance Act, 1994, as amended, should not be imposed on them;
- (v) Penalty under Section 78 of the Finance Act, 1994, as amended, should not be imposed on them for suppressing the full value of taxable services and material facts from the department resulting into non-payment of Service Tax.

DEFENCE REPLY:

The assessee vide their letter dated 18.06.2021 tendered their written submission, wherein they interalia have stated that:

- They were registered Government and Municipal contractor. They were doing contract work for Government, Municipal Corporation of Greater Mumbai and Mira Bhayander Municipal Corporation and Public Works Department, through direct contracts as well as sub-contracts. They have done contract work of Municipal Corporation of Greater Mumbai and Mira Bhayander Municipal Corporation and PWD, through direct contracts as well as a sub-contractor to main contractor of MCGM. They have submitted that all services provided to Government or Local Authorities, were exempted from levy of Service Tax vide Notification No.25/2012.
- They have submitted that, they have received SCN for difference between turnover in ITR and Turnover in ST-3 returns for Rs.17,14,93,059/- with tax liability of Rs.2,52,04,337/-. They have submitted that SCN pertaining to F.Y.2015-16 & 2016-17 has been issued on .04 2021 i.e. under the extended time of 5 years (even after 5 years) u/s 73 (1) of the Service Tax Act.
- They have submitted that, extended time limit for issue of show cause notice of five years is available only in case where service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of-
 - (a) Fraud;or
 - (b) Collusion;or
 - (c) Willful Mis-statement; or
 - (d) Suppression of facts;
 - (e) contravention of any of the provisions of this chapter or of the rules made there under with intent to evade payment of service tax.
- They have submitted the contents of para no.2.7 and para no.3.2 of Master Circular No. 1053/02/2017-CX dated 10.03.2017 on Show Cause Notice, and submitted that explaining the reasons behind a possible mismatch between the ITR and service tax and difference in receipts of ITR and service tax or non-application of service tax number does not tantamount to any fraud leading to notices asking for five years' old information. They have submitted that enquiry upto five years can be made only if service tax has not been paid due to fraud, collusion, wilful misstatement or suppression of facts. The receipts, as per Income Tax Returns not tallying, it does not mean there is fraud, collusion, wilfull misstatement or suppression of facts (SIC). There can be a number of reasons for the mismatch like Exempted receipts, cash or mercantile basis of the system, professionals, other person not liable to service tax and so on (SIC).

They have submitted that the reconciliation of data between the Income Tax Returns and ST-3 returns, even that to not calling any reconciliation cannot be treated as service tax is not paid due to fraud, collusion, wilful mis-statement, suppression of facts and contravention of provisions. They have



submitted that the SCN issued after lapse of time allowed by the law and hence be dropped. They have submitted that SCN issued without giving any opportunity to submit reconciliation of turnover and the liabilities between ITR and ST3. SCN issued without primary enquiry is also not valid. They have submitted that the reconciliation of data between the Income Tax Return and ST3, even that to not calling for any reconciliation cannot be treated as service is not paid due to fraud, collusion, wilful mis-statement, suppression of facts and contravention of provisions (SIC).

- They have submitted that they were in the business of works contract, executing the works mainly for MCGM, MBMC and PWD directly and sometime on sub-contract basis. The contract receipts are exempt from service tax vide notification no.25/2012.
- They have submitted the details of contract receipt for the period 2014-15 to 2016-17 with reconciliation of gross receipts with form 26AS/ITR and ST-3 returns as under;

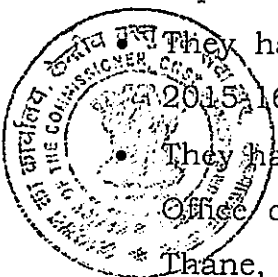
Year	Receipts		Remarks- Exemption details
2015-16	MCGM Contract-Direct	85,51,477.56	Direct Municipal Contracts Exempt as per Notification NO.25/2012
	MBMC Contract-Receipts	1,38,76,865.00	Direct Municipal Contracts Exempt as per Notification NO.25/2012
	MCGM Contract-on Sub- contract	6,25,06,717.18	Municipal Contracts on sub-contract basis exempt as per Notification No.25/2012
	Total	8,49,35,059.74	

2016-17	MCGM Contract-Direct	6,28,09,509.75	Direct Municipal Contracts Exempt as per Notification NO.25/2012
	MBMC Contract-Receipts	15,13,283.00	Direct Municipal Contracts Exempt as per Notification NO.25/2012
	PWD-Road Development Division	3378047.00	Direct Government Contracts Exempt as per Notification NO.25/2012
	MCGM Contract-on Sub- contract	3,52,70,416.00	Municipal Contracts on sub-contract basis exempt as per Notification No.25/2012
	Total	10,29,71,355.75	

- They have submitted the copy of Work orders/payment certificates for MCGM direct contracts. Work orders and sub-contract agreements/copies of bills of MCBM contracts on sub-contract. They have also submitted the copies of sales bills and ledger accounts for sale of goods.

They have submitted that their contract receipt/sales , during the year 2015-16 & 2016-17 were exempted vide notification no.25/2012.

They have also submitted that they had received similar enquiries from the Office of the Commissioner of Central GST and CE-Anti Evasion Cell, Thane, and they had submitted the details, and no show cause notice was



issued in the matter. They have requested that no service tax should be imposed on them as proposed in the SCN in view of their reply/submission.

PERSONAL HEARING:

20. Personal Hearing was granted to the assessee on 21.06.2022, which was attended by Ms. Jigna P. Soni, CA as authorized by the assessee. During the course of personal hearing, she made reference to their earlier written submission dated 18.06.2021 and stated that the activity of the assessee was exempt from payment of service tax under Mega Exemption Notification NO.25/2012, as the assessee were engaged in providing Construction activity/service for Government, Municipal Corporation of Greater Mumbai etc. She requested to drop the proceeding initiated against the assessee in the interest of justice.

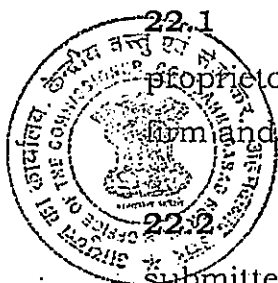
DISCUSSION AND FINDINGS:

21. I have carefully gone through the facts of the case and records available in the case file, which includes the SCN, the defence reply submitted on 18.06.2021, the documents submitted by the assessee and oral submission made during the course of hearing by the authorized representatives of the assessee.

22. On going through the SCN, I find that basically the essence of the case is that data of "Sales /Gross Receipts from Services (value from ITR)" / "Total Amount Paid/Credited under 194C, 194H,194I, 194J" (as per TDS Statement-Form 26AS) were shared by the CBDT with CBIC for FY 2015-16 and 2016-17. It was observed from the data that the assessee had Sales/ Gross Receipt of Rs.17,14,93,059/- for FY 2015-16 and 2016-17 from providing services, however they had not paid any service tax on it. Therefore, it was alleged that the assessee had not paid the service tax of Rs. 2,52,04,337/- on such sales/gross receipts, for providing the taxable service. Accordingly, the subject SCN was issued. I find that the issue which requires determination as of now is as to whether the assessee is liable to pay service tax of Rs. 2,52,04,337/- on the sales/gross receipts of Rs. 17,14,93,059/- as per the data shared by the CBDT for the Financial Year 2015-16 and 2016-17 under proviso to section 73(1) of Finance Act, 1994 or not.

22.1 I find from the available records that the assessee is a proprietorship firm and Shri Mukesh Ramlal Purohit is the proprietor of the firm and he runs his business in the name of M/s. Mukesh Construction Co.

22.2 I find that the assessee vide their letter dated 18.06.2021 have submitted their written submission wherein they have contested that they are



doing contract work for Government, Municipal Corporation of Greater Mumbai, Mira Bhayander Municipal Corporation and Public Works Department through direct contract as well as in the capacity of sub-contractor. They have contended that all the services provided to the Government or Local Authorities, are exempt from levy of Service Tax vide Mega Exemption Notification NO.25/2012-ST dated 20.06.2012. In support of their defence, they have submitted the documents i.e. Copy of Work Orders and Payment Certificates , Copy of Form 26AS, Copy of sub-contract agreement with main contractors and work orders issued to the main contractor.

23. I discern from the data shared by the CBDT that the assessee was paid/credited the amount of Rs.8,49,35,059.739 and Rs. 8,65,57,999.75, as disclosed by the tax deductor under section 194C and 194H of the Income Tax Act,1961 during FY 2015-16 and 2016-17 respectively. Section 194C of the Income Tax Act deals with the tax deduction at source (TDS) and that is to be compulsorily deducted from any payments that has to be made to any person who is a resident contractor or a subcontractor. Therefore, any amount paid/credited on which TDS has been deducted under Section 194C is contract income. Section 194H of the Income Tax deals with the earnings received as commission or brokerage. The commission is the amount paid to an entity for rendering services during sale or purchase. I find that in form 26AS pertaining to the assessee TDS has been deducted under Section 194C and 194H of the Income Tax Act. Section 194C & 194 H of the Income Tax Act,1961 are reproduced herein below:

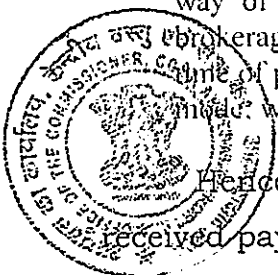
194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family, of such sum as income-tax on income comprised therein.

194H. Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent.

Hence, I am of opinion that the assessee had done contract work, received payment under the Works Contract Service under Section 194C of the



Income Tax Act,1961 and commission or brokerage income under Section 194H of the Income Tax Act,1961.

23.1 I find that the SCN mentions sharing of data from ITR/Form 26AS, however, on going through the data shared by the CBDT, it is seen that the value of service is taken from the amount paid/ credited to the assessee as disclosed by the tax deductor (service recipients) under Section 194C & 194H of the Income Tax Act, and the said amounts are found tallying with Form 26AS for FY 2015-16 and 2016-17. Hence, I proceed with these data sets for deciding the matter.

24. I find that Notification No. 25/2012-ST dated 20.06.2012 issued under Section 93(1) of the Act, grants exemption to taxable services enlisted therein from whole of Service Tax leviable under section 66B of the Act. I also observe that the assessee has contested the demand of Service Tax on services rendered by them arguing that the service provided by them under the Works Contract Services for the Government, local authorities were exempted from levy of Service Tax. The assessee has claimed the exemption from levy of service tax under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. Since the assessee has claimed the exemption from service tax under Notification 25/2012-ST dated 20.06.2012, the relevant extracts of the said notification are reproduced as under for ready reference.

Notification No. 25/2012-Service Tax dated 20th June, 2012

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely":-

.....

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

(a) ***

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) ***

(d) canal, dam or other irrigation works;

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

(f) ***"

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

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

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

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

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date: provided that nothing contained in this entry shall apply on or after the 1st April, 2020;" Inserted vide Notification 9/2016- Service Tax to be in effect from 1 March 2016.. 1

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

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

"25. Services provided to Government, a local authority or a governmental authority by way of -

(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation;"

"29. Services by the following persons in respective capacities –

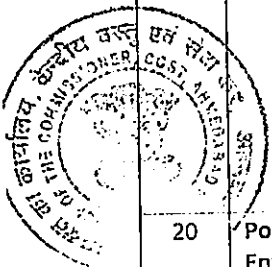
(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;"

25. In order to ascertain the availability of the exemption to the assessee from payment of service tax under Notification No. 25/2012- ST dated 20.06.2012 or otherwise on the services rendered by the assessee, I would like to examine the documents submitted by the assessee alongwith their written submission dated 18.06.2021. On going through the Form 26AS, work orders, and department bill (RA bills), the following facts as enumerated in tables below are emerging as under:

Table-I.

2015-16						Exemption available under Notification NO.25/2012
Sr.No	Name of the TDS deductor	Amount paid /credited	TDS deducted under Section 194C			
	Aruna Lokesh Jain	168753	1688	original work allotted to M/s. Vidhi Enterpirse vide work order no.3853 dated 06.06.15	civil work for petty building repairs including slum imporvement work and pett stomr water drain repair works (SIC)	Yes

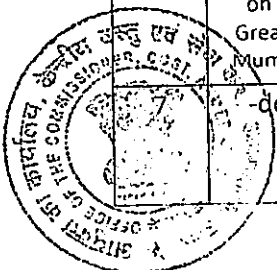
2	Aruna Lokesh Jain	502539	5026	-do-	-do-	Yes
3	Municipal corporation of Greater Mumbai	825342.92	16506.86	work order no.4200061095 dated 22.12.15	construction of toilet block & urinal block in B ward office premises	no
4	-do-	328797.97	6575.96	work order no.4200061773 dated 05.01.16	Imp of Drng system at 6/8 sai manzil	yes
5	-do-	303515.45	6070.31	Work order dated 4200062855 dated 18.01.16	Imp of passge and drainage line at 58 vignahar sadan building (SIC)	Yes
6	-do-	81210.05	1624.2	Work Order No.4200066508 dated 22.02.2016	supply and fixing GI Doors and Soil Pan at Various places, Kurla (W), Beat No.157	no
7	-do-	478481.09	9569.62	work order NO.4200061892 dated 06.01.16	Repair works of passage & drain at along room no.238, christain gaon, kurla	Yes
8	-do-	324652.94	6493.06	work order no.4200061779 dated 05.01.16	imp of drng line at 7/11 gopal house	Yes
9	-do-	134554.85	2691.1	Work order No.4200064554 dated 04.02.16	Repair works of passage and rain at Gomes Chawl	Yes
10	-do-	1401708.95	28034.18	Work Order no.4200061090 dated 22.12.15	Imp. Of footpath at SVP road	Yes
11	-do-	1238479.87	24769.6	Work order No.4200061088 dated 22.12.15	Imp. Of passage in B ward Office Premises	no
12	-do-	625530.32	12510.61	Work order NO.4200060255	Imporvement of Footpath	Yes
13	-do-	628544.14	12570.88	Work order No.4200060256	Repair to passage and drainage line	Yes
14	-do-	356232.57	7124.65	Work Order No.4200061887	Repair Work of passages and drains , kurla	Yes
15	-do-	483157.94	9663.16	Work Order No.4200061890	Repair Work of passages and drains , kurla	Yes
16	-do-	274587.84	5491.76	No document		no
17	-do-	522361.63	10447.23	Work Order No.4200056660	Imp. Of passage and drainage , Kurla L Ward.	Yes
18	-do-	544319.03	10886.38	Work order no.4200056655	Imp. Of passage and drainage , Kurla L Ward.	Yes
19	Nandish Construction Company	696138	6961	Original work allotted to M/s. Nandish Construction vide order no.533 dated 22.04.13 by Municipal Corporaiton of Greater Mumbai, the same has been contracted to assessee.	ES-124 Desilting of Minor Nallas & Closed Drain in 'S' Ward.	Yes
20	Popular Enterprise (194H)	632504	63250			no



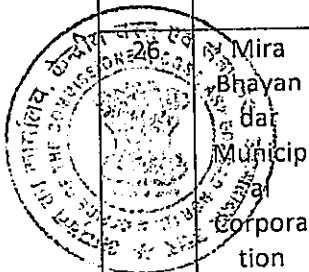
21	R E Infra Private Limited	13000000	130000	Original work allotted to M/s. R E Infra Pvt Ltd., the same sub-contract to assessee	ES 165 Widening/deepening/training and reconstruction of Subhash Nagar Nala System.	Yes
22	-do-	12663766.5	126637	-do-	-do-	Yes
23	-do-	10553345.3	105533	-do-	-do-	Yes
24	-do-	7629703	77068	-do-	-do-	Yes
25	-do-	16659968.4	166600	No document	NO document	no
26	Mira Bhayandar Municipal Corporation	13876865	310842	work order no.511 dated 14.12.15	constructon of nala v market shed	no

Table-II

2016-17						
Sr. No.	Name of the TDS deductor	Amount paid /credited	TDS deducted under Section 194C			Exemption available under Notification No.25/2012
1	Executive Engineer Road Development	900000	18000	work order no.2175	desilting and removing of garbage in storm water drain, pipe drain , nalla, river etc. on western express highway	Yes
2		1282576	25652	work order no.2174	desilting and removing of garbage in storm water drain, pipe drain , nalla, river etc. on western express highway	Yes
3		1195471	23909	work order no.2172	desilting and removing of garbage in storm water drain, pipe drain , nalla, river etc. on western express highway	Yes
4	Force Construction Pvt. Ltd	13958733	139587	no documents		No
5	H V construction	1899358	18994	Work order no.37 dated 12.01.16 issued to M/s. H.V construction. The same sub contract to assessee	widening and constructon of Golibar Nalla, Santacruz	Yes
6	Municipal Corporation of Greater Mumbai	254105.6	5082.11	work order no.4200079487 dated 26.09.2016	providing and fixing RCC benches at various locations In beat no.157, Kurla (W) L ward	No
	-do-	4070815.45	81416.31	Work order NO.58 dated 30.12.16	Training & Construction of MHB Nalla	Yes



8	-do-	876129.12	17522.58	work order no.4200076602	imp of passage & drainage system	Yes
9	-do-	3398883.78	67977.68	work order no.4100025898	desilting mogra & majas nalla system in k/east ward	Yes
10	-do-	7168102.08	143362.04	Work order No.4100025849	desilting malvani nalla	Yes
11	-do-	3052751.84	61055.04	Work order No.4100025849	desilting malvani nalla	Yes
12	-do-	1107333.06	22146.66	Work order No.4100025850	desilting malvani nalla	Yes
13	-do-	2115094.86	42301.9	work order no.06 dated 07.04.16	Desilting of major nala i.e. Walbhat River System in P/south ward	Yes
14	-do-	3692208.5	73844.17	work order no.06 dated 07.04.16	Desilting of major nala i.e. Walbhat River System in P/south ward	Yes
15	-do-	9381480.45	187629.61	Work order No.4100025849	Desilting Malvani Nala	Yes
16	-do-	628945.3	12578.91	work order no.4200077120 dated 11.08.16	Repair to 6 seated PSC block Bubumanzil chawl, Kurla (W).	No
17	-do-	5094818.05	101896.36	work order no.4100025898	desilting mogra & majas nalla system in k/east ward	Yes
18	-do-	204938.53	4098.77	work order no.4100025899	desilting mogra & majas nalla system in k/east ward	Yes
19	-do-	518338.26	10366.77	work order no. 4200076601	imp of passage and drainage system	Yes
20	-do-	1338092.72	26761.85	Work order no.07 dated 07.04.16	Desilting of major nala i.e. Kurar & Malvani Nala system in P/North Ward	Yes
21	-do-	14070817.6	281416.35	-do-	-do-	Yes
22	-do-	5836654.52	116733.09	work order no.06 dated 07.04.16	Desilting of major nala i.e. Walbhat River System in P/south ward	Yes
23	Popular Enterprise (194H)	632979	31649			No
24	R F Infra Pvt Ltd	1250496	12505	no documents		No
25	Rajesh Virumal Vatnani	1115594	11156	work order no.4270 was issued to M/s. R.K.Brothers and the same has been sub contracted to assessee	remodeling of existing pipe culverts in to box culverts, reconstruction of existing damaged S.W. Drains	Yes
	Mira Bhayan Municipal Corporation	1513283	33898	work order no.511 dated 14.12.15	construction of nala v market shed	No



On going through the Form-26AS submitted by the assessee, it is seen that the assessee has received payment from the tax deducter under Section 194C i.e. payment to contractors and sub-contractors under Income Tax Act,1961, that the assessee had provided the works contract services and amount has been received from tax deducter under Section 194C, and the assessee have income under Section 194H i.e. commission or brokerage income has been considered as taxable service for issuance of SCN. The details are as given below;

Sr.No.	Financial Year	Total Value for TDS (including 194C,194Ia,194Ib,194J,194)	Service Tax Rate	Service Tax payable
01.	2015-16	84935059.739	14.5%	12315584/-
02.	2016-17	86557999.75	15%	12888753/-
				25204337/-

On going through the above table, I find that in the subject SCN demand has been raised on Gross Receipt from Services (Value from ITR/26AS) considered as Rs. 84935059.739 for F.Y.2015-16 and Rs. 86557999.75 for F.Y. 2016-17, the same is tallied with the Form 26AS submitted by the assessee.

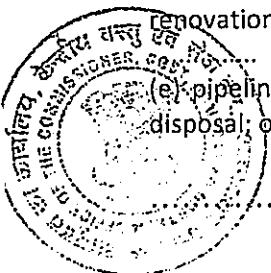
25.1 The assessee has claimed the exemption from service tax under Notification No. 25/2012-ST dated 20.06.2012 on Services provided by them as main contractor and sub-contractor i.e. for drainage, nala, road, etc., to Municipal Corporation of Greater Mumbai, Mira Bhayander Municipal Corporation i.e. local authorities. The relevant extracts of the said notification are reproduced as under for ready reference:

Notification No. 25/2012-Service Tax dated 20th June, 2012

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely":-

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

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



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

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

(b)

25. Services provided to Government, a local authority or a governmental authority by way of -

(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or

(b).....

"29. Services by the following persons in respective capacities -

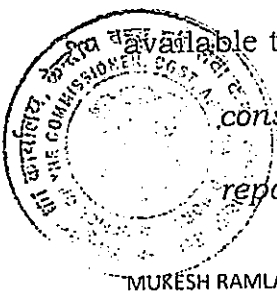
(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;"

26. I find that the assessee vide letter dated 18.06.2021 has stated that they have submitted copy of RA bills, 26AS, works contracts and payment certificate for direct contracts & sub-contract agreements with bills for sub-contracts. However, on scrutiny of the details/documents submitted by the assessee, I find that the assessee has not provided all the RA bills in support of their claim. I find that the assessee has claimed that they have provided works contract service to the Municipal Corporation of Greater Mumbai and Mira Bhayander Municipal corporation and PWD, and therefore they are exempted from levy of service tax. I find that RA Bill clearly describe that the work carried out by the assessee was of "works contract service" and the same was awarded by various department of Municipal Corporation. It is accordingly established from the above that the assessee was indeed engaged in providing services of works contract.

26.1 Keeping in view the aforementioned detailed discussions, I find that the works contract service provided by the assessee were squarely covered under the Sr. No. 12(e), 13(a) and 25(a) of the Notification No. 25/2012-ST dated 20.06.2012 & Sub-Contract work under Sr. No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012, I find that the exemption is quite clearly

available to the assessee for-

construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of "pipeline, conduit or plant



for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal"

Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of - a road, bridge, tunnel, or terminal for road transportation for use by general public

Services provided to Government, a local authority or a governmental authority by way of - water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation;

and

sub-contractor service provided by way of works contract to another contractor providing works contract services which are exempt;" as claimed by them. I am convinced with the arguments put forth by the assessee and they are held not liable for payment of service tax on those services provided by them under Notification NO.25/2012-ST dated 20.06.2012.

26.2 However, I find that assessee has not provided any supporting required/relevant documents for the work/service provided by them mentioned at Sr.No.16 & 25 of Table-I and Sr.No.4 & 24 of Table-II of para 25. Hence, I am unable to draw any conclusion with regard to nature of service as to whether the same are exempted or otherwise? In the absence of documentary and tangible support, I am unable to agree with the assessee claim for exemption and I am left with no option but to hold that, the assessee is not eligible for exemption under Notification No.25/2012-ST dated 20.06.2012 as claimed by them. Accordingly, I am constrained to hold that the assessee is not eligible to avail benefit of exemption Notification NO.25/2012-ST dated 20.06.2012 vis-a-vis the abovementioned work/service provided by them.

26.3 I also find that assessee has provided services for construction of toilet block & urinary block in B ward office premises, supply and fixing GI doors and soil pan, Imp. of passage in B ward office premises, provided and fixed RCC benches and repaired 6 seated PSC block, however, I am of the view that the said services are not covered under Exemption Notification NO.25/2012 and the assessee is liable to pay Service Tax on the same.

Further, in respect of service provided for construction of nala v market shed, there is no break-up for the service provided for construction of



nala & construction of market shed, hence, I am unable to quantify and bifurcate the amount paid for construction of nala and construction of market shed, therefore, again I am constrained to hold that the assessee is not entitled to avail benefit of exemption notification no.25/2012.

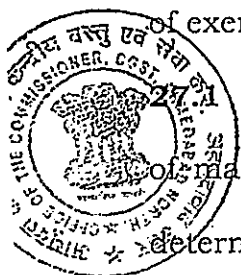
26.5. I find that the assessee has blandly stated in their defence reply that they had provided service to the MCGM, MBMC and PWD, therefore they are exempt from levy of service tax. In the absence of documentary tangible evidence in support of the assessee's contention, I am left with no recourse, but to disagree with the assertion of the assessee. Hence, I am of the considered opinion that the assessee is not entitled for exemption under Notification NO.25/2012-ST dated 20.06.2012 as claimed by them vis-a-vis the service provided at Sr.No.3,6,11,16,25 & 26 of Table-I above & Sr.No.4,6,16,24 & 26 of Table-II above.

I also find that the assessee has commission/brokerage income of Rs.632504/- Sr.No.20 of Table-I above, for F.Y.2015-16 & Rs. 632979/- Sr.No.23 of Table-II above, for F.Y. 2016-17, and hold that the same is not exempted under notification no.25/2012-ST dated 20.06.2012 as wrongly claimed by the assessee.

26.6 I find that the assessee has also provided works contract service for Imp. of Footpath at SVP Road Sr.No.10 & 12 of Table-I above, and the same is squarely covered under Sr.No.13(a) of Notification No.25/2012-ST dated 20.06.2012. Accordingly, I hold that the assessee is clearly entitled for benefit of exemption notification no.25/2012 for the above mentioned services.

27. I find that except for the service provided as discussed in para 26.5, for the rest of services, assessee is clearly entitled for benefit of avilment of exemption notification no.25/2012-ST dated 20.06.2012.

I find that works contract service is a composite service consisting of material used and labour/service provided to the client. The valuation to determine the liability of service tax due on works contract service for value of service portion in the execution of a works contract is to be carried out as per



Rule 2A(ii) of the Service Tax (Determination of Value) Rules, 2006. The said rules are reproduced herein as under;

"2A. Determination of value of service portion in the execution of a works contract.-

Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

(i)

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

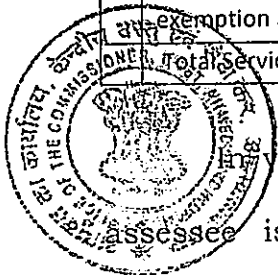
(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

28. In view of the discussion made in the forgoing paras, the service tax liability of the assessee has been determined as under;

2015-16					
		Taxable income	Abatement	Net Taxable Income	S.Tax Payable
1	Taxable value on which service tax Exempted under Notification NO.25/2012, 12(e) & 25(a)	49318862	0	49318862	0
2	Taxable value on which service tax Exempted under Notification NO.25/2012, 13(a)	2027239	0	2027239	0
3	works contract service, no exemption available under notification no25/2012	16021898	9613139	6408759	929270
4	works contract service, where no documents submitted, no exemption available under Notification no.25/2012	16934556	10160734	6773822	982204
5	194H (Commission / Brokerage), no exemption available	632504	0	632504	91713
	Total Service Tax Payable for 2015-16				2003187

2016-17					
		Taxable income	Abatement	Net Taxable Income	S.Tax Payable
1	Taxable value on which service tax has been Exempted under Notificaton NO.25/2012, 12(e) & 25(a)	68319458	0	68319458	0
2	works contract service, no exepmtion available under notification no25/2012	2396334	1437800	958534	143780
3	works contract service, where no documents submitted, no exemption available under Notification no.25/2012	15209229	9125537	6083692	912554
4	194H (Commission / Broakrage), no exemption available	632979	0	632504	94876
	Total Service Tax payable 2016-17				1151209

In view of the above discussion, I am of the considered view that the assessee is liable to pay service tax of Rs.3154396/- (Rs.2003187/- for F.Y.2015-16 + Rs.1151209/- for F.Y.2016-17). Accordingly, the Service Tax



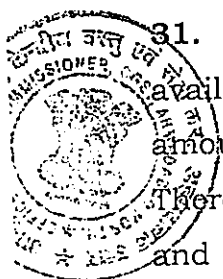
totally amounting to Rs. 31,54,396/- is recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994. The assessee have also rendered themselves liable to pay interest under section 75 of the Finance Act, 1994. They have further rendered themselves liable for penalty under the provisions of Section 78 of the Finance Act, 1994

28.1 I find that no data for the period 2017-18 (up to June,2017) is available in the instant case file, and the same has also not been provided by the assessee or the department, hence, I refrain myself from entering into any discussion for the period 2017-18 (up to June,2017) to determine the liability or otherwise of Service Tax for the period 2017-18 (upto June,2017).

29. From the above facts and circumstances, documents submitted by the assessee, and the legal position, I find that the difference in the value of service as alleged in the subject SCN is on account of the exemptions claimed by the assessee. I find that apart from the figures reported in Form 26AS, the department has not adduced/ relied upon any other evidence or investigation to substantiate the allegations of short payment/ non payment of service tax by the assessee. Having considered these factual and documentary evidences available on record, I find that the assessee is liable to pay service tax of Rs. 31,54,396/- out of the total demand of service tax of Rs. 2,52,04,337/- for FY 2015-16 & 2016-17. Thus, the rest of demand of Service Tax of Rs.2,20,49,941/- is liable to be dropped on merits, the same being incorrect and legally not sustainable. Therefore, I hold that the assessee is required to pay service tax of Rs. 31,54,396/- and thus, the same is required to be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

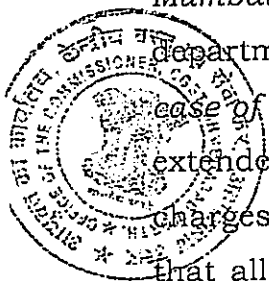
30. I also find that Section 75 of Finance Act,1994 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate. I, therefore hold that the assessee is also liable to pay the interest on the demand of service Tax of Rs.31,54,396/-.

31. Based on above facts and circumstances, discussion and documents available on records, I hold that assessee is liable to pay the service tax amounting to Rs. 31,54,396/- for the period from FY 2015-16 to 2016-17. Therefore, I find that the assessee has contravened the provisions of Section 68 and 66B of the Finance Act, 1994 read with Rules 2 and 6 of the Service Tax



Rules 1994, in as much as they have failed to pay service tax to the tune of Rs.31,54,396/- though they were liable to pay the same; they have also contravened the provision of Section 69 in as much as they have failed to obtain service tax registration, though they were liable to pay service tax; they have also contravened the provision of Section 70 of Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to assess their correct service tax liability and have failed to file ST-3 Returns for the period FY 2015-16 to 2016-17.

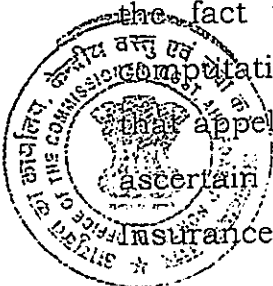
32. From the facts and discussion aforementioned, I find that assessee has failed to assess and discharge their service tax liability for the period from FY 2015-16 to FY 2016-17. They have failed to obtain service tax registration and have also failed to pay legitimate service tax due to the government account. They have also failed to disclose their actual taxable income by not declaring of taxable value of service provided by them and by not filing service tax returns, though they were having income which was liable to service tax. These acts of non payment of service tax, non filing of service tax returns, suppressing the material facts from the department were done with an intent to evade the payment of service tax. The government has from the very beginning placed full trust on the assessee, accordingly measures like self assessment etc. based on mutual trust and confidence have been put in place. Further, the assessee are not required to maintain any statutory or separate records under the Excise/Service Tax Law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for purpose of service tax law. Moreover, returns are also filed online without any supporting documents. All these operate on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provision is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is evident that such fact of contravention and non payment of service tax, as discussed earlier, on the part of the assessee only came to the notice of the department when the inquiry was initiated by the department, consequent to the data shared by the CBDT. In the case of *M/s. Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241*, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In case of *M/s. Lalit Enterprises v CST Chennai, 2009 (23) STT 275*, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period



under the proviso to Section 73(1) of Finance Act, 1994. Hence, by invoking the extended period of five years, I hold that the assessee is liable to pay Service Tax of Rs.31,54,396/- along with applicable interest under Section 75 of the Finance Act, 1994. And for the same reasons, the assessee has rendered themselves liable for penal action under the provisions of Section 78 of the Finance Act, 1994.

Further, I find that invoking extended period of limitation has been discussed in the SCN at length. It is my considered view that the Government has, from the very beginning, put in place mechanism of trust-based compliance on the part of manufacturers/ supplier of goods/ output service providers/ taxpayers and accordingly, measures such as self-assessment etc., based on mutual trust and confidence have been 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 Works Contract Service & Commission/Brokerage. This deliberate act of suppressing income under Finance Act, 1994 is in utter disregard to the requirements of law and is a breach of trust reposed in them and is certainly not in tune with Government's efforts in the direction to create a voluntary tax compliance regime.

I rely upon the judgment in the case involving Aircel Digilink India Ltd. V/s. Commissioner of Central Excise, Jaipur, reported in 2006 (3) STR 386 (Tri.-Del) and the case involving Bharti Cellular Ltd. V/s Commissioner of Central Excise, Delhi, reported in 2006 (3) STR 423 (Tri.-Del). In both cases, the Hon'ble Tribunal upheld invocation of extended period after taking note of the fact that appellants had not disclosed certain details and mode of computation in their ST-3 details and there was nothing on record to suggest that appellants had ever approached the office of the service tax authorities to ascertain the details of their liability to pay the service tax. Similarly, in case of Insurance & Provident Fund Department V/s. Commissioner of Central Excise,



Jaipur-I, reported in 2006 (2) STR 369 (Tri.-Del.), Hon'ble Tribunal held that non-disclosure of full amount of premium collected would attract invocation of extended period. The ratio of the above judgments is squarely applicable to the present case also as the assessee has not only suppressed the material facts from the department but has also failed to comply with law and procedures, including payment of service tax. In view of the above, I hold that in the facts and circumstances of the present case, proviso to section 73 (1) of finance act, 1994, is rightly invoked for raising the demand for service tax against the assessee.

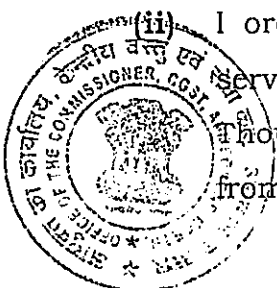
33. As regards, the proposal for imposition of penalty under Section 77(1) for failure to obtain service tax registration under the provisions of Section 69 of the Finance Act, 1994, I find that the assessee has not obtained the service tax registration though they were liable to pay service tax as discussed hereinabove, hence, they have contravened the provisions of Section 69 of the Finance Act, 1994. Thus, I find that the assessee is liable to penal action under Section 77(1)(a) the Finance Act, 1994. The assessee has also neither furnished information not produced documents to the department, accordingly they had made themselves liable for penalty under Section 77(1)(C) of the Finance Act, 1994. The assessee has also made themselves liable for penalty under Section 77(2) of the Finance Act, 1994, for not filing the service tax returns for FY 2015-16 to 2016-17, under the provisions of Rule 7C of Service Tax Rules 1994 read with Section 70 of the Finance Act, 1994.

In view of the above discussion and findings, I pass the following order:

ORDER

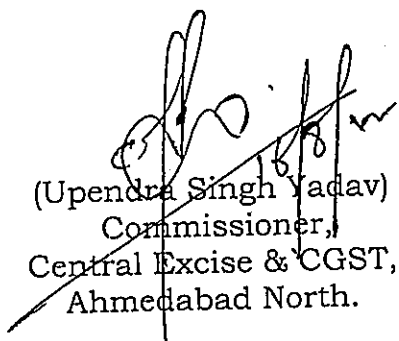
- (i) I hereby confirm the demand of service tax of Rs. 31,54,396/- (Rupees Thirty One Lakh Fifty Four Thousand Three Hundred Ninety Six only) on provision of service made by them, out of the total demand of service tax of Rs. 2,52,04,337/, not paid by the assessee for FY 2015-16 and 2016-17 and order to recover the same from the assessee under proviso to Sub-section (1) of Section 73 of Finance Act, 1994. I however drop the rest of the demand of Service Tax of Rs. 2,20,49,941/- in view of the service being exempt from service tax.

(ii) I order to charge Interest at the appropriate rate on the demand of Service tax of Rs. 31,54,396/- (Rupees Thirty One Lakh Fifty Four thousand Three Hundred Ninety Six only) and order to recover the same from the assessee under Section 75 of the Finance Act, 1994;



- (iii) I impose penalty of Rs. 10,000/- on the assessee under the provision of Section 77(1) (a) of the Finance Act, 1994.
- (iv) I impose penalty of Rs. 10,000/- on the assessee under the provision of Section 77(1) (c) of the Finance Act, 1994.
- (v) I impose penalty of Rs. 10,000/- on the assessee under the provision of Section 77 (2) of the Finance Act, 1994.
- (vi) I impose penalty of Rs.31,54,396/- (Rupees Thirty One Lakh Fifty Four Thousand Three Hundred Ninety Six only) Fifty Three only) on the assessee under the provision of Section 78 of the Finance Act, 1994.

However, in view of clause (ii) of the second proviso to Section 78 (1), if the amount of Service Tax confirmed and interest thereon is paid within period of thirty days from the date of receipt of this Order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.


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

By Regd. Post AD./Hand Delivery
F.No. STC/15-233/OA/2021.

Date: .08.2022.

To
M/s. Mukesh Ramlal Purohit,
Flat - 201, Tower-4,
Devnandan Infinity, Nr. Devam-2,
Motera,
Ahmedabad-380 005.

Copy to:

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

