


<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 &amp; Services Tax &amp; Central Excise, Ahmedabad North, Custom House(1<sup>st</sup> Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- <a href="mailto:qaahmedabad2@gmail.com">qaahmedabad2@gmail.com</a></p>		

**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा .सं/. STC/15-99/OA/2020 & STC/15-27/OA/2021

DIN-20220264WT00008808BD

आदेश की तारीख / Date of Order :21.02.2022

जारी करने की तारीख / Date of Issue : 25.02.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 68 & 69 /2021-22**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. अपील पर भी रु.4 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice No. STC/15-99/OA/2020 & STC/15-27/OA/2021 issued to M/s. Samriddhi Contech Private Limited, 402/C, Ganesh Plaza, Nr. Navrangpura Bus Stand, Navrangpura, Ahmedabad, Gujarat-380 009.

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-6969/2021-22**

M/s Samriddhi Contech Private Limited, 402/C, Ganesh Plaza, Nr. Navrangpura Bus Stand, Navrangpura, Ahmedabad, Gujarat- 380009, were issued two SCNs F. No. STC/15-27/OA/2021 dated 23.04.2021 by the Commissioner, Central GST & Central Excise and No. STC/15-99/OA/2020 dated 29.09.2020 by the Additional Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad..

**BRIEF FACTS OF THE CASE PERTAINING TO THE TWO SCNs ISSUED TO SAMRIDDHI CONTECH PRIVATE LIMITED ARE AS FOLLOWS:**

M/s Samriddhi Contech Private Limited, 402/C, Ganesh Plaza, Nr. Navrangpura Bus Stand, Navrangpura, Ahmedabad, Gujarat- 380009, (hereinafter referred to as the 'Assessee' for the sake of brevity) are engaged in providing taxable services, and are holding Service Tax Registration No. AATCS0887KSD001.

- **SCN F. No. STC/15-99/OA/2020 dated 29.09.2020 demanding service tax of Rs.1,29,47,630/- issued by the Additional Commissioner, CGST, Ahmedabad North made answerable to the Additional Commissioner, CGST, Ahmedabad North.**
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" was undertaken by the Central of Direct Taxes (CBDT) for the F.Y.2014-15, 2015-16 and 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes & Customs (CBIC).
3. As per the records available with the divisional office of Division-VII and on going through the Third party Data shared by CBDT with CBIC of the said assessee for the F.Y.2014-15, 2015-16 and 2016-17, the total sales of service (Value from ITR) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return for the F.Y. 2014-15, 2015-16 and 2016-17. Therefore, it appeared that the said assessee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for the F.Y. 2014-15, 2015-16 and 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2014-



15, 2015-16 and 2016-17. The difference in value as observed for FY 2014-15, 2015-16 and 2016-17 were found to be as under:

TABLE

F.Y.	Value as per B/S, P&L, Form 26AS of ITR	Value declared in ST3 returns	Differential amount	Service Tax payable (including cess)
2014-15	19458500/-	558500/-	18900000/-	2336040/-
2015-16	52855890/-	0/-	52855890/-	7664104/-
2016-17	97667410	78017500/-	19649910/-	2947486/-
TOTAL			9,14,05,800/-	1,29,47,630/-

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs.1,29,47,630/- (including Cess ) on the differential value of Rs.9,14,05,800/-.

4. To explain the reasons for such difference and to submit documents in support thereof, Letters dated 08.02.2018, 03.05.2018, 30.07.2019 and 13.07.2020 were issued to the said assessee. The assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner. Due to this reason, no further verification could be done in this regard by the department. This act of non-cooperation of assessee contravened the provision of Section 72 of Finance Act, 1994, and rendered the assessee liable for penal action under Section 77 of the Finance Act, 1994.

5. It therefore, appeared that the Assessee had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they had failed to pay/ short paid/ deposit Service Tax to the extent of Rs.1,29,47,630/-, by declaring less value in their ST-3 Returns vis-à-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they had failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

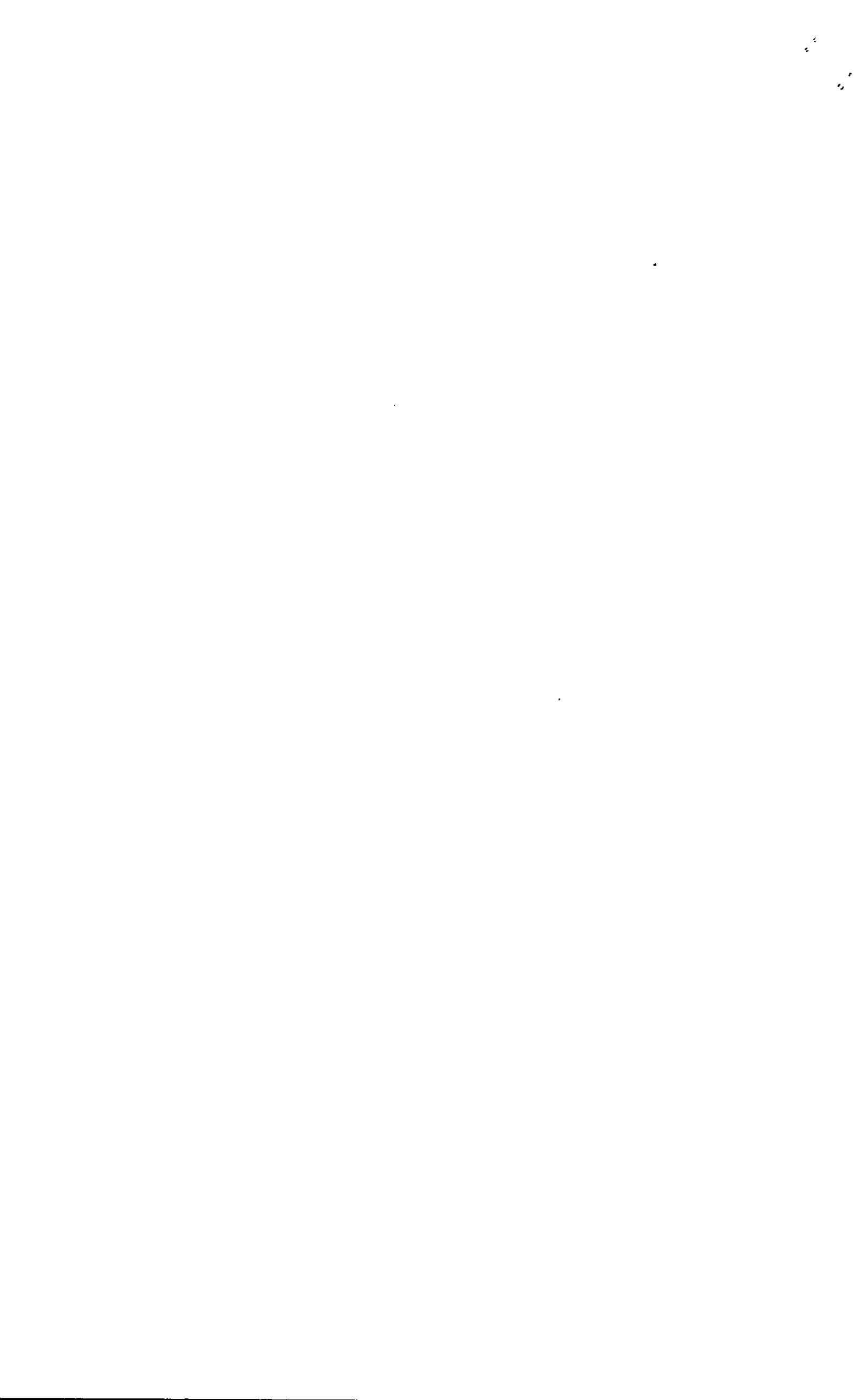
6. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value which had come to the notice of the



Department only after going through the Third Party CBDT data generated for the Financial Year 2014-15,2015-16 & 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 worth the differential value as could be seen in the table above and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs.1,29,47,630/-. 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 was in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government. It appeared that the above act of omission on the part of the Assessee which resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 were done with intent to evade payment of Service tax to the extent mentioned hereinabove. The same appeared to be recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. The above act of omission on the part of the Assessee constituted offence of the nature specified under Section 78 of the Finance Act, 1994 and it appeared that the Assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

7. Accordingly, Show Cause Notice No.STC/15-99/OA/2020 dated 29.09.2020 was issued by the Additional Commissioner, Central GST & Central Excise, Ahmedabad North to M/s SAMRIDDI CONTECH PRIVATE LIMITED, 402/C, GANESH PLAZA, NR.NAVRANGPURA BUS STAND, NAVRANGPURA, AHMEDABAD, Gujarat- 380009 asking them as to why:

- (i) The demand for Service tax to the extent of Rs. 1,29,47,630/- (Rs. One Crore Twenty Nine Lakhs Forty Seven Thousand Six Hundred Thirty Only) short paid /not paid by them, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;





- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty of Rs.10,000/- (Rs. Ten Thousand Only) should not be imposed under Section 77 of the Finance Act,1994.

➤ **SCN F.NO.STC/15-27/OA/2021 DATED 23.04.2021 demanding service tax of Rs.2,23,13,980/- issued by the Commissioner, CGST, Ahmedabad North made answerable to Commissioner, CGST, Ahmedabad North.**

8. Similar 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" 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 & Customs (CBIC).

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

TABLE

F.Y.	Taxable value as per ST-3 returns (In Rs.)	Gross receipts from services (Value from ITR/26AS) (In Rs.)	Value difference in ITR and STR	Resultant Service Tax short paid (including cess)
2015-16	0/-	5,28,54,260/-	5,28,54,260/-	76,63,868/-
2016-17	0/-	9,76,67,410/-	9,76,67,410/-	1,46,50,112/-
TOTAL				2,23,13,980/-



Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs.2,23,13,980/- (including Cess ) on the differential value of Rs.15,05,21,670/-.

10. 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 66/66B *ibid* in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, it appeared that the assessee had not paid service tax for Financial Year 2015-16 and 2016-17.

11. As per Section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). It appeared that the assessee had not assessed the tax dues properly, on the services received, and had failed to file correct ST-3 Returns under provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

12. As per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. It appeared that the assessee had failed to pay their Service Tax liabilities in the prescribed time limit therefore they had made themselves liable to pay the said amount along with interest. The said Service Tax was required to be demanded and recovered from the noticee along with interest under Section 75 of the Finance Act, 1994.

13. It appeared that the Assessee had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994



in as much as they had failed to pay/ short paid/ deposit Service Tax to the extent of Rs.2,23,13,980/-, by declaring less value in their ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they had failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

14. 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 which had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 & 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 worth the differential value as can be seen in the table above and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 2,23,13,980/-. 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 was in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government. It appeared that the above act of omission on the part of the Assessee which resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 were done with intent to evade payment of Service tax to the extent mentioned hereinabove. The same appeared to be recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. The above act of



omission on the part of the Assessee constituted offence of the nature specified under Section 78 of the Finance Act, 1994, and it appeared that the Assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

15. No data was shared by the CBDT with CBIC, for the period 2017-18 (upto June-2017) and the assessee had failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of issuance of SCN it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

Unquantified demand at the time of issuance of SCN.

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issue by the CBEC, New Delhi clarified that:

*'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'*

16. 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-SCN 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-SCN consultation on 23.04.2021 by the SCN issuing authority. However, nobody turned up for pre-SCN consultation before issuance of SCN.

17. Accordingly, Show Cause Notice No.STC/15-50/OA/2021 dated 23.04.2021 was issued by the Commissioner, Central GST & Central Excise, Ahmedabad North to M/s Samriddhi Contech Private Limited, 402/C, Ganesh Plaza, Nr. Navrangpura Bus Stand, Navrangpura, Ahmedabad, Gujarat-380009 asking them as to why:

- (i) The demand for Service tax to the extent of Rs. 22313980/- short paid /not paid by them in F.Y. 2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;





- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

**DEFENCE REPLY:**

18. The assessee tendered their written submission on 25.01.2021 against SCN issued from F. No. STC/15-99/OA/2020 dated 29.09.2020, wherein they interalia have stated that:

- They have received SCN dated 29.09.2020 on 28.12.2020 due to change of address. They have submitted that they had not responded to letter dated 12.02.2018, 03.05.2018, 30.07.2019 and 13.07.2020 intentionally but due to reason of change of address of their registered premises, they were unaware about the above referred letters and therefore they could not have responded to the said letters.
- They have submitted that during F.Y.2014-15 to 2016-17, they were engaged in the activity of construction of 1000 LIG multistoried affordable residential flats in partnership with the Ahmedabad Municipal Corporation. They have submitted that difference to the extent of Rs.9,01,00,584/- of value of service as per ST3 and as per CBDT data was due to value of construction service provided with regards to 1000 LIG multistoried affordable residential flats.
- They have submitted that as per provision of sub-clause (c) of clause 14 of Notification No.25/2012- service by way of construction of affordable housing is exempted from levy of Service Tax.
- They have submitted that difference of Rs.9,01,00,584/- in value of service provided during the period under consideration was due to Mega Exemption Notification NO.25/2012, they have submitted a copy of work order awarded by the principal contractor to the company along with work order given by AMC to principal contractor. They have submitted that difference of taxable service of Rs.13,05,800/- attracts service tax liability. They have submitted that non-payment of service tax on differential value of Rs.13,05,800/- was because of noticee's misunderstanding of provision of threshold limit of Finance Act,1994. They have submitted the reconciliation statement alongwith applicable interest and penalty. They have requested to drop the proceeding.



19. The assessee have tendered their written submission on 11.10.2021 against SCN issued from F.No.STC/15-27/OA/2021 dated 23.04.2021, wherein they interalia have stated that:

- They have submitted that the same matter was pending before the Additional Commissioner of CGST, Ahmedabad North. They have submitted that period of SCN issued was also covered in the SCN issued by the Additional Commissioner. They have submitted that, clarification along with supporting documents and evidences to the department had been given vide letter dated 25.01.2021 in respect of difference in taxable services as declared in ST3 vis-à-vis third party CBDT data for the F.Y.2015-16.
- They have submitted that major difference was due to value of service provided for construction of 1000 LIG multistoried affordable residential flats in partnership with the Ahmedabad Municipal Corporation, that the same was exempted under the provision of sub-clause (c) of clause 14 of Notification No.25/2012 "service by way of construction of affordable housing". They have submitted reconciliation statement on 25.01.2021.
- They have submitted that there was difference in taxable value of SCN F. No. STC/15-27/OA/2021 and STC/15-99/OA/2020. In SCN F. No. STC/15-27/OA/2021 taxable had been shown as '0'(Zero) for F.Y.2016-17, that actual taxable value was of Rs.7,80,17,500/- for F.Y.2016-17.They have submitted that there was apparent mistake in finding difference in value of taxable service and actual total difference in value of service for both the financial years was of Rs.72506384/- instead of Rs.150521670/-.
- They have submitted that out of Rs. 72506384/-, Rs.71400584/- was of the value of construction service provided with regard to 1000 LIG multistoried affordable residential flats. They have submitted the ledger account of Siddhi Developers and Builders for the period under consideration.
- They have submitted that difference of Rs.11,05,800/- of taxable service attracts the service tax liability. They have submitted that non-payment of service tax on differential value of Rs.1105800/- was due to their misunderstanding of provision of threshold limit of Finance Act,1994. They have submitted the reconciliation statement and requested to drop the proceedings initiated vide subject SCNs. They have submitted the copies of ST3 for F.Y.2014-15,2015-16 and 2016-17, copies of income



tax returns for F.Y.2014-15,2015-16 and 2016-17, copy of letter issued by Urban Development & Urban Housing department to the Municipal Commissioner of Ahmedabad informing that construction service of affordable housing is exempted as per Notification NO.25/2012.

**PERSONAL HEARING:**

20. Personal Hearing on the subject matter was granted to the assessee on 12.01.2022. Shri Nirav Patel, C.A. appeared on behalf of the noticee. He has submitted that the company is engaged in construction of affordable housing awarded by AMC and the same are covered by the Mega Exemption Notification, thus exempting them from payment of Service Tax. He has also submitted that noticee is willing to pay additional tax liability which might arise on account of any other service provided by them. He has made reference to their earlier written submission and requested to decide the issue on merit.

**DISCUSSION AND FINDINGS:**

21. I have carefully gone through the facts of the case and records available in the case file, which include the two SCNs namely F. No. STC/15-27/OA/2021 and No. STC/15-99/OA/2020, the defence reply submitted by the noticee on 25.01.2021 and 11.10.2021, and documents submitted and oral submission made by the assessee during the personal hearing.

22. I find that in instant case two SCNs had been issued. 1. SCN F. No. STC/15-27/OA/2021 by the Commissioner, Central GST & Central Excise, Ahmedabad and 2. SCN F.No. STC/15-99/OA/2020 by the Additional Commissioner, Central GST & Central Excise, Ahmedabad. I find that issue involved in both the SCNs are identical, both the SCN had been issued on third party data shared by CBDT with CBIC, however the amount of duty is higher in SCN F.NO. STC/15-27/OA/2021. Therefore, in accordance with para 11.2 (ii) of Master Circular on Show Cause Notice, Adjudication and



Recovery issued from F.NO. 96/1/2017-CX.1, Dated: 19th January, 2017 issued by the CBEC, I am deciding both the SCNs issued to the noticee M/s. Samriddhi Contech Pvt. Ltd., Ahmedabad.

23. On going through the both the SCNs, I find that the assessee has been issued the two SCNs for Service Tax Registration NO.AATCS0887KSD001. I find that basically the essence of the case is that data of Sales /Gross receipt from services/ Total Amount Paid/Credited under 194C, 194H, 194I, 194J” was shared by the CBDT for FY 2014-15, 2015-16 & 2016-17. The difference in taxable value was worked out after comparing the income declared in ITR /Form 26AS vis-à-vis taxable value disclosed in ST-3 Returns.

In the SCN issued from F. No. STC/15-99/OA/2020, the difference of Rs. 9,14,05,800/- in value was observed for FY 2014-15, 2015-16 & 2016-17. On the basis of which, it appeared that the assessee had short paid the service tax of Rs. 1,29,47,630/- on such differential value, for providing the taxable service. The breakup of the same for the F.Y. 2014-15, 2015-16 & 2016-17 is as given below.

F.Y.	Value as per B/S, P&L, Form 26AS of ITR	Value declared in ST3 returns	Differential amount	Service Tax payable (including cess)
2014-15	19458500/-	558500/-	18900000/-	2336040/-
2015-16	52855890/-	0/-	52855890/-	7664104/-
2016-17	97667410	78017500/-	19649910/-	2947486/-
TOTAL			9,14,05,800/-	1,29,47,630/-

In the SCN issued from F.No. STC/15-27/OA/2021, the difference of Rs. 15,05,21,670/- in value was observed for FY 2015-16 & 2016-17. On the basis of which, it appeared that the assessee had short paid the service tax of Rs. 2,23,13,980/- on such differential value, for providing the taxable service. The break up of the same for the F.Y. 2014-15, 2015-16 & 2016-17 is as given below.

F.Y.	Taxable value as per ST-3 returns (In Rs.)	Gross receipts from services (Value from ITR/26AS) (In Rs.)	Value difference in ITR and STR	Resultant Service Tax short paid (including cess)
2015-16	0/-	5,28,54,260/-	5,28,54,260/-	76,63,868/-
2016-17	0/-	9,76,67,410/-	9,76,67,410/-	1,46,50,112/-
TOTAL				2,23,13,980/-





Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 1,29,47,630/- on the taxable value of Rs. 9,14,05,800/- for SCN F.No.STC/15-99/OA/2020 and Rs. 2,23,13,980 on the taxable value of Rs. 15,05,21,670/- for SCN F. No.STC/15-27/OA/2021 for the Financial Year 2014-15, 2015-16 and 2016-17 under proviso to section 73(1) of Finance Act, 1994 or not.

It is pertinent to keep in mind that SCN F. No. STC/15-27/OA/2021 demands service tax of Rs.76,63,868/- for F.Y. 2015-16, whereas for the same period SCN F. No. STC/15-99/OA/2020 demands Rs.7664104/- as Service Tax, similarly SCN F. No. STC/15-99/OA/2020 seeks Rs. 29,47,486/- as service tax for the F.Y.2016-17 where as for the same period SCN F. No. STC/15-27/OA/2021 demands Rs.1,46,50,112/- as Service Tax.

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

25. I discern that the assessee in his defence reply dated 11.10.2021 enclosing therewith the copy of reply dated 25.01.2021, has stated that their income was from construction service provided for 1000 LIG multistoried affordable residential flats in partnership with the Ahmedabad Municipal Corporation, and the same was exempted from levy of service tax under clause 14 (c) of Mega Exemption Notification No.25/2012.

26. I find that the assessee are holding Service Tax Registration No.AATCS0887KSD001 under the category of Business Auxiliary Service,



Construction of residential complex service, construction service other than residential complex, including commercial/industrial building or civil structures, consulting engineering service, works contract service and they had filed ST3 returns for the year 2014-15, 2015-16 & 2016-17. The details of the ST3 returns filed are as under;

2014-15

	Gross Taxable value	service tax payable	S.Tax paid
consulting engineering (April to Sept) as per ST3 return.	133500	16501	16500
consulting engineering (oct to march) as per ST3 return.	425000	52530	52530
TOTAL 2014-15	558500	69030.6	69030

2015-16

Assessee had not filed any ST-3 for F.Y.2015-16.

**ST-3 RETURNS FOR APRIL TO SEPTEMBER (2016-17)**

	Gross Taxable value	Abatement		service tax payable (as per ST3 return)	S.Tax paid (as per ST3 return)
works contract service	25509400	15305640	10203760	1515173	1515173
Works contract service (partial RCM)	17065	5120	11946	1792	1792

**ST-3 RETURNS FOR OCTOBER TO MARCH (2016-17)**

	Gross Taxable value	Abatement	Taxable value	service tax payable (as per ST3 return)	Service tax paid (as per ST3 return)
GTA	1385003	969502.1	415501	62325	92325
Works contract service	52508100	31504860	21003240	3150486	3150486
Works contract service (partial RCM)	20214	6064	14150	2123	2123
TOTAL OF 2016-17	79439782	32480426.3		3214934	3214938

27. Assessee has submitted the copy of letter issued by Project Specialist, Affordable Housing Mission dated 19.01.2015, addressed to the Municipal Commissioner/Chief Executive Authority/Chief Officer. The gist of the said letter is as under:



"As per income tax notification no.25/2012-service tax (copy attached herewith) service tax to be paid by developer for providing services for construction of affordable housing is exempted.

You are requested to take note of it and also make aware to the developers of affordable housing scheme including slum improvement and upgradation, implemented in your territory and to take advantage of it, which in turn will reduce the cost of housing, resulting in reduced cost of house to beneficiary. However, it is required to go through the sr.no.12,13, and 14 terms and conditions of the notification and take action accordingly." (SIC).

From the above, it is discerned that it had been clearly mentioned in the letter that to avail the benefit, the beneficiary has to fulfill the conditions laid down in the exemption notification.

28. I find that Ahmedabad Municipal Corporation had issued work order dated 11.02.2014 to Siddhi Developers & Builders, Arohi Complex, Nr. Sun City, 200ft ring road, South Bopal, Ahmedabad-380 058 for construction of 1000 LIG residential flats+96 shops including internal infrastructure & development work within the plot at various locations in Ahmedabad. (LIG Package-5).

From the above, it is apparent that work order was not only for 1000 LIG residential flats, but also for shops including internal infrastructure & development work. Therefore, assessee's/notices argument that they had provided sub-contract work for 1000 LIG residential flats to Siddhi Developers & Builders is not entirely correct.

29. I find that letter dated 15.04.2014 was issued by Siddhi Developers & Builders to Samriddhi Contech Pvt. Ltd., Ahmedabad. The subject of the said letter is "**Work order for engaging labour work into the construction of 1000 LIG multistoried residential flats including internal infrastructure & development work at TP NO.44, FP NO.229, Chandkheda, Ahmedabad,**



**Gujarat".** The said letter also clarified that "**service tax has been exempted by the Central Government in this project. And if it will not exempt than it will be borne by you**".(SIC)

From the above letter it is not clear, whether the noticee was awarded the work for construction of 1000 residential flats or for supply of labour to samriddhi contech pvt.ltd. The said letter speaks about construction of 1000 LIG flats on TP NO.44, FP NO.229, Chandkheda, Ahmedabad, Gujarat. However, the AMC work contract had been awarded for Construction of 1000 LIG residential flats+96 shops including internal infrastructure & development work within the plot at various locations in Ahmedabad to Siddhi Developers & Builders, Ahmedabad.

I find that the assessee has not submitted the relevant documents e.g. RA bills, copy of tender or detailed work order issued by AMC, agreement/quotation with siddhi developers & builders, time limit extension granted by AMC for completion of work. Without any supporting documents, I am not able to reconcile myself with the assessee argument put forth that they had provided service as sub-contractor to M/s. Siddhi developers & builders for construction of 1000 LIG flats, thus making them eligible for exemption from Service Tax.

30. Further, I find that the assessee has claimed that service provided for construction of 1000 LIG multistoried affordable residential flats in partnership with Ahmedabad Municipal Corporation were exempted from levy of service tax under Mega Exemption Notification No.25/2012, vide Sr.No.14(c), I reproduced the same as under:

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

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





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

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

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

I find that from the above that, to avail the benefit of Sr.NO.14(C) of Mega Exemption Notification, low-cost houses have to have carpet area up to 60 square meters per house, housing project should be approved by competent authority empowered under the "Scheme of Affordable Housing in Partnership" framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India. However, the assessee has not submitted any supporting document in support of their contention and they have failed to prove to my satisfaction that they had rendered sub-contract service for affordable housing project, thus making them eligible for exemption from payment of Service Tax.

31. I find that the assessee has claimed that they had provided services as sub-contractor to the main contractor who was exempted from levy of service tax. I find that as per entry 29(h) of the exemption notification no.25/2012 "**sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt**". Assessee has submitted that since main contractor were exempted from levy of service tax, accordingly service provided by them as sub-contractor were also exempted. Again, I find that the assessee has not provided any supporting document in support of their argument/claim as discussed in para above. Therefore, I am constrained to hold that, the assessee are not eligible to avail benefit of Notification NO.25/2012-ST, Sr. No. 29(h). Their claim for exemption benefit is therefore liable for rejection for the work contract sale.



32. Further, I find that the assessee has contested that in SCN F. No. STC/15-27/OA/2021 taxable value has been shown as "0" (Zero) as compared to actual taxable value of Rs.7,80,17,500/- for F.Y.2016-17; thus, there was apparent mistake in difference in value of taxable service as contested by the department and actual total difference in value of service for both the F.Y. 2015-16 & 2016-17. I find that demand of service tax for F.Y.15-16 in SCN F. No. STC/15-27/OA/2021 is Rs.76,63,868/-, however for the same period demand of Service Tax in SCN F.No. STC/15-99/OA/2020 is Rs.76,64,104/-. I also observe that SCN No.STC/15-99/OA/2020 dated 29.09.2020 demanded Rs.2947486/- as service tax for the F.Y.2016-17 whereas SCN No.STC/15-27/OA/2021 dated 23.04.2021 demanded Rs.14650112/- as service tax dues for the same financial year 2016-17 from the noticee. Therefore, I find that both SCNs have huge difference in the quantum of service tax demanded from the assessee for F.Y.2014-15, 2015-16 & 2016-17. It is quite clear that the SCN issuing authorities had erred while issuing the subject SCNs.

32.1 Nevertheless, 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 to be carried out as per Rule 2A(ii) of the Service Tax (Determination of Value) Rules,2006.The said rules herein are 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;**



33. 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 for entering into any discussion for the period 2017-18 (up to June, 2017) to determine the liability of Service Tax for the period 2017-18 (upto June,2017). I also find that SCN had been issued on the basis of data shared by CBDT with CBIC in respect of taxable value declared in ST3 vis-à-vis declared in gross receipts form services (Value from ITR/26AS), hence, I am not entering any discussion beyond the charges framed in SCN.

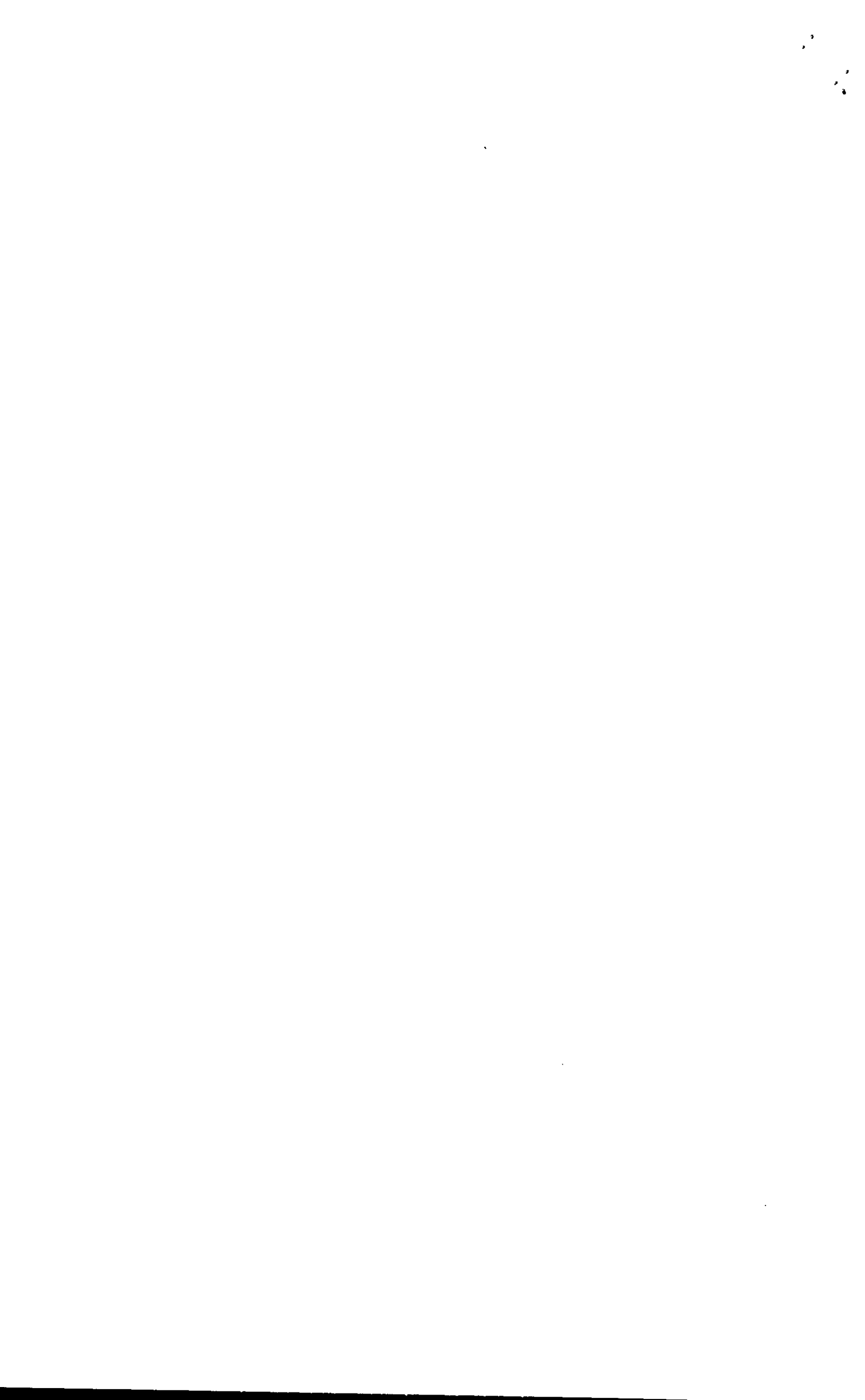
34. Further, the then effective provisions of the Central Excise Act, 1944 and the Central Excise Tariff Act, 1985, as repealed vide Section 174(1) of the CGST Act, 2017 and the then effective provisions of the Chapter V of the Finance Act, 1994, as omitted vide Section 173 of the CGST Act, 2017, and the then effective provisions of the Finance Act, 1994, have been saved vide Section 174(2), of the CGST Act, 2017, which is read as under;

*(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not-*

*(f) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;"*

Therefore, the provisions of the said repealed/amended Acts and Rules made there under are rightly enforceable for the purpose of demand of duty, interest, etc. and imposition of penalty under this notice.

35 I find that the assessee has rendered taxable service namely "Works Contract Service" and not paid the service tax during the year 2014-15,



2015-16 & 2016-17 and thereby violated the provision of Section 68 read with Rule 6 of the Service Tax Rules. It is also noticed that the same had come to the notice of the department only after the submission of the documents by the assessee subsequent to the issuance of the SCN, which clearly proves malafide intention of the assessee. I therefore find that the said service tax not paid is required to be demanded and recovered along with interest from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years and the demand sustainable on above ground shall be recovered under Section 75 of the Finance Act, 1994 for the delayed payment.

36. I find that the assessee vide letter dated 11.10.2021 has submitted the copies of ST3 returns for the period April-September (14-15), October to March (14-15), April-September (15-16), October to March (15-16), April-September (16-17) & October to March (16-17); Copies of returns of total income filed before the income tax department for F.Y.2014-15, 2015-16 & 2016-17 alongwith the copy of financial statement comprising of audited balance sheet, profit and loss statement and schedules forming part of financial statements; audit report under Section 44AB of the Income Tax Act, 1961 issued by Alpa bhavesh Shah, partner of Alpa Bhavesh Shah & Co., Member Ship NO.046425 for the Financial year 2014-15, 2015-16 & 2016-17 .

In view of the above discussion and the detailed scrutiny of documents tendered by the assessee, I am of the view that the assessee are liable to pay service tax of Rs.51,56,978/- for the F.Y.2014-15, 2015-16 & 2016-17 as calculated below;

F.Y.	14-15	15-16	16-17
Revenue from operation (as per Balance Sheet)	18700000	52855890	97667994
less: consulting engineer (as per ST3 returns)	558500	0	0
Gross revenue from operation	18141500	52855890	97667994
Gross value declared in ST3 returns	0	0	78017500
Taxable value	18141500	52855890	97667994





less : abatement	10884900	31713534	58600796
Net taxable value	7256600	21142356	39067198
Service Tax payable	896916	3065642	5860080
Service Tax paid (as per ST3 returns)	0	0	4665659
Service tax recoverable	896916	3065642	1194421
TOTAL SERVICE TAX RECOVERABLE FOR F.Y. 2014-15, 15-16 & 16-17.	5156978		

37. In view of the above findings, the assessee are liable to pay Service Tax on taxable income received towards works contract service as calculated in above para 36, accordingly Service Tax of Rs.51,56,978/- is demanded and is to be recovered from the assessee under Section 73 of the Finance Act, 1994 for works contract service provided by them as discussed herein above.

38. 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. This deliberate act of suppressing income under Finance Act, 1994 is in utter disregard to the requirements of law and breach of trust reposed in them and is certainly not in tune with Government's efforts in the direction to create a voluntary tax compliance regime.

38.1 Further, it is observed that the assessee was fully aware about the fact that they were receiving such income which was chargeable to Service Tax. However, in spite of knowing the facts; they chose not to pay the said applicable dues related to Service Tax. This has 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, if the third party data had not been received from CBDT. 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.

39. I find that even during the opportunities arising during the adjudication process, they have not been able to prove their contentions/arguments and thus the suppression with an intent to evade payment, on part of the assessee, is proved beyond doubt and proviso to section 73(1) of the finance act, 1994 has rightly been applied in the instant case and therefore, by their such act of omission and commission, the assessee have rendered themselves liable for penalty.

I rely upon the judgment in the case involving Aircel Digilink India Ltd. V/s. Commissioner of Central Excise, Jaipur, reported in 2006 (3) STR 386 (Tri.-Del) and the case involving Bharti Cellular Ltd. V/s Commissioner of Central Excise, Delhi, reported in 2006 (3) STR 423 (Tri.-Del). In both cases, the Hon'ble Tribunal upheld invocation of extended



period after taking note of the fact that appellants had not disclosed certain details and mode of computation in their ST-3 details and that there was nothing on record to suggest that appellants ever approached the office of the service tax authorities to ascertain the details of their liability to pay the service tax. Similarly, in case of Insurance & Provident Fund Department V/s. Commissioner of Central Excise, Jaipur-I, 2006 (2) STR 369 (Tri.-Del.), Hon. Tribunal held that non-disclosure of full amount of premium collected would attract invocation of extended period. The ratio of the above judgments can be applied to the present case also as the assessee had not only suppressed the material facts from the department but had also failed to comply with law and procedures, including payment of service tax. In view of the above, I hold that in the facts and circumstances of the present case, proviso to section 73 (1) of finance act, 1994, is rightly invoked for raising the demand for service tax against the assessee.

40. In view of the above, I find that extended period for recovery of service tax short paid/not paid by the assessee on rendering of said taxable services, under the proviso to section 73(1) of the finance act, 1994 was rightly invoked and the SCN is sustainable on limitation. Therefore, the service tax amount of Rs. 51,56,978/- is recoverable from the assessee along with interest as provided in proviso to section 73(1) of the finance act, 1994 read with section 75 of the act *ibid*.

41. Since in the instant case, suppression of material facts have been established beyond doubt after 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.”*

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

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

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





for such failure. Here the penalty prescribed is penalty which shall not be less than but which shall not exceed twice the amount or service tax sought to be evaded by reason of suppression or concealment or the value of taxable service or the furnishing of inaccurate value of such taxable service.

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

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

42. Further, in view of the discussion made in the forgoing paras, I hold that the assessee has failed to pay the service tax on the income received for "works contract services" 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.51,56,978/- is recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 and they have also rendered themselves liable to pay interest under section 75 of the Finance Act, 1994. They have further rendered themselves liable for penalty under the provisions of Section 78 of the Finance Act, 1994.

43. Regarding penalty under Section 77, I find that the assessee has also contravened the provision of Section 67 of the Finance Act, 1994 in as much as they failed to determine the correct value of taxable services; violated the provisions of Section 68 of the act read with Rule 6 of the Service Tax Rules, 1994 by not paying the Service Tax during the F.Y. 2014-15, 2015-16 & 2016-17. Further, the assessee has

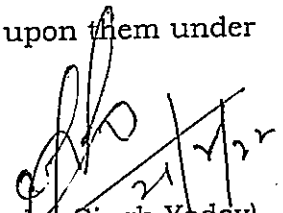


not assessed the tax dues, properly on the services provided by them, as discussed above, and has failed to file correct ST3 returns in time thereby violating the proviso of Section 70 of the act read with Rule 7 of the Service Tax Rules,1994. In view of the above, they are liable for imposition of appropriate penalty under Section 77 of the Finance Act,1994.

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

**ORDER**

- (i) I confirm the demand and order to recovery of Service Tax of Rs. 51,56,978/- (Rs. Fifty One Lakh Fifty Six Thousand Nine Hundred Seventy Eight Only ) including cess (as per para 32 ) from the assessee under the provision of Section 73 of the Finance Act,1994.
- (ii) I order to recover interest at the applicable rate from the assessee under the provisions of Section 75 of the Finance Act, 1994 on the demand at (i) above.
- (iii) I impose penalty of Rs.51,56,978/-(Rs. Fifty One Lakh Fifty Six Thousand Nine Hundred Seventy Eight Only) under section 78 of the Finance Act, 1994. If the service tax amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the Service Tax amount, provided if such penalty is also paid within such period of 30 days.
- (iv) I impose penalty of Rs.10,000/- (Rupees Ten Thousand Only) upon them under section 77(2) of the Finance Act,1994.

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

Dt.21.02.2022.

F.No.STC/15-27/OA/2021  
F.No.STC/15-99/OA/2020

To,  
SAMRIDDI CONTECH PRIVATE LIMITED,  
402/C, GANESH PLAZA,  
NR.NAVRANGPURA BUS STAND,  
NAVRANGPURA,  
AHMEDABAD,  
Gujarat- 380009

Copy to:

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

