


<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:- oaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-32/OA/2019

DIN-20220364WT0000000C18

आदेश की तारीख / Date of Order :30.03.2022
जारी करने की तारीख / Date of Issue : 31.03.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV
आयुक्त / COMMISSIONER

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 73 /2021-22

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

This copy is granted free of charge for private use of the person(s) to whom it is sent.

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

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

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

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 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

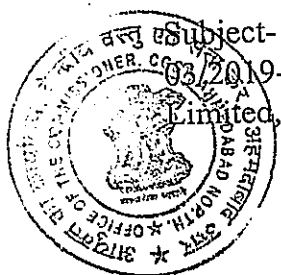
The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 .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. DGGI/AZU/Gr-A/36-19-20 dated 20.04.2019 issued to M/s. Indra Security and allied Services Private Limited, 302, Narayan Complex, Opp. Havmor Restaurant, Navrangpura, Ahmedabad.



ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 73 / 2021-22

M/s. Indra Security & Allied Services Private Limited, having their registered office at 302, Narayan Complex, Opp. Havmor Restaurant, Navrangpura, Ahmedabad -380009 were issued SCN No. DGGI/AZU/Gr.A/36-03 / 2019-20 dated 24.04.2019 by the Additional Director General, DGGI, AZU, Ahmedabad.

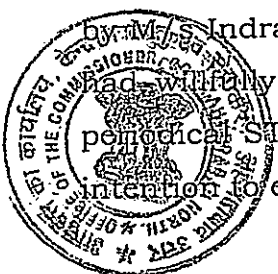
BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S INDRA SECURITY & ALLIED SERVICES PRIVATE LIMITED ARE AS FOLLOWS:

1. M/s. Indra Security & Allied Services Private Limited, having their registered office at 302, Narayan Complex, Opp. Havmor Restaurant, Navrangpura, Ahmedabad-380009 (herein after referred to as 'M/s. Indra' for the sake of brevity) were engaged in providing 'Security/Detective Agency Services' and 'Manpower Recruitment/Supply Agency Services' (Fire and Safety Services); and they were also registered with service tax department with Service Tax registration no. AAACI7092RST001.

2. Acting upon the intelligence that M/s. Indra had short paid/not paid service tax on the Security/Detective Agency Services provided by them to various clients, which was done by way of deliberate suppression and under-reporting of the actual value of their taxable receipts in the periodic ST-3 returns filed by them and by way of claiming wrong exemption against provision of services to SEZ Units, an investigation was initiated against M/s. Indra, under the provisions of Section 67 of the CGST Act, 2017 read with Section 174 of the CGST Act, 2017. Accordingly, a search was carried out in the presence of independent panchas at the office premises of M/s Indra on 25.10.2018 and certain records of M/s. Indra were withdrawn under the reasonable belief that the same would aid in the investigation of the case. The details of the documents withdrawn were as per Annexure-A to the Panchnama dated 25.10.2018.

2.1 Investigation by the officers of the DGGI, revealed that there existed differences in the net revenue from the aforesaid services as reported in the Balance Sheets (P&L Accounts), Sales Ledgers, Form 26 AS and the gross income declared by M/s Indra in the periodical ST-3 Returns on which the service tax liability had been discharged by them for FY 2013-14 to FY 2017-18. The non-consonance of the figures reported across different financial records maintained

by M/s Indra during FY 2013-14 to FY 2017-18, established that M/s Indra had wilfully suppressed and mis-stated their actual taxable turnover in the periodical ST-3 returns filed by them during the aforesaid period with the sole intention to evade payment of service tax.



2.2 Scrutiny of the invoices seized during the search at the official premises of M/s Indra revealed that some of the invoices raised by M/s Indra were not accounted for in the Sales Ledger maintained by them. Non-accounting of such invoices clearly evidenced that the service tax charged and collected by M/s Indra against such invoices was not paid by them.

2.3 It further appeared that M/s Indra were availing the benefit of exemption as available under Notification No. 40/2012-ST dated 20.06.2012, as amended vide Notification No. 12/2013-ST dated 01.07.2013 and further amended by Notification No.s 15/2013-ST dated 21.11.2013 & 07/2014-ST dated 11.07.2014 on the grounds of providing the above referred services to Special Economic Zone Units/Developers (hereinafter referred to as SEZ). Scrutiny of the sales ledger further revealed that a substantial quantum of the total turnover of M/s Indra for FY 2013-14 to FY 2017-18 was reported under the head '**SEZ Sales**'. On comparing the sales entries made in the sales ledgers under the head 'SEZ Sales' with the physical copies of invoices seized during the search proceeding dated 25-10-2018, it was also observed that except for a limited number of invoices issued to SEZ Units where no service tax was charged, service tax was actually being charged on such invoices on a regular basis but the same were deliberately shown as exempted under the head of 'SEZ Sales' in the ST-3 returns to evade payment of service tax. The modus operandi adopted by M/s Indra while showing sale of taxable services as exempted under the head 'SEZ Sales' was as follows:

(i) Modus Operandi 1:

M/s Indra while raising invoices to the SEZ Units had charged service tax at the applicable rate and collected the gross amount inclusive of service tax from the SEZ Units/Developers. However, the gross amount against such invoices, which was inclusive of the element of service tax was shown as exempted under the head 'SEZ Sales' in the sales ledger to evade the payment of service tax without satisfying the conditions prescribed under Notification No. 40/2012-ST dated 20.06.2012 as amended vide Notification No. 07/2013-ST dated 01.07.2013 and further amended by Notification No. 15/2013-ST dated 21.11.2013 and 07/2014-ST dated 11.07.2014, providing ab-initio exemption in respect of provision of services to SEZ units.

Modus Operandi 2:



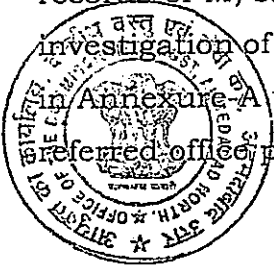
M/s Indra while raising invoices to the SEZ Units used to charge service tax at the applicable rate and collect the gross amount inclusive of service tax from the SEZ Units/Developers. However, the taxable (basic) values shown in such invoices were shown as exempted under the head 'SEZ Sales' in the sales ledger to evade the payment of service tax without satisfying the conditions prescribed under Notification No. 40/2012-ST dated 20.06.2012 as amended vide Notification No. 07/2013-ST dated 01.07.2013 and further amended by Notification No. 15/2013-ST dated 21.11.2013 and 07/2014- ST dated 11.07.2014, providing ab-initio exemption in respect of provision of services to SEZ units.

(iii) Modus Operandi 3 :

M/s Indra had claimed exemption in respect of sales to units/entities which were not SEZ Units (e.g. Services supplied to M/s National Handloom Corporation) and therefore they were not covered by the provisions of Notification No. 40/2012-ST dated 20.06.2012 (as amended vide Notification No. 07/2013-ST dated 01.07.2013) providing ab-initio exemption to provision of services to SEZ Units/Developers.

2.4 It was further revealed from the investigation that M/s. Indra had evaded Service Tax liability of Rs.5,75,50,059/- (Rupees Five Crore Seventy Five Lakhs Fifty Thousand and Fifty Nine Only) by way of availing frivolous and wrong exemption against taxable services supplied to SEZ units, claiming inadmissible exemption in the name of SEZ units, non-accounting of certain invoices in Sales Ledger and by suppressing the actual turnover in the periodical ST-3 Returns filed by them. During the course of investigation, M/s Indra agreed to the above modus used by them for evading payment of service tax.

3. Further, during the Panchnama proceedings, Shri Shrikant Rambhuvan Tiwari, Managing Director of M/s Indra was present at their premises. Shri Shrikant Rambhuvan Tiwari explained to the officers that M/s. Indra was a Private Limited Company engaged mainly in providing Security/Detective Agency services and that the Company had two Directors namely Shri Shrikant Rambhuvan Tiwari and Smt. Sushilaben Chandramani Prasad Tiwari. Subsequently, the officers segregated and withdrew certain records of M/s. Indra under the reasonable belief that the same will aid in the investigation of the case. The details of the documents withdrawn are mentioned in Annexure A to the Panchnama dated 25.10.2018 [RUD-1] drawn at the above referred office premises of M/s Indra.



4. STATEMENT DATED 25.10.2018 OF SHRI SHRIKANT RAMBHUVAN TIWARI, MANAGING DIRECTOR OF M/S. INDRA: -

A preliminary statement of Shri Shrikant Rambhuvan Tiwari, Managing Director of M/s Indra was recorded under the provisions of Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and the CGST Act, 2017, on 25.10.2018. The details of his statement are reproduced as follows:

Q.1 Have you been explained as to why your statement is being recorded?

A.1. Yes. I have been explained that my statement is being recorded in connection with the Service Tax Inquiry being conducted against M/s. Indra Security And Allied Services (P) Ltd, having office address at 302, Narayan Complex, Opp. Havmor Restaurant, Navarangpura, Ahmedabad-380 009. I state that I am the Managing Director of M/s. Indra Security And Allied Services (P) Ltd and therefore I present myself before you to tender my statement.

Q.2. Please explain the constitution and business activities of M/s Indra Security And Allied Services (P) Ltd?

A.2. M/S. Indra Security And Allied Services (P) Ltd is a Private Limited Company. I state that I am the Managing Director and Smt. Sushilaben Chandramani Prasad Tiwari, my sister-in-law is the other Director. M/s. Indra Security And Allied Services (P) Ltd is engaged in the business of providing Security and Detective Agency Service and Fire and Safety Service.

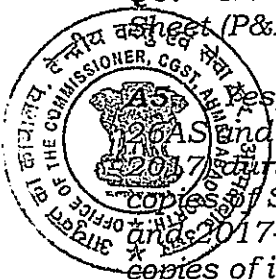
Q3. Please state whether M/s Indra Security And Allied Services (P) Ltd is engaged in providing any services other than 'Security/Detective Agency Service' and 'Fire and Safety Service'?

A3. The company is not engaged in providing any other service other than 'Security/Detective Agency Service' and 'Fire and Safety Service'. **Q4.** The activities of your firm are taxable under the Finance Act, 1994 as amended from time to time. Please state, whether your firm was registered with the erstwhile Service Tax Department and were you properly discharging all the Service Tax liabilities and filing ST-3 Returns regularly, or, otherwise?

A4. M/s. Indra Security And Allied Services (P) Ltd is registered with the Service Tax Department and we are holding STC No. AAACI 7092RST001. The said registration no. has been issued to us on 12.11.2001. Post registration, M/s Indra Security And Allied Services (P) Ltd has filed ST-3 returns upto March, 2017. However, I state that we have not filed the ST-3 returns for the period April, 2017 to June, 2017. Further, I state that we have not discharged our Service Tax liability for the aforesaid period.

Q5. Has your firm submitted copies of Invoices, Sales ledger, 26AS and Balance sheet (P&L account) for the period from 2012-13 to 2017-18 (Upto June, 2017)?

A5. Yes, M/s. Indra Security And Allied Services (P) Ltd has submitted copies of 26AS and Income Tax return for the period from 2012-2013 to 2017-18 (Upto June, 2017) during the course of search on 25/10/2018. My company has also provided copies of Sales ledger for the F. Y. 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 (up to June 2017). As regards copies of invoices, we have submitted copies of invoices available with us as the same was not maintained properly.



Q6. Do you agree with the figures mentioned in the Sales ledger, ST-3 Returns, 26AS and Income Tax return for the period from 2012-13 to 2017.- 18 (Up to June, 2017)?

A6. I state that the aggregate service income shown as generated by the services provided by my company in the Sales ledger, ST-3 Returns, 26AS and Income Tax return for the period from 2012-13 to 2017-18 (Upto June, 2017) is true and correct.

Q7. Please provide the year-wise aggregate service income generated by M/s Indra Security And Allied Services (P) Ltd as per Profit and Loss Account I Balance Sheet for the period from 2012-13 to 2017-18 (Upto June, 2017)?

A7. The year-wise aggregate income of M/s Indra Security And Allied Services (P) Ltd as per P&L Account/ Balance Sheet for the period from 2012-13 to 2016-17 (Upto June, 2017) is shown below:

Sr.No.	Financial Year	Revenue from Operations	Sales figures to SEZ	Exempted sales	Total
1	2012-13	63109157	42305453	0	105414610
2	2013-14	76361021	51576351	0	127937372
3	2014-15	78477434	52188467	0	130665901
4	2015-16	66643480	111747392	2568645	180959517
5	2016-17	72216902	114977384	548674	187742960
6	2017-18 (upto June 2017)	Not finalized			
	Total	356807994	372795047	3117319	732720360

Q8. Please state the nature of services provided and the income reflected in the 26AS statement and Income Tax return filed by M/s Indra Security And Allied Services (P) Ltd, Ahmedabad?

A8. As already stated, M/s. Indra Security And Allied Services (P) Ltd is engaged in providing 'Security/ Detective Agency Service' and 'Fire Safety Services' and the entire income reflected in the 26AS and Income Tax returns is considerations received towards providing these services and nothing else.

Q.9 Kindly provide the details of exempted service rendered by Ms Indra Security And Allied Services (P) Ltd during the period 2012-13 to 2017-18 (upto June 2017)?

A9. The services provided by M/s Indra Security And Allied Services (P) Ltd to educational institutes viz. DAV Public School and C U Shah Medical College are exempted and the same has been mentioned in the P&L Account. The exemption has been claimed during the financial year 2015-16 onwards.

Q.10 Kindly provide the details of sales to BEZ by M/s Indra Security And Allied Services (P) Ltd during the period 2012-13 to 2017-18 (upto June 2017)?

A 10. The services provided by M/s Indra Security And Allied Services (P) Ltd to M/s Adani Port and Special Economic Zone Ltd, M/s Adani Mundra SEZ Infrastructure and M/s. Adani International Container Terminal Ltd are exempted as all the firms to whom we have provided services are SEZ Units.

Q11. Please provide the copies of Form A1 and A2 by which upfront exemption for supply of services to SEZ's has been claimed by M/s Indra Security And Allied Services (P) Ltd ?

A11. I am unable to produce the copies of Form A1 and A2 as the same are not available with us now. I state that the copies of the same are available with the Chartered Accountant M/s R Dharval, the Chartered Accountant of M/s Indra Security And Allied

Services (P) Ltd who is presently out of station. On being asked I state that copies of Form A1 and A2 will be submitted by me in two days time.

Q12. Please state whether M/s Indra Security And Allied Services (PJ Ltd registered with GST?

A12. Yes, M/s Indra Security And Allied Services (P) Ltd is registered with GST and holding GSTIN no. 24AAACI7092R1ZZ.

Q. 13. Please state whether M/s Indra Security And Allied Services (PJ Ltd have discharged their GST liability and filed all the returns viz. GSTR 3B and GSTR1 during the period July, 2017 to September, 2018.

A. 13. On being asked I state that M/s. Indra Security And Allied Services (P) Ltd have discharged their GST liability and filed all the returns viz. GSTR 3B and GSTR1 upto June, 2018. On being asked I state that we have not discharged the GST liability from July, 2018 onwards and the approximate liability comes to Rs. 40,29,191/- comprising of CGST Rs. 17,42,751/- + SGST Rs. 17,42,751/- and IGST Rs. 5,43,681/-.

Q. 14. By when will the GST liability and interest be paid by M/s Indra Security And Allied Services (P) Ltd?

A. 14. I state that during the course of search on 25/10/2018 we have made part payment of Rs. 4,00,000/- towards CGST and Rs. 4,00,000/- towards SGST. The remaining payment towards GST will be made tomorrow i.e. on 26/10/2018 and interest will be paid in due course of time.

Q. 15. Do you admit the short-payment of GST?

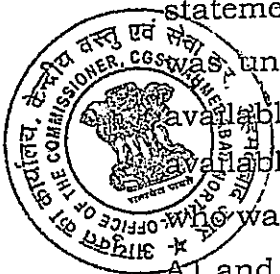
A. 15. Yes. On behalf of my Company, I admit the short payment of GST by our company as mentioned above. Being the Director of the company, I take the responsibility of the above short/non-payment of Service Tax. At the same time, since the issue has come to my notice and admitting our liability, I undertake to make the payment of the entire outstanding GST liability of our company.

Q. 16. Is there any other company/firm operating from this premises?

A.16. Yes, other company/firm operating from this premises are M/s Indra Security And Menpower Services (P) Ltd in which I am the Managing Director; M/s. Maruti Security Services in which I am the proprietor and M/s Mangal Murti Security Services in which Shri Ashwin Shivanand Tiwari is the Proprietor.

5. SUBMISSION OF RECORDS BY M/S. INDRA:

5.1. During the course of search on 25.10.2018, Shri Shrikant Rambhuvan Tiwari was specifically asked to produce documents in respect of the exemptions claimed by M/s Indra towards provision of services to SEZ Units viz. copies of Form A1 and A2 by which upfront exemption had been availed (Q.11 of the above statement). In response, Shri Shrikant Rambhuvan Tiwari had replied that he was unable to produce the copies of Form A1 and A2 as the same were not available with him. He had further stated that the copies of the same were available with the Shri T.R. Dharival, the Chartered Accountant of M/s Indra who was then out of station. He had given the assurance that the copies of Form A1 and A2 would be submitted by him in two days time i.e. by 27-10-2018.



5.2 He was thereafter asked to produce the invoices raised by M/s Indra during the period from 2013-14 to 2017-18 (Up to June, 2017) (Q.5 of the above statement), he had replied that his firm had submitted copies of only those invoices which were available with them, as Invoices were not maintained properly.

5.3 It appeared that M/s Indra vide Summons dated 18.03.2019 were once again called upon to submit certain documents including Form A-1 & Form A-2 in support of the upfront/ab-initio exemption claimed by them against provision of services to SEZ units. However, M/s Indra had not submitted any documents. As such the investigation had been carried out solely on the basis of the documents seized during the course of search and the voluntary statements given by Shri Shrikant Rambhuvan Tiwari, wherein vide his statement dated 18.04.2019 he agreed with the findings of the investigation in toto and confessed to the evasion of service tax.

6. The documents withdrawn during the course of Panchnama proceeding dated 25/10/2018 (Annexure-A to the Panchnama) at the office premises of M/s Indra were carefully scrutinized and consequent to such scrutiny, certain observations have been made which were summarized as under:

[A]. Variance noticed in the figures reported in the ST-3 Returns vis-a-vis the figures reported in the Balance Sheet, Sales Ledger and Form-26 AS during the period from FY 2013-14 to FY 2017-18 (up to June-17) for Security/Detective Agency Services and Manpower Recruitment/Supply Agency Services (Fire & Safety Services):-

(i) On comparing the gross taxable income reported for Security/Detective Agency Services & Manpower Recruitment/Supply Agency Services (Fire & Safety Services) in the ST-3 returns filed by M/s Indra for the period from FY 2013-14 to FY 2017-18 (up to June-17) vis-a-vis, the revenue from operations reported in the Balance Sheet (Profit & Loss Account), Sales Ledgers and Form 26AS for the even period, it is revealed that there exists variance in these figures. The detailed comparison between the taxable incomes reported in the ST-3 Returns vis-a-vis the financial documents maintained by M/s Indra was as given below in **Table-A:**

Sr.No.	FY	Sales Ledger			Receipt as per Form 26AS	Revenue from operations as per Profit & Loss Statement (net)	As per ST-3 Return (gross taxable value including service tax)
		Sales Register (net) (Taxable + Exempted+ Reimbursement of Medical, Telephone Expenses etc.)	Service tax Payable as shown in the taxable invoices of Sales ledger	Gross			
1	2013-14	12,79,50,578	94,38,379	13,73,88,957	13,65,62,686	12,79,37,372	12,79,37,372
2	2014-15	13,06,65,902	96,92,346	14,03,58,248	14,00,73,414	13,06,65,901	13,06,65,902
3	2015-16	17,95,88,134	86,56,886	18,82,45,020	17,53,09,884	18,09,59,517	18,09,59,516

4	2016-17	18,82,52,062	1,08,19,719	19,90,71,781	16,70,66,676	18,77,42,960	17,83,30,425
5	2017-18 (upto June 2017)	4,27,21,744	14,76,102	4,41,97,846	---	---	4,11,52,052
	Total	66,91,78,420	4,00,83,432	70,92,61,852	61,90,12,660	62,73,05,750	65,90,45,267

Since quarterly period for the FY 2017-18 was involved in the present Show Cause Notice, accordingly the net sale recorded in the certified sales ledger for the period from April to June, 2017 was considered for calculation of the net and gross value.

(ii) On perusing the above Table, it appeared that there existed variance in the values of turnover recorded in the financial records of M/s Indra during the period from FY 2013-14 to FY 2017-18 (up to June-17). Under such situation, in order to lawfully arrive at the value of taxable services suppressed and service tax not paid/short paid by M/s Indra during the aforesaid period, values reported in Sales Ledger which appeared to be the highest had been considered, after giving M/s Indra an opportunity to be heard and after recording a formal statement on 18.04.2019 and getting the confirmation from M/s Indra in the statement dated 18.04.2019, Shri Shrikant Rambhuvan Tiwari, MD of M/s Indra that the value reported in their Sales Ledger were their true turnover figures.

[B]. Turnover of Exempted Services- Major Component of Sales against provision of services of M/s Indra during the period from FY 2013-14 to FY 2017-18 (up to June-17):

It further appeared from the records seized that the major component of sales turnover of M/s Indra comprised of exempted sales. The exempted services provided by them could be broadly classified under the following two categories, which are:

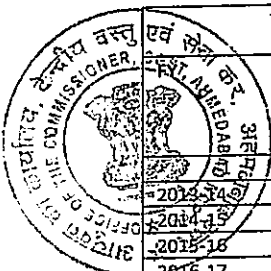
- Provision of services to SEZ Units/Developers.
- Provision of services to Educational Institutions.

It appeared in certain instances that exemption was claimed in respect of service recipients for whom the benefit of exemption in respect of the services provided by M/s Indra were not admissible under the provisions of the Finance Act, 1994 and the notifications/circulars/instructions issued thereof. It also appeared that exemption available for SEZ units was availed wrongly for 'National Handloom'. Exemptions availed by M/s Indra during the period from FY 2013-14 to 2017-18 (up to June-17) was summarized in the Table-B below:

Table-B

Analysis of the Exempted Turnover vis-a-vis the Net Turnover for the period from FY 2013-14 to 2017-18
(Value in Rs.)

	Net Turnover as per Sales Ledger (excluding Service tax)	Exempted SEZ sales as per Sales Ledger	Exempted Sales (other than SEZ) as per Sales Ledger	Total Exempted Turnover as per Sales Ledger	Percentage of Net Turnover
	2	3	4	5=3+4	6=(5/2)X100
2013-14	12,79,50,578	5,15,76,530	0	5,15,76,530	40.30%
2014-15	13,06,65,902	5,21,88,468	0	5,21,88,468	40%
2015-16	17,95,88,134	11,49,66,289	25,68,645	11,75,34,934	65.44%
2016-17	18,82,52,062	11,50,30,464	5,48,674	11,55,79,138	61.39%
2017-18 (upto June 2017)	4,27,21,744	3,25,44,781	3,36,404	3,28,81,185	76.96%



Total	66,91,78,420	36,63,06,532	34,53,723	36,97,60,255	55.25%
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Detailed Break-up of the Sales Ledger [RUD-3] was as per Annexure-A to the notice.

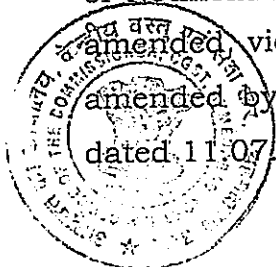
[C]. Exemptions availed by M/s Indra for provision of services to SEZ Units during the period from FY 2013-14 to 2017-18 not supported by documentary evidences, without satisfying the conditions prescribed for availment of such exemption:

(i) It also appeared from the records seized viz. Sales Ledger, Invoices, Form 26-AS etc, it was forthcoming that out of the total exempted turnover (Table-B above), major quantum pertained to supplies to SEZ Units. As per the sales ledger, the major service recipients to whom exempted supplies were made by M/s Indra under the head 'SEZ Sales' during the period from FY 2013-14 to FY 2017-18 (up to June-2017) were as follows:

- (a) Adani Kandla Bulk Terminal Private Limited.
- (b) Adani Ports and Special Economic Zone Private Limited.
- (c) Adani Gas Limited.
- (d) Adani Transmission Limited.
- (e) Adani Murmugao Port Terminal Private Limited.
- (f) Adani Hazira Port Private Limited.
- (g) PMC Projects.
- (h) Adani Petronet Dahej Private Limited.
- (i) Chetan Engineers.
- (j) Electrotherm India Limited.
- (k) Gujarat Chemical Port Co. Ltd.
- (l) Adani Foundation.
- (m) Adani Mundra Hospitals Pvt Ltd.
- (n) Adani Mundra SEZ Infrastructure Pvt Ltd

(ii) M/s Indra had filed all ST-3 Returns for the period from FY 2013-14 to FY 2016-17. The ST -3 returns for the period April 17 to June 17 was filed on 31.10.2018 after search was carried out i.e. after 25.10.2018. Scrutiny of these returns revealed that they had claimed substantial exemption in these returns. In this context, as per Sr. No. A-11.1 of the ST-3 Returns, the assessee was to mention whether he had availed the benefit of exemption or otherwise. If so, as per Sr. No. A-11.2 of the ST-3 Return, the assessee was to furnish the Notification No. and Serial No. of the Notification vide which such exemption had been availed.

(iii) The provision of services to SEZ Units/Developers was exempt from service tax leviable under section 66B of the Finance Act, 1994 provided such services were to be used for the authorized operations by SEZ units/ Developer, by virtue of Notification No. 40/2012-ST dated 20.06.2012. The above notification was amended vide Notification No. 12/2013-ST dated 01.07.2013 and further amended by Notification No. 15/2013-ST dated 21.11.2013 and 07/2014-ST dated 11.07.2014.



(iv) It further appeared that M/s Indra had neither quoted any Notification No. nor Serial No. of such Notification under Sr.No.A-11.2 of the ST-3 return filed for the period FY 2013-14 to 2017-18 (April-June 2017) by them, by virtue of which they claimed exemptions in respect of provision of services, which cast serious aspersions on the genuineness of the exemptions availed and indicated that such exemptions were not available in the first place for the services supplied by them. Further, while filing the ST-3 Return for the quarter April-17 to June-17 [RUD-4], exemption of Rs.2,70,06,256/- was claimed at Sr. No. B.1.8, where exemption in respect of export of services was to be indicated. M/s Indra had not produced any documentary evidence such as copy of contracts; Foreign Inward Remittance Certificate (FIRC)/Bank Realization Certificate (BRC) etc to suggest that actually any services had been exported by them. The same was also obvious from the fact that all the service recipients enlisted in the Sales Ledger maintained by them for the period from FY 2013-14 to FY 2017-18 (up to June-17) were Indian entities and therefore, the question of any export of services by M/s Indra did not arise per se. Thus, the exemption claimed by M/s Indra was only fictitious, but the same reflected a clear malafide intention to evade the payment of service tax by M/s. Indra.

(v) The Notification No. 40/2012-ST dated 20.06.2012 (as amended vide Notification No. 12/2013-ST dated 01.07.2013 and further amended by Notification No. 15/2013-ST dated 21.11.2013 & 07/2014-ST dated 11.07.2014) exempted the service from the payment of service tax leviable under Section 66B of the Finance Act; if services were to be received by a unit located in a Special Economic Zone or Developer of SEZ and were to be used for the authorized operations. However, the above notifications were conditional and had stipulated certain pre-conditions for availing exemption.

(vi) All the aforementioned notifications clearly specified certain conditions for granting /availing exemption in respect of services received by units in SEZ. Accordingly, the service recipient SEZ Unit/Developer was to get an approval of the list of services (specified services) and was to make a declaration in Form A-1 regarding the services sought for authorized operations. Based on declaration, Form A-2 was to be issued to the SEZ Unit/Developer by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise. The service provider was required to provide services to the SEZ Unit/Developer without charging Service Tax on the strength of Form A-1/A-2 supplied to it by the SEZ Unit/Developer. Thus, Form A1/A2 were the requisite documents on the basis of which ab-initio/upfront exemption was available for the provision of taxable services to the SEZ Unit/Developer.



It appeared that M/s Indra had purportedly provided taxable services to SEZ Units/Developers claiming ab-initio exemption, they were called upon to produce these forms for verification during search proceedings dated 25-10-2018 and vide summons dated 18.03.2019. During the course of statement dated 18-04-2019, M/s Indra were once again given the opportunity to produce Form A-1/A-2. However, they had failed to produce the same again. Therefore, the exemptions availed by them, in absence of supporting documentary evidences, appeared inadmissible under the provisions of the above referred notifications.

[D]. Taxable Supplies to SEZ Units shown as Exempted Services by M/s Indra, during the period from FY 2013-14 to 2017-18 (up to June-17) despite collection of service tax on such services so as to evade payment of service tax rendering such exemptions availed by them as fraudulent & fictitious:

(i) Upon scrutiny of the records seized during the search at the office premises of M/s Indra particularly the invoices [RUD-5] raised by them to SEZ Units/Developers, it appeared that service tax was actually charged on such invoices on a regular basis except for a very limited number of invoices. The fact that these invoices were raised with service tax charged on them summarily rules out the contention of availment of any upfront/ab-initio exemption on the services provided by M/s Indra to the SEZ Units/Developers. As a matter of fact, it was evident from a comparison between the sales entries reflected in the Sales Ledger and physical copies of corresponding invoices that M/s Indra were raising invoices to these SEZ Units/Developers and charging Service tax on such invoices but they had, after having collected the tax, deliberately shown such services in the Sales Ledger and ST-3 Returns filed by them as exempted services with the sole intention to evade payment of service tax.

(ii) Scrutiny of invoices issued by M/s Indra revealed that except for a limited number of invoices issued to SEZ Units, where the element of service tax was not charged, in all others the element of service tax was charged on the invoices on a regular basis, but the same was deliberately shown as exempted under the head of SEZ Sales' to evade the payment of service tax. The different types of modus-operandi adopted by M/s Indra while showing sale of taxable services as exempted under the head 'SEZ Sales' were as under, which conclusively establish the evasion of service tax:

(a) **Modus Operandi-1 (Service Tax charged to SEZ units on invoices but gross value of transactions shown as exempt in the books/ST-3 Return):**



M/s Indra while raising invoices to the SEZ Units used to charge the element of service tax at the applicable rate and collect the gross amount inclusive of service tax from the SEZ Units/Developers. However, the gross amount against such invoices which included service tax was shown as exempted under the head 'SEZ Sales'. Comparison of the invoices seized during the course of search at the office premises of M/s Indra on 25/10/2018 and the corresponding entries in the sales ledger maintained by them clearly substantiated that service tax was being charged while raising invoices to the SEZ units/developers, however the gross amount of such invoices inclusive of service tax was deliberately shown as "SEZ sale" in the sale ledger to evade the payment of service tax. Details contained in some of Sample invoices for FY 2013-14 to FY 2017-18 (up to June-17) are tabulated below for better and comprehensive understanding of the modus operandi (Table-C):

TABLE-C

Details of invoices raised by M/s Indra to SEZ units during the period from FY 2013-14 to FY 2017-18 (up to June-17) wherein service tax was charged on the Basic Value but the Gross Amount was shown as 'Exempted SEZ Sale' in the Sales Register [RUD-3].						
FY	Name of the Service Recipient	Bill No.	Date	Basic Amount	Service Tax (including cess)	Gross Amount
2013-14	Adani Ports and Special Economic Zone Private Limited	ST/02/807	01-03-14	1,58,062	19,536	1,77,598
2014-15	Adani Kandla Bulk Terminal Private Limited	ST/11/665	01-12-14	3,29,023	39,483	3,69,690
2015-16	Adani Hazira Port Private Limited	ST/01/791	01-02-16	9,14,122	1,32,548	10,46,670
2016-17	Adani Murmugao port Terminal Pvt Ltd	ST/10/537	01-11-16	4,94,143	7,41,22	5,68,265
2017-18 (Upto June -17)	Adani Petronet Dahej Private Limited	ST/6/181	24-06-17	2,50,900	37,635	2,88,535

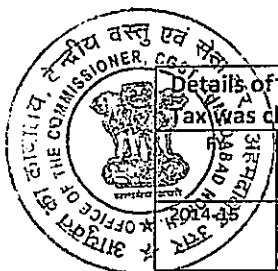
Therefore, it appeared that this was the reason behind non-submission of Form A-1 and A-2 by them despite opportunities given to produce the same.

(b) Modus Operandi-2 [Service tax charged on invoices to SEZ units but the basic value of transaction (excluding service tax amount) shown as exempt in the Books/ST-3 Returns]:

M/s Indra while raising invoices to the SEZ Units used to charge service tax at the applicable rate and collect the gross amount inclusive of service tax from the SEZ Units/Developers. However, the basic taxable amount against such invoices, which was exclusive of service tax, was shown as exempted under the head 'SEZ Sales' in their sales ledger. Details contained in some of Sample invoices are tabulated below for better and comprehensive understanding of the modus operandi (Table-D):

TABLE-D

Details of invoices raised by M/s Indra during the period from FY 2014-15 & FY 2015-16 wherein Service Tax was charged on the Basic Value but such Basic Amount was shown as 'Exempted SEZ Sale'.						
Name of the Service Recipient	Bill No.	Date	Basic Amount	Service Tax (including cess)	Gross Amount	
Adani Ports and Special Economic Zone Private Limited	2014-15/ST/04/15	01-05-14	1,45,015	17,924	1,62,939	



2014-15	Adani Hazira Port Private Limited	ST/1/843	01-02-15	8,35,658	1,03,287	9,38,945
2015-16	Adani Ports and Special Economic Zone Private Limited	ST/09/484	01-10-15	6,59,481	92,327	7,51,808

In view of the above explained modus (modus-1 and modus-2), it appeared that M/s Indra had charged and collected service tax while making taxable supplies to SEZ units which were deliberately shown as exempted services with intent to evade the payment of service tax. It appeared that the Form A-1/A-2 were not available with them in the first place as despite they being given opportunity to produce the same, they could not produce the same and it also appeared that they were charging service tax for taxable supplies made to SEZ units. It was observed that in respect of few invoices issued to SEZ units, service tax had not been charged by M/s Indra. However, it appeared that the benefit of exemptions was not available to M/s Indra in respect of such invoices, owing to non-availability of Form A-1 and Form A-2. By adopting the above modus, M/s Indra appeared to have suppressed a net taxable value of Rs.36,63,06,532/- as shown in Table-G in para [E] hereinafter which had been shown as exempted services in the sales ledger maintained by them.

(c) Modus Operandi 3 (Invoices raised to non SEZ units; service tax collected but shown in sales ledger as provision of service to SEZ units):

M/s Indra appeared to have claimed exemption in respect of services provided to units/entities in Domestic Tariff Area (DTA), e.g. services provided to M/s National Handloom Corporation and therefore, they were not covered by the provisions of Notification No. 40/2012-ST dated 20.06.2012 (as amended vide Notification No. 12/2013-ST dated 01.07.2013) providing ab-initio exemption to SEZ units/developers. It also appeared that the service tax was collected by M/s. Indra, on such invoices.

Details contained in some of Sample invoices are tabulated below for better and comprehensive understanding of the modus operandi (Table-E):

TABLE-E

Details of invoices raised by M/s Indra during the period from FY 2013-14 to FY 2017-18 to recipients other than SEZ Units but exemption was availed under the disguise of 'Exempted SEZ Sale'						
FY	Name of the Service Recipient	Bill No.	Date	Basic Amount	Service Tax (including cess)	Gross Amount
2013-14	National Handloom Corporation	ST/4/1	01-03-15	1,57,716	19,494	1,77,210
2015-16	Sterling Adcliffe India Pvt Ltd.	ST/03/1008	31.03.16	5,80,718	84,204	6,64,922
2017-18 (April - June 17)	Bizz Grow Hospitality Services Pvt Ltd.	37	01-15-17	54,000	8,100	62,100

As appeared from the above discussed modus and on comparison of the sales entries made under the head of 'SEZ sales' vis-a-vis the physical copies of invoices seized during the search, that M/s Indra had charged and collected service tax on such invoices while rendering such services. Once service tax

has been charged, the benefit of exemption becomes unavailable. M/s Indra were under the statutory obligation to deposit any amount collected as service tax to the Government Exchequer. However, it appeared that instead of doing so, they had charged and collected service tax from the service recipients, both to SEZ and non SEZ units, vide tax invoices and had shown them as exempted under the head of 'Exempted SEZ Sales' in the Sales Ledger maintained by them. Therefore, it appeared that by resorting to such modus-operandi, M/s Indra had willfully mis-stated and suppressed the actual quantum of their taxable turnover during the period from FY 2013-14 to FY 2017-18 (up to June-17) with the sole intention to evade the payment of applicable service tax.

[E]. Exempted Sales: Other than SEZ Sales reflected in the Sales Ledger (Services provided to Educational Institutions covered under Sr. No. 9(b) of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012), despite service tax being charged by M/s Indra:

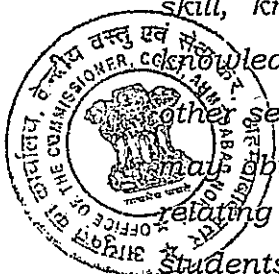
(i) It also appeared from the Sales Ledger for the period from FY 2013-14 to FY 2017-18 (up to June-17) maintained by M/s Indra that apart from the head 'SEZ Sales', they had created another head by the name 'Exempted Sales' which primarily consisted of services provided to Educational Institutions. Security/Detective Agency Services provided to educational institutions was given exemption under Sr. No. 9 (b) of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 as amended vide Notification No. 6/2014-ST dated 11-07-14 and further amended vide Notification No. 10/2017-ST dated 08-03-2017. For the sake of ready reference, the relevant portion of the exemption notification is reproduced as under:

Sr. No. 9 of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012

"9. Services provided to or by (the words "or by" deleted w.e.f. 01.04.2013 vide Notification No. 03/2013-ST dated 01.04.2013) an educational institution in respect of education exempted from service tax, by way of-

- a) auxiliary educational services; or*
- b) renting of immovable property"*

"auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge - enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution"



"(oa) **"educational institution"** means an institution providing services specified in clause (l) of section 66D of the Finance Act, 1994 (32 of 1994)" [Inserted w.e.f 11.07.2014 vide Notification No.06/2014-ST dated 11.07.2014]

Further Section 66D (l) of the Finance Act, 1994 reads as under:

"(l) Services by way of-

- (i) pre school education and education up to higher secondary school or equivalent;
- (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
- (iii) education as a part of an approved vocational education course."

CBEC Board's circular no. 172/7/2013-T dated 19.09.2013,

Relevant portion of the said circular is as below:

"By virtue of the entry in the negative list and by virtue of the portion of the exemption notification, it will be clear that all services relating to education are exempt from service tax. There are many services provided to an educational institution. These have been described as "auxiliary educational services" and they have been defined in the exemption notification. Such services provided to an educational institution are exempt from service tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the transport services provided by the transport operator to the school are exempt by virtue of the exemption notification.

In addition to the services mentioned in the definition of "auxiliary educational services", other examples would be hostels, housekeeping, security services, canteen, etc."

Amendment in Sr. No. 9 of Mega Exemption Notification 25/2012-ST dated 20.06.2012

Sr. No 9 of Notification No. 25/2012-ST was amended vide Notification No. 06/2014 dated 11.07.2014. The said amendment is reproduced as under:

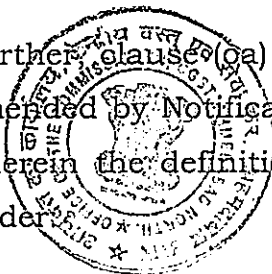
"9, Services provided, -

- a) **by** an educational institution to its student, faculty and staff;
- b) **to** an educational institution, by way of,-

- (i) transportation of students, faculty and staff;
- (ii) catering, including any mid-day meals scheme sponsored by the Government;
- (iii) security or cleaning or house-keeping services performed in such educational institution;
- (iv) services relating to admission to, or conduct of examination by, such institution,";

Amendment in the definition of educational institution

Further, clause (oa) of the Notification No. ST-25/2012 dated 20.06.2012 was amended by Notification No. 09/2016-ST dated 01.03.2016 w.e.f. 14.05.2016 wherein the definition of "educational Institution" was amended and read as under



"(oa) "educational institution" means an institution providing services by way of

- a) pre-school education and education up to higher secondary school or equivalent;
- b) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
- c) education as a part of an approved vocational education course;"

Further Amendment in Sr. No. 9 of the Mega Exemption Notification:

Sr. No 9 of Notification No. 25/2012-ST was amended vide Notification No. 10/2017 dated 08.03.2017. The said amendment is reproduced as below:

"In the said notification, in the opening paragraph, in entry 9, in clause (b), after sub-clause (v), the following proviso shall be inserted, namely:-

"Provided that nothing contained in clause (b) of this entry shall apply to an educational institution other than an institution providing services by way of pre school education and education up to higher secondary school or equivalent;" This notification shall come into force on the 1s day of April, 2017".

The above notifications exempt security services provided to educational institutions (up to Higher Secondary level w.e.f. 01.04.17) and as such the benefit of exemption appeared to be available to M/s Indra. However, M/s Indra appeared not eligible for this exemption on account of the following two grounds:

(a) Scrutiny of the sales ledger reveals that even though they have claimed the services as exempted, while raising invoices to the educational institutions for provision of services, service tax has been charged and collected regularly on these invoices during the period from FY 2013-14 to 2017-18 (up to June-17), and some of them have even been shown under the head 'SEZ Sale'. The invoices as mentioned in Table-F below clearly revealed the situation:

TABLE-F

Details of invoices raised by M/s Indra during the period from FY 2013-14 to FY 2017-18 to educational institutions to whom service tax has been charged.						
FY	Name of the Service Recipient	Bill No.	Date	Basic Amount	Service Tax (including cess)	Gross Amount
2013-14	Adani DAV Public School	ST/04/24	01-15-13	82,199	82,199	82,199
2014-15	Adani DAV Public School	2014-2015/ST/09/453	11-12-14	87,866	87,866	87,866
2015-16	Adani DAV Public School	ST/08/387	01-19-15	4,47,016	4,47,016	4,47,016
2016-17	Adani Vidyamandir	2016-17/ST/08/347	01-19-16	1,57,846	1,57,846	1,57,846

All such invoices had not been made available by M/s Indra for arriving at any conclusion as to whether the exemption was valid or otherwise.

In view of the foregoing discussions at [B], [C], [D] and [E], it appeared that exemptions claimed by M/s Indra in the Sales Ledgers maintained by them and the periodical ST-3 returns filed by them for the period from FY 2013-14 to



FY 2017-18 (up to June-17) appeared to be wrong, fraudulent, fictitious and in gross violation of the provisions of the Finance Act, 1994 and the Notifications/Circulars/Rules prescribed therein. Further, all these benefits claimed appeared to be involving misdeclaration with an intention to evade payment of service tax. The quantum of service tax which appeared to have been evaded by M/s Indra during the aforesaid period through claim of wrong and fraudulent exemption was worked out in **Table-G** below:

Table-G

FY	Exempted SEZ Sales as per Sales Ledger	Exempted Sales (Other Than SEZ) as per Sales Ledger	Net Exempted Turnover as per Sales Ledger	Service Tax Evaded by claiming wrong & Fraudulent exemption
1	3	4	5=3+4	6
2013-14	5,15,76,530	0	5,15,76,530	63,74,859
2014-15	5,21,88,468	0	5,21,88,468	64,50,495
2015-16	11,49,66,289	25,68,645	11,75,34,934	1,66,87,850
2016-17	11,50,30,464	5,48,674	11,55,79,138	1,72,93,358
2017-18 (upto June-17)	3,25,44,781	3,36,404	3,28,81,185	49,32,178
Total	36,63,06,532	34,53,723	36,97,60,255	5,17,38,740

*Detailed working of the service tax evaded by way of claiming wrong exemption was as per **Annexure-B to the SCN**.

[F] **Comparison of the Taxable Turnover as reflected in the periodical ST-3 Returns filed by M/s Indra for the period from FY 2013-14 to FY 2017-18 (up to June-17) vis-a-vis the actual taxable turnover emanating from the Sales Ledger, Unaccounted Invoices not included in Sales Ledger & Reimbursement of Expenses :**

(i) On comparing the net taxable turnover reflected in the Sales Ledger vis-a-vis the net taxable turnover reported in the periodical ST-3 Returns filed by M/s Indra during the period from FY 2013-14 to FY 2017-18 (up to June-17), it appeared that a sizeable quantum of taxable turnover was deliberately under-reported in the ST-3 Returns to evade the payment of service tax. The under-reporting of the taxable income appeared as detailed in Table-H below.

(ii) In addition to the above, it further appeared that the certain invoices were not accounted for in the Sales Ledger maintained by M/s. Indra. Such invoices were raised and service tax was charged on them but the same appeared to have not been included in the Sales Ledger maintained by M/s Indra. A list of such unaccounted invoices were annexed to the Show Cause Notice as Annexure-D. The details of value of service which appeared to have been suppressed and service tax evaded by non accounting of taxable invoices by M/s Indra in the Sales Ledger maintained by them appeared as detailed in Table-H below.

(iii) It was further observed from the sales ledger that M/s Indra had booked income under the heads of 'Telephone/Mobile Expenses Reimbursement', 'Insurance Income' and 'Medical Expenses Reimbursement'. All the above



expenses which had been reimbursed to M/s Indra by the service recipients during the course of provisioning of services appeared to be part of gross taxable value by virtue of the provisions of Section 67 of the Finance Act, 1994, read with Rule 5 of the Service Tax (Determination of Value) Rules 2006 and Section 174 of the CGST Act, 2017.

It also appeared that the reimbursements received from the service recipients was over and above the invoice value. These reimbursement appeared to be includible in taxable value in terms of Section 67 ibid read with Rule-5 of Service Tax (Determination of Value) Rules 2006. However, it was observed that service tax on such reimbursements had not been paid by M/s Indra; rather the same appeared to have been suppressed and evaded by them as detailed in Table-H below. The taxable turnover which appeared to have been suppressed by M/s. Indra was amounting Rs. 4,31,67,268/- and Service tax short paid/not-paid appeared to be involved therein was Rs. 58,11,319.

Table-H

Comparison of the Taxable Turnover as reflected in the periodical ST-3 Returns filed by M/s Indra for the period from FY 2013-14 to FY 2017-18 (up to June-17) vis-a-vis the Taxable Turnover reflected in Sales Ledger maintained by them & Unaccounted Invoices (All values in INR)									
FY	Taxable Turnover (Accounted in Sales Ledger & Unaccounted Invoices)						Taxable Turnover Reflected in the ST-3 Returns	Differential Taxable Value Suppressed	Service Tax Short Paid/Not paid
	Sales of services - Accounted in Sales ledger, including those claimed as exempted	Sale of services - unaccounted in Sales ledger	Telephone Mobile Expenses	Insurance Reimbursement Income	Medical Reimbursement Income	Total			
1	2	3	4	5	6	7 = 2+3+4+5+6	8	9 = 7-8	10
2013-14	7,63,72,643	3,07,608	1,400	0	0	7,66,81,651	7,63,61,020	3,20,631	12,847
2014-15	7,84,77,433	2,80,62,131	0	0	0	10,65,39,564	7,84,77,434	2,80,62,130	34,68,480
2015-16	6,20,53,137	1,15,82,117	0	0	0	7,36,35,254	6,34,24,582	1,02,10,672	16,29,545
2016-17	7,24,10,665	32,82,778	0	2,53,287	9,000	7,59,55,730	7,13,81,895	45,73,835	7,00,447
2017-18 (upto June-17)	98,40,563	2,02,667	0	0	0	1,00,43,230	1,38,09,392	----	----
Grand Total	29,91,54,441	4,34,37,301	1,400	2,53,287	9,000	34,28,55,429	30,34,54,323	4,31,67,268	58,11,319

*Detailed working of the service tax was as per Annexure -C to the SCN

7. Final Statement of Shri Shrikant Rambhuvan Tiwari, Managing Director of M/s Indra was recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and Section 174 of the CGST Act, 2017, on 18.04.2019[RUD-6].

7.1. The above statement of Shri Shrikant Rambhuvan Tiwari, was recorded in Question Answer Format as under:

Q.1 Have you been explained as to why your statement is being recorded?

A-1 Yes. I have been explained that my statement is being recorded in connection with the on-going Service Tax Investigation being conducted against our Company M/s Indra Security and Allied Services Private Limited having office address at 302, Narayan Complex, Opp. Havmor Restaurant, Navarangpura, Ahmedabad-380 009.

Q.2 Please explain the roles and responsibilities looked after by you in your firm namely M/s Indra Security and Allied Services Private Limited.

A.2 I state vide submission dated 16/04/2019, I have submitted details of the roles and responsibilities looked after by me in my company viz. M/s. Indra Security and Allied Services Private Limited, Ahmedabad. I state that I have held the post of Managing Director in M/s Indra Security and Allied Services Private Limited since inception. I have been actively involved with all and entire operations of the said firm from June-2018 which otherwise were being looked after by Shri Laxmi Narayan Pandey {from 2010-11 till June-2018) who was on job plus commission basis @1-2% of the profit since 2010-11 and passed away in June-2018. I look after and supervise the entire operations of the firm viz. M/s Indra Security and Allied Services Private Limited ranging from execution of contracts for supply of manpower, payment of wages, legal matters and compliance matters relating to Service Tax and GST since June-2018.

Q.3 Please explain the constitution and business activities of M/s Indra Security and Allied Services Private Limited.

A.3 M/s Indra Security and Allied Services Private Limited, Ahmedabad is a Private Limited company having two Directors namely myself and Smt. Sushilaben Chandramani Prasad Tiwari, who happens to be my sister-in-law. The company is engaged in the business of providing Security/Detective Agency Services and Manpower Recruitment/Supply Agency Services (Fire and Safety Services).

Q.4 Whether your company M/s Indra Security and Allied Services Private Limited Ahmedabad is engaged in providing any services other than the aforesaid services?

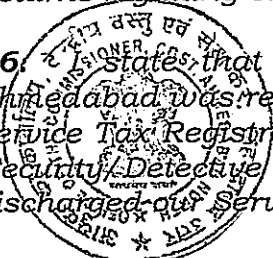
A.4 I state that M/s Indra Security and Allied Services Private Limited is not engaged in supply of any services other than the above stated services.

Q.5 From the scrutiny of the invoices seized during the course of search proceedings dated 25/10/2018 at the office premises of M/s Indra Security and Allied Services Private Limited and your statement dated 25/10/2018 and as stated above, it is forthcoming that in addition to Security/Detective Agency Services, your firm was also engaged in supply of Manpower Recruitment/Supply Agency Services. In this context, from the Service Tax Registration Certificate (ST-2) issued on 12-11-2001 to your firm; it appears that the firm was registered only for supply of Security/Detective Agency Services. The said registration certificate has not been amended since then. In view of the above, it transpires that your firm was engaged in supply of Manpower Recruitment/Supply Agency Services without being registered for the same with the Department and therefore this fact has been concealed from the Service Tax Department. Do you agree?

A.5 Yes. I agree that my firm viz. M/s Indra Security and Allied Services Private Limited was engaged in supply of Manpower Recruitment/Supply Agency Services primarily Fire & Safety Services during the period from FY 2013-14 to 2017-18 (up to June-2017). I further accept the failure of my firm in getting the Registration Certificate amended within time and I further assure that whatever liability is accrued in respect of provision of such services shall be paid by our firm with applicable interest and penalty.

Q.6. The activities of your company are taxable under the provisions of the Finance Act, 1994 read with the CGST Act, 2017. Please state, whether your company is properly discharging all its service tax liabilities and filing ST-3 Returns regularly or otherwise.

A.6. I state that M/s Indra Security and Allied Services Private Limited, Ahmedabad was registered with the erstwhile Service Tax Commissionerate with Service Tax Registration No. AAACI7092RST001 for the taxable services namely 'Security/Detective Agency Services' since 2001. Our company has regularly discharged our Service Tax liabilities and filed the corresponding ST-3 Returns up



to June 2017. However, I admit that the Service Tax liability shown in the ST-3 returns and discharged by the Company is on the lower side as compared to the taxable income mentioned in the Balance Sheet and Sales Ledger.

Q.7 Kindly peruse your earlier statement dated 25.10.2018 wherein you had stated that M/s Indra Security and Allied Services Private Limited have not filed the ST-3 Return for the period April-17 to June-17 and that the Service Tax liability was also not paid for this period. Has your firm filed the aforesaid ST-3 Return and paid entire service tax liability for the said period?

A. 7 I state that the ST-3 Return for the period April-17 to June-17 has been filed by us on 31-10-2018 after the search was carried out by DGGI, Ahmedabad Zonal Unit. Further, I state that a total amount of Rs. 20,19,404/-has been paid by our company as Service Tax liability for this period.

Q.8 Has your Company submitted copies of Sales ledger, 26AS and Balance Sheet (P&L account) during the time of investigation for the period from 2013- 14 (Oct-Mar) to 2017-18 (Up to June, 2017)?

A. 8 I state that during the search proceedings dated 25-10-2018, the above mentioned documents have already been submitted by our company viz. M/s Indra Security and Allied Services Private Limited, Ahmedabad. Further, I state that the turn over figures reported in the above financial documents are the true and correct turn over figures of our company during the aforesaid period.

Q.9 Please state as to whether the invoices raised by your company against provision of Security/Detective Agency Services and Manpower Recruitment/Supply Agency Service to various clients during the period from FY 2013-14 to FY 2017-18 (up to June-2017) have been submitted or otherwise?

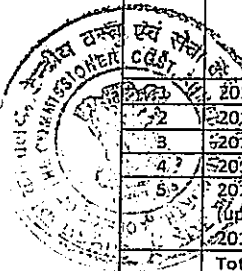
A.9 I state that vide my statement dated 25/10/2018 recorded during the course of search at our office premises, the invoices available with us have already been submitted and the same have been seized by your good office. I further state that no more invoices are available with us for the aforesaid period except those which have been withdrawn vide panchanama dated 25/10/2018 at our office premises. However, details of all the invoices are captured in the Sales Ledger submitted by us to your good office.

Q.10 Kindly provide the year wise aggregate service income generated by your company as per Sales Register, Profit & Loss Statement, as per Form 26AS and as reflected in ST-3 Returns for the period from FY 2013-14 to FY 2017-18 (Up to June, 2017)

A.10 The year wise aggregate income of M/s Indra Security and Allied Services Private Limited, Ahmedabad as per Sales Ledger, Profit & Loss Statement, Form 26AS and' as reflected in ST-3 Returns for the period from Financial year 2013-14 to 2017-18 (Up to June, 2017) is shown below in Table-A:

TABLE-A

Sr.No.	FY	Sales Ledger			Receipt as per Form 26AS	Revenue from operations as per Profit & Loss Statement (net)	As per ST-3 Return (gross taxable value including service tax)
		Sales Register (net) (Taxable + Exempted + Reimbursement of Medical, Telephone Expenses etc.)	Service tax Payable as shown in the taxable invoices of Sales ledger	Gross			
1	2013-14	12,79,50,578	94,38,379	13,73,88,957	13,65,62,686	12,79,37,372	12,79,37,372
2	2014-15	13,06,65,902	96,92,346	14,03,58,248	14,00,73,414	13,06,65,901	13,06,65,902
3	2015-16	17,95,88,134	86,56,886	18,82,45,020	17,53,09,884	18,09,59,517	18,09,59,516
4	2016-17	18,82,52,062	1,08,19,719	19,90,71,781	16,70,66,676	18,77,42,960	17,83,30,425
5	2017-18 (upto June 2017)	4,27,21,744	14,76,102	4,41,97,846	-----	-----	4,11,52,052
	Total	66,91,78,420	4,00,83,432	70,92,61,852	61,90,12,660	62,73,05,750	65,90,45,267



Q.11 Please state the nature of services provided by the company, and income recorded in the Balance Sheet, Sales Ledger and 26AS of your company, M/s Canny Management Services Pvt Ltd?

A.11. As already stated, our company, Mis Indra Security and Allied Services Private Limited Ahmedabad is engaged in the provision of Security/Detective Agency Services' and 'Manpower Recruitment/ Supply Agency Service' and the entire income reflected in the Balance Sheet, Sales Ledger, 26AS& ST-3 Returns of our company is the consideration received towards providing these services and nothing else.

Q12. From the year wise aggregate service income submitted by your company, it is forthcoming that there exist significant variations in the figures mentioned in Sales Register, 26AS, P&L Statement of Balance Sheet and the ST-3 Returns filed during the period from FY 2013-14 to FY 2017-18 (U to June, 2017). Kindly explain the reasons for the variations. Also provide the correct income of your company during the said period?

A.12 Among all the figures shown above, the correct income of M/s Indra Security and Allied Services Private Limited is shown in the Sales Ledger maintained by us. The variations noticed in the figures mentioned in Sales Ledger, 26AS, P&L Statement of Balance Sheet and the ST-3 Returns filed during the period from 2013-14 to 2017-18 (Up to June, 2017) is due to the reason that certain quantum of taxable income has not been reported in the periodical ST-3 Return filed by our company. I also state that monetary consideration received in the form of certain reimbursements received by our company have not been considered while finalizing the ST-3 Returns.

Q.13 In view of the submission given in response of Q.12 above, it is forthcoming that the actual taxable turnover as reflected in the Sales ledger has been under-reported in the ST-3 Return filed by M/s Indra Security and Allied Services Private Limited and accordingly Service Tax has been short paid/not paid by your company during the period from FY 2013-14 to FY 2017-18 (Up to June, 2017). Do you admit to the under-reporting and short payment/non-payment of Service Tax?

A.13 As already stated above, I on behalf of M/s Indra Security and Allied Services Private Limited admit that the actual taxable turnover has been under-reported by our company on account of non-inclusion of certain quantum of taxable turnover and non inclusion of certain reimbursements received by our company. I further state that our firm shall pay the amount short-paid/not paid by us during the aforesaid period with applicable interest and penalty.

Q.14 Scrutiny of the records seized under Form GST-INS-02 of the Panchnama dated 25/10/2018 drawn at the office premises of M/s Indra Security and Allied Services Private Limited has revealed that the major component of sales turnover of your firm comprised of exempted sales. Do you agree? If yes, please provide the details of such exempted services for the period from FY 2013-14 to FY 2017-18 (up to June-17).

A.14 Yes. I agree that the major component of sales turnover of our firm comprises of exempted sales The exempted services provided by our firm viz. M/s Indra Security and Allied Services Private Limited can be broadly classified under the following two categories:

- (a) Sales of Services to SEZ Units/ Developers.
- (d) Provision of services to Educational Institutions.



The year wise details of the exempted services provided by M/ Indra Security & Allied Services Private Limited are shown in Table-B below:

TABLE-B					
FY	Net Turnover as per Sales Ledger (excluding Service tax)	Exempted SEZ sales as per Sales Ledger	Exempted Sales (other than SEZ) as per Sales Ledger	Total Exempted Turnover as per Sales Ledger	Percentage of Net Turnover
1	2	3	4	5=3+4	6=(5/2)X100
2013-14	12,79,50,578	5,15,76,530	0	5,15,76,530	40.30%
2014-15	13,06,65,902	5,21,88,468	0	5,21,88,468	40%
2015-16	17,95,88,134	11,49,66,289	25,68,645	11,75,34,934	65.44%
2016-17	18,82,52,062	11,50,30,464	5,48,674	11,55,79,138	61.39%
2017-18 (upto June 2017)	4,27,21,744	3,25,44,781	3,36,404	3,28,81,185	76.96%
Total	66,91,78,420	36,63,06,532	34,53,723	36,97,60,255	55.25%

Q.15 Kindly produce list of major SEZ Units/Developers to whom exempted services has been provided by M/s Indra Security and Allied Services Private Limited, Ahmedabad during the period from FY 2013-14 to 2017-18 (up to June 2017).

A.15 The major service recipients to whom exempted supplies have been made by M/s Indra Security and Allied Services Private Limited, Ahmedabad under the head 'Sales' during the period from FY 2013-14 to FY 2017-18 (up to June-2017) are the following:

- (a) Adani Kandla Bulk Terminal Private Limited.
- (b) Adani Ports and Special Economic Zone Private Limited.
- (c) Adani Gas Limited.
- (d) Adani Transmission Limited.
- (e) Adani Murrugao Port Terminal Private Limited.
- (f) Adani Hazira Port Private Limited.
- (g) PMC Projects.
- (h) Adani Petronet Dahej Private Limited.
- (i) Chetan Engineers.
- (j) Electrotherm India Limited.
- (k) Gujarat Chemical Port Co. Ltd.
- (l) Adani Foundation.
- (m) Adani Mundra Hospitals Pvt Ltd.
- (n) Adani Mundra SEZ Infrastructure Pvt Ltd.

Q.16 Kindly peruse the ST-3 returns filed by M/s Indra Security and Allied Services Private Limited, Ahmedabad for the period from FY 2013-14 to FY 2017-18 (up to June-2017). You are being explained that Sr. No. A-11.1 of the ST-3 Returns allows the assessee to mention whether he has availed the benefit of exemption or otherwise. In continuation to that, if any assessee has availed the benefit of any exemption notification, Sr. No. A-11.2 of the ST-3 Return allows the assessee to furnish the Notification No. and Serial No. of the Notification vide which such exemption has been availed. From the above referred ST-3 Returns filed by your firm, it is evident that not even at a single instance the details of such exemption notification and the relevant Serial No. of such notification has been mentioned which casts serious aspersions on the maintainability & genuineness of such exemptions availed by your firm. Please provide your comments on the

A.16 I agree that our firm M/s Indra Security and Allied Services Private Limited, Ahmedabad had not mentioned the notification no.s and serial no.s of such notifications while claiming exemptions in the ST-3 returns filed by us for the period from FY 2013-14 to 2017-18 (up to June-17). I state that at this juncture, I am not able to produce the reasons for such non-compliance on part of our firm, but I assure you that the same shall be communicated to your good office at the earliest.

Q.17 Kindly peruse the ST-3 Return filed by M/s Indra Security and Allied Services Private Limited for the quarter April-17 to June-17. In the said return, an exemption of Rs.2,70,06,256/- has been claimed at Sr.No.B.1.8 which provides exemption in respect of export of services. Kindly provide your comments on the same and the documentary evidences viz. copy of contracts, Foreign Inward Remittance Certificate (FIRC)/ Bank Realization Certificate (BRC) etc to support the above exemption.

A.17 I have perused the ST-3 return filed by M/s Indra Security and Allied Services Private Limited, Ahmedabad for the period from April-17 to June-17. I state that M/s Indra Security and Allied Services Private Limited, Ahmedabad have not exported any services during the said period and that the value for exempted services has been wrongly shown as export of services in the said ST-3 return. However, details of the issue shall be submitted in due course by our firm.

Q.18 It is forthcoming from the above referred statement of yours that a major component of the exempted services provided by your firm comprises of services provided to SEZ Units/Developers. In this connection, you are being shown and explained the provisions of Notification No. 40/2012-ST dated 20.06.2012 as amended by Notification No. 12/2013-ST dated 01.07.2013. It transpires from the above notifications that the service recipient SEZ Unit/Developer has to get an approval of the list of services (specified services) and has to make a declaration in Form A-1 regarding the services sought for authorised operations. Notification No. 12/2013-ST dated 01-07-13 stipulates that Form A-2 shall be issued to the SEZ Unit/Developer by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise. The service provider has to provide services to the SEZ Unit/Developer without charging Service Tax on the strength of Form A-1/A-2 supplied to it by the SEZ Unit/Developer. Thus, Form-A1/A2 are the core documents on the basis of which ab-initio/upfront exemption has to be granted while supply of taxable services to the SEZ Unit/Developer. Kindly produce the copies of Form A-1 & Form A-2 on the strength of which such exempted services have been provided by your firm to the SEZ Units/Developers during the period from FY 2013-14 to 2017-18 (up to June-17).

A.18 I have perused the above referred notifications and understood the provisions stipulated therein. However, I state that our firm M/s Indra Security and Allied Services Private Limited cannot produce the copies of Form A-1/Form A-2 as the same are not available with us.

Q.19 Kindly peruse the sample invoices whose details are mentioned in Table-C below and the Sales Ledger of M/s Indra Security and Allied Services Private Limited:

FY	Name of the Service Recipient	Bill No.	Date	Basic Amount	Service Tax (including cess)	Gross Amount
2013-14	Adani Ports and Special Economic Zone Private Limited	ST/02/807	01-03-14	1,58,062	19,536	1,77,598
2014-15	Adani Kandla Bulk Terminal Private Limited	ST/11/665	01-12-14	3,29,023	39,483	3,69,690
2015-16	Adani Hazira Port Private Limited	ST/01/791	01-02-16	9,14,122	1,32,548	10,46,670
2016-17	Adani Murrumbidgee port Terminal Pvt Ltd	ST/10/537	01-11-16	4,94,143	7,41,22	5,68,265
2017-18 (Upto June-17)	Adani Petroref Bahej Private Limited	ST/6/181	24-06-17	2,50,900	37,635	2,88,535

On perusal of the above invoices, it is evident that Service Tax has been charged on the taxable value of these invoices and the gross amount has been arrived at. However, in the Sales Ledger maintained by M/s Indra Security and

Allied Services Private Limited, these invoices have been shown as exempted SEZ Sales and the gross amount reflected on these invoices has been reflected therein without any incidence of Service Tax. Except for a very limited no. of invoices, identical modus has been noticed while comparing the invoices with the Sales Ledger during the period from FY 2013-14 to FY 2017-18 (up to June 17). Do you agree to the above? If yes, please furnish your comments on the same.

A.19 I have perused the above invoices and the Sales Ledger maintained by our firm for the period from FY 2013-14 to 2017-18 (up to June-17) and I agree that Service Tax has been charged and collected on these invoices but the same have been shown as exempted SEZ Sales without any incidence of Service Tax. I state that this may be due to accounting errors and the reasons for such grave error have to be first analyzed by our firm post which only a proper reply can be furnished. I assure you that such entire Service Tax collected by our firm shall be deposited with interest and penalty.

Q.20 Kindly peruse the sample invoices whose details are mentioned in Table- D below and the Sales Ledger of M/s Indra Security and Allied Services Private Limited:

TABLE-D						
FY	Name of the Service Recipient	Bill No.	Date	Basic Amount	Service Tax (including cess)	Gross Amount
2014-15	Adani Ports and Special Economic Zone Private Limited	2014-15/ST/04/15	01-05-14	1,45,015	17,924	1,62,939
2014-15	Adani Hazira Port Private Limited	ST/1/843	01-02-15	8,35,658	1,03,287	9,38,945
2015-16	Adani Ports and Special Economic Zone Private Limited	ST/09/484	01-10-15	6,59,481	92,327	7,51,808

On perusal of the above invoices, it is evident that Service Tax has been charged on the taxable value of these invoices and the gross amount has been arrived at. However, in the Sales Ledger maintained by M/s Indra Security and Allied Services Private Limited, these invoices have been shown as exempted SEZ Sales and the basic taxable amount reflected on these invoices has been reflected therein without any incidence of Service Tax. Except for a very limited no. of invoices, identical modus has been noticed while comparing the invoices with the Sales Ledger during the period from FY 2013-14 to FY 2017- 18 (up to June-17). Do you agree to the above? If yes, please furnish your comments on the same.

A.20 I have perused the above invoices and the Sales Ledger maintained by our firm for the period from FY 2013-14 to 2017-18 (up to June-17) and I agree that Service Tax has been charged and collected on these invoices but the same have been shown as exempted SEZ Sales without any incidence of Service Tax. I state that this may be due to accounting errors and the reasons for such grave error have to be first analyzed by our firm post which only a proper reply can be furnished. I assure you that the entire Service Tax collected by our firm shall be deposited with interest and penalty.

Q.21 During the course of scrutiny of the invoices and the sales ledgers of M/s Indra Security and Allied Services Private Limited, Ahmedabad for the period from FY 2013-14 to 2017-18 (up to June-17), it has been noticed that in case of some of the recipients which do not appear to be SEZ units/developers, taxable invoices have been raised but the gross amount so received has been shown under the head of 'Exempted SEZ Sales'. In this connection, kindly peruse the following sample invoices wherein the above modus has been used (Table-E below) and offer your comments on the same.

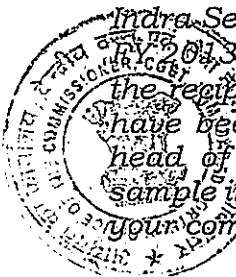


TABLE-E						
FY	Name of the Service Recipient	Bill No.	Date	Basic Amount	Service Tax (including cess)	Gross Amount
2013-14	National Handloom Corporation	ST/4/1	01-03-15	1,57,716	19,494	1,77,210
2015-16	Sterling Adlife India Pvt Ltd.	ST/03/1008	31.03.16	5,80,718	84,204	6,64,922
2017-18 (April-June 17)	Bizz Grow Hospitality Services Pvt Ltd.	37	01-15-17	54,000	8,100	62,100

A.21 I have perused the above invoices and the Sales Ledger maintained by our firm for the period from FY 2013-14 to 2017-18 (up to June-17) and I agree that Service Tax has been charged and collected on these invoices but the same have been shown as exempted SEZ Sales without any incidence of Service Tax. I state that this may be due to accounting errors and the reasons for such grave error have to be first analyzed by our firm post which only a proper reply can be furnished. I assure you that the entire Service Tax collected by our firm shall be deposited with interest and penalty.

Q.22 Proceeding further, scrutiny of the sales ledger reveals that while raising invoices to the educational institutions for supply of services, Service Tax has been charged regularly on these invoices during the period from FY 2013-14 to 2017-18 (up to June-17) and some of them have even been shown under the head 'SEZ Sale'. The sample invoices as mentioned in Table-F below clearly reveal the situation:

TABLE-F						
FY	Name of the Service Recipient	Bill No.	Date	Basic Amount	Service Tax (including cess)	Gross Amount
2013-14	Adani DAV Public School	ST/04/24	01-15-13	82,199	82,199	82,199
2014-15	Adani DAV Public School	2014-2015/ST/09/453	11-12-14	87,866	87,866	87,866
2015-16	Adani DAV Public School	ST/08/387	01-19-15	4,47,016	4,47,016	4,47,016
2016-17	Adani Vidyamandir	2016-17/ST/08/347	01-19-16	1,57,846	1,57,846	1,57,846

Do you agree to the above? Kindly offer you comments on the same.

A.22 I have perused the above invoices and the Sales Ledger maintained by our firm for the period from FY 2013-14 to 2017-18 (up to June-17) and I agree that Service Tax has been charged and collected on these invoices but the same have been shown as exempted SEZ Sales without any incidence of Service Tax. I state that this may be due to accounting errors and the reasons for such grave error have to be first analyzed by our firm post which only a proper reply can be furnished. I assure you that the entire Service Tax collected by our firm shall be deposited with interest and penalty.

Q.23 From the above it transpires that the exemptions claimed by M/s Indra Security and Allied Services Private Limited in the Sales Ledgers maintained by them for the period from FY 2013-14 to FY 2017-18 (up to June-17) are wrong, fraudulent, fictitious and in gross violation of the provisions of the Finance Act, 1994 and the Notifications/Circulars/Rules prescribed therein. Further, these have been claimed with an intention to evade payment of Service Tax. As such the quantum of exemption is worthy of lawful denial and the Service Tax so evaded is required to be recovered from along with interest and penalty under the provisions of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017. Do you

A.23 Yes. I agree that the exemptions availed by our firm M/s Indra Security and Allied Services are worthy of lawful denial.



Q.24 The quantum of Service Tax so evaded by M/s Indra during the aforesaid period through claim of wrong & fraudulent exemption has been worked out in Table-G below:

TABLE-G

FY	Exempted SEZ Sales as per Sales Ledger	Exempted Sales (Other Than SEZ) as per Sales Ledger	Net Exempted Turnover as per Sales Ledger	Service Tax Evaded by claiming wrong & Fraudulent exemption
1	3	4	5=3+4	6
2013-14	5,15,76,530	0	5,15,76,530	63,74,859
2014-15	5,21,88,468	0	5,21,88,468	64,50,495
2015-16	11,49,66,289	25,68,645	11,75,34,934	1,66,87,850
2016-17	11,50,30,464	5,48,674	11,55,79,138	1,72,93,358
2017-18 (upto June-17)	3,25,44,781	3,36,404	3,28,81,185	49,32,178
Total	36,63,06,532	34,53,723	36,97,60,255	5,17,38,740

Do you agree to the above calculation?

A.24 Yes. I agree to the above calculation.

Q.25 During the course of scrutiny of the invoices seized during the search at the office premises of M/s Indra on 25-10-2018, it is observed that certain invoices have not been accounted for in the Sales Ledger maintained by M/s Indra Security and Allied Services Private Limited during the period from FY 2013-14 to 2017-18 (up to June-17). Such invoices have been raised during the even period and Service Tax has been charged on them but the same has not been included in the Sales Ledger maintained by M/s Indra with the sole intention to evade payment of Service Tax. A list of such unaccounted invoices has been compiled as Annexure-D. Kindly peruse the same and offer your comments.

A.25 I have perused the Annexure-C and I state that these invoices have not been included in the Sales Ledger of our firm for the period from FY 2013-14 to 2017-18 (up to June-2017) and it appears that Service Tax liability on the same have not been discharged by us. This may be due to accounting errors and I further assure you that the Service Tax liability arising out of such unaccounted invoices shall be discharged by our firm.

[Total basic value of such unaccounted invoices being Rs- 4,34,37,301/- and involving service tax of Rs- 56, 19,233 /-]

Q.26 On comparing the net taxable turnover reflected in the Sales Ledger vis-a-vis the net taxable turnover reported in the periodical ST-3 Returns filed by M/s Indra during the period from FY 2013-14 to FY 2016-17, it is noticed that a sizeable quantum of taxable turnover has been deliberately under-reported in the ST-3 Returns to evade the payment of Service Tax. Do you agree?

A.26 Yes. I agree.

Q.27 From the sales ledger seized during the search dated 25/10/2018 at the office premises of M/s Indra Security and Allied Services Private Limited, it is forthcoming that certain reimbursements have been received by your firm from the clients/service recipients during the period from FY 2013-14 to FY 2017-18 (up to June-2017) such as Telephone/Mobile Expenses, Medical Expenses and Insurance Expenses. The same have not been considered as taxable while computing the Service Tax liability. In this context, kindly peruse Section 67 of the Finance Act, 1994 and Rule 5 of the Services Tax (Determination of Value) Rules 2006. From the above provisions it is obvious that the reimbursements received from the service recipients during the course of provision of service are subjected to liability of Service Tax. Do you agree that such reimbursements are actually taxable and should have been included while filing the ST-3 Returns?

A.27 After having perused Section 67 of the Finance Act, 1994 and Rule 5 of the Service Tax (Determination of Value) Rules 2006 I agree that the reimbursements

received by us from the service recipients are chargeable to Service Tax. I further state that our jinn viz. M/s Indra Security and Allied Services Private Limited have received the following separate reimbursements from our clients during the period from FY 2013-14 to 2017-18 (up to June-2017) which have not been included in the Taxable Turnover as shown in Table-H below:

Sr.No.	FY	Nature of Reimbursement			Total
		Telephone Mobile Expenses	Medical Expenses	Insurance Expenses	
1	2013-14	1,400	0	0	1,400
2	2014-15	0	0	0	0
3	2015-16	0	0	0	0
4	2016-17	0	9,000	2,53,287	2,62,287
5	2017-18 (upto June-17)	0	0	0	0
	Total	1,400	9,000	2,53,287	2,63,687

I further assure that the Service Tax liability in respect of the above reimbursements received by our firm shall be paid along with interest and penalty

Q.28 By committing to the above viz. under-reporting of true value of taxable turnover, non-accounting of invoices and non-inclusion of reimbursement of expenses in the taxable turnover, it appears that M/s Indra Security and Allied Services Private Limited have suppressed a total taxable value of Rs.4,31,67,268/- and short paid/not-paid Service Tax of Rs. 58,11,319 as shown in Table-I below. Do you agree?

TABLE-I

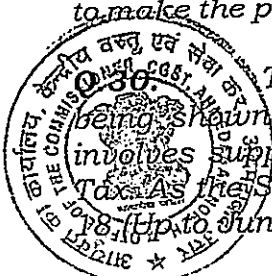
FY	Taxable Turnover (Accounted In Sales Ledger & Unaccounted Invoices)						Taxable Turnover Reflected in the ST-3 Returns	Differential Taxable Value Suppressed	Service Tax Short Paid/Not paid
	Sales of services - Accounted In Sales ledger, including those claimed as exempted	Sale of services - unaccounted in Sales ledger	Telephone Mobile Expenses	Insurance Reimbursement Income	Medical Reimbursement Income	Total			
1	2	3	4	5	6	7=2+3+4+5+6	8	9=7-8	10
2013-14	7,63,72,643	3,07,608	1,400	0	0	7,66,81,651	7,63,61,020	3,20,631	12,847
2014-15	7,84,77,433	2,80,62,131	0	0	0	10,65,39,564	7,84,77,434	2,80,62,130	34,68,480
2015-16	6,20,53,137	1,15,82,117	0	0	0	7,36,35,254	6,34,24,582	1,02,10,672	16,29,545
2016-17	7,24,10,665	32,82,778	0	2,53,287	9,000	7,59,55,730	7,13,81,895	45,73,835	7,00,447
2017-18 (upto June-17)	98,40,563	2,02,667	0	0	0	1,00,43,230	1,38,09,392	---	---
Grand Total	29,91,54,441	4,34,37,301	1,400	2,53,287	9,000	34,28,55,429	30,34,54,323	4,31,67,268	58,11,319

A.28 Yes. I agree to the above.

Q.29 From Table-G & Table-I above, it appears that a net service tax Liability of Rs. 5,75,50,059/- (Rs. 5,17,38,740/- + Rs 58,11,319/-) has been collected but not paid by M/s Indra Security and Allied Services Private Limited and net taxable value of Rs.41,29,27,523/- (Rs. 36,97,60,255/- + Rs.4,31,67,268/-) has been suppressed during the period from FY 2013-14 to 2017-18 (up to June-17). Do you admit to the above?

A.29 Yes on behalf of my Company I admit the short payment of Service Tax by our company to the above extent. Being the Managing Director of the company, I take the responsibility of the above short/non-payment of Service Tax. At the same time, since the issue has come to my notice and admitting our liability, I undertake to make the payment of the entire outstanding Service Tax liability of our company.

The provisions of Section 73, 76 and 78 of the Finance Act, 1994 are being shown to you. These provisions are required to be invoked as the case involves suppression of facts with mala fide intent to evade payment of Service Tax. As the Service Tax Demand is worked out for the period FY 2013-14 to 2017-18 (up to June, 2017), It is mandatory to ask your Company, if you desire to close



the case by paying the Service Tax demanded along with interest and penalty @ 15%?

A.30 After reading through the provisions of Section 73, 76 and 78 of the Finance Act, 1994, I state that extended period has been rightly invoked in our case. I further state on behalf of my company, we seek closure of the case. However, due to severe liquidity crisis we cannot pay the outstanding amount at this stage. Till date an amount of Rs. 81,87,780/- has been voluntarily paid by our firm.

Q.31. Do you have anything to state further?

A.31 No. I do not wish to state anything further at this juncture

9. Outcome of Investigation / Conclusion:

In view of the discussions in the foregoing paras and the evidences brought on record and the Statements dated 25/10/2018 and 18/04/2019 given by Shri Shrikant Rambhuvan Tiwari during the course of investigation, it appeared that:

(i) M/s Indra had provided Security/Detective Agency Services and Manpower Recruitment/Supply Agency Services (Fire and Safety Services) to various clients during the period from FY 2013-14 to FY 2017-18 (up to June-17). The above services provided by M/s Indra are taxable services under the provisions of Section 65B(51) of Finance Act, 1994 read with Section 66D of Finance Act, 1994 and the definition of 'service' as enunciated in Sec. 65B(44) of the Act *ibid* (w.e.f. 01.07.2012). Further, they had charged and collected service tax from the service recipients by way of raising invoices for such taxable services to their clients.

(ii) M/s Indra had filed their ST-3 returns for the period from FY 2013-14 to FY 2017-18 vide which they had disclosed the values for taxable and exempted services provided by them during the aforesaid period and their net tax liability during the even period. They had reported a gross value of Rs. 65,90,45,267/- in the ST-3 Returns filed by them (Table-A above) comprising of taxable services and exempted services provided by them and the service tax paid by them which did not appear to be the true value of turnover of M/s Indra. It appeared from the examination of records that the values reported in the Sales Ledger and Invoices (not included in the sales ledger) were higher and therefore the same was considered for the arriving at the actual tax liability of M/s Indra during the period from FY 2013-14 to FY 2017-18 (April-June 2017)(Table-A above). The correctness of the sales ledger had been admitted by Shri Shrikant Rambhuvan Tiwari, Managing Director of M/s Indra in his statement dated 18.04.2019 (reply to Q.12 of the said statement).

(iii) Analysis of such turnover figures indicated that a sizeable portion of the turnover of M/s Indra comprises of exempted services on which they had not

discharged any tax liability. The exempted turnover was reflected by M/s Indra in the Sales Ledger maintained by them as 'SEZ Sales' & 'Exempted Sales'. 'SEZ Sales' primarily pertained to provision of services to SEZ Units, whereas 'exempted sales' mainly pertained to provision of services to educational institutions. No service tax liability had been mentioned in the Sales Ledgers against exempted services and M/s Indra have actually availed the benefit of such exemptions.

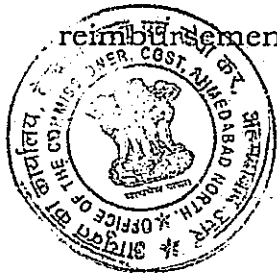
(iv) On comparing the entries made in the sales ledger against 'SEZ Sales' & 'Exempted Sales' Heads with the actual copy of invoices seized during the search dated 25-10-18, it appeared that such exemptions claimed by M/s Indra were not supported by documentary evidences and they could not produce Form A1/A2, as required under Notification No. 40/2012-ST dated 20.06.2012 (as amended vide Notification No. 12/2013-ST dated 01.07.2013 and further amended by Notification No.s 15/2013-ST dated 21.11.2013 & 07 /2014- ST dated 11.07.2014), for availing the benefit of upfront/ab-initio exemption for provision of services to the SEZ Units/Developers. During the day of search, Shri Shrikant Tiwari, Director had contended that the requisite documents relating to availing of SEZ exemption were available with the Chartered Accountant. If it was so, the same could have been submitted by them at a later stage. Instead, M/s Indra chose not to produce the same. Further, such exemptions claimed by M/s Indra appeared to be wrongfully and fraudulently availed as service tax was being charged and collected on a regular basis while making supplies to various SEZ Units. It was observed that in respect of few invoices issued to SEZ units, service tax had not been charged by M/s Indra. However it appeared that the benefit of exemptions was still not available to M/s Indra in respect of such invoices, owing to non-availability of Form A-1 and Form A-2. M/s Indra have adopted a modus to evade the payment of service tax by disguising taxable supplies as exempted supplies in the below explained manner:

- a. M/s Indra used to charge service tax on the taxable basic value while raising invoices to the SEZ Units and they used to collect gross amount which was inclusive of service tax. However, they used to deliberately report the gross or basic amount as 'Exempted SEZ' sale in the sales ledger maintained by them to evade the payment of service tax. The modus has been already explained in detail at Para [D] and Table-C & D above. Therefore, it appeared that M /s Indra had resorted to claiming of exemption wrongly and willfully.
- b. M/s Indra had provided taxable services to such units which were not SEZ Units but the sale proceeds in respect of such units had been reported as exempted SEZ sale, in the Sales Ledger maintained by them. The modus has



already been explained in detail at Para [D] and Table-E of above. Therefore, it appeared that M /s Indra had resorted to claiming of exemption wrongly and willfully.

- c. M/s Indra had provided services to certain educational institutions which had been classified as 'Exempted Sale' in the sales ledger maintained by them. However, on comparing these entries with the actual copies of invoices, it appeared that the service tax had actually been charged from such educational institutions as well. Once service tax had been charged and collected, M/s Indra were under the legal obligation to deposit the same to the Government Exchequer. However, they rather opted for suppression of this fact and classified such sales under 'Exempted Sales'. The modus has already been explained in detail at Para [E] and Table-F above. Therefore, it appeared that M /s Indra had resorted to claiming of exemption wrongly and willfully.
- d. In an attempt to misguide revenue authorities and to evade the payment of service tax, M/s Indra appeared to have gone to the extent of reporting taxable services provided by them as 'Export of Services' in the ST-3 Returns filed by them for the period April-17 to June-17 wherein exemption had been claimed for a value of Rs. 2,70,06,256/- towards export of services but they could not produce any evidence in support of their claim. It further appeared that there was no exports made at any point of time and the only intent behind reporting them in the ST-3 return was to suppress the value of taxable service and evade payment of taxes.
- e. The investigation in the instant case indicated that the exemptions claimed by M /s Indra in respect of the services provided by them appeared without support of any documentary evidences, baseless, fraudulent and the same appeared to have been claimed with an intention to evade the payment of applicable service tax during the period from FY 2013-14 to FY 2017-18 (up to June-17). M/s Indra had claimed total exemption of Rs. 36,97,60,255/- during the above period which was not available to them. By claiming such wrong exemption, they appeared to have evaded service tax liability of Rs. 5,17,38,740/- as calculated in Table-G above.
- f. M/s Indra appeared to have willfully suppressed the quantum of taxable turnover reported in the ST-3 returns filed by them by way of under-reporting of the taxable turnover reported in the Sales Ledger, non-accounting of certain invoices in such sales ledger and by non-inclusion of the reimbursement income received from the service recipients. During the



period from FY 2013-14 to FY 2017-18 (up to June-17), it appeared that M/s Indra had under-reported a net taxable income of Rs. 4,31,67,268/- and evaded service tax liability of Rs. 58,11,319/- as detailed in Para [F] and Table-H above.

- g. M/s Indra during the course of investigation had confessed that they had resorted to willful suppression of the taxable receipts received by them during the period FY 2013-14 to FY 2017-18 (up to June, 2017) by way of under-reporting of taxable receipts in the ST-3 returns filed by them and by disguising sale of taxable services as exempted services. They had agreed in principle to their service tax Liability of Rs. 5,75,50,059/- (Rs. 5,17,38,740/- + Rs 58,11,319/-) collected but not paid by them on the suppressed taxable value of Rs.41,29,27,523/- (Rs. 36,97,60,255/- + Rs.4,31,67,268/-).

8. As per the definition provided under Section 65B(44), "Service" means; *"any activity carried out by a person for another for consideration and includes a declared service."*

8.1 M/s Indra were providing Security/Detective Agency Services and Manpower Recruitment/Supply Agency Services (Fire and Safety Services) to various clients for commercial consideration. All the ingredients required for the activity for being 'service' were available in this case and accordingly it appeared that the activity undertaken by M/s Indra was covered under the definition of Services and that these services were not covered under negative list as provided in Section 66D of the Finance Act, 1994, therefore, the services provided were chargeable to service tax.

9. INVOCATION OF EXTENDED PERIOD AND PENALTY UPON M/s. INDRA:

9.1 It appeared that M/s. Indra were having a very good team of employees well conversant with tax matters as well as very skilled/learned/educated tax consultants and having knowledge of the various provisions of service tax and having service tax Registration for payment of service tax as a provider for 'Manpower Recruitment/Supply Agency Services'. They were aware of provisions relating to service tax. However, they deliberately adopted modus as indicated above to evade payment of service tax.

9.2 M/s Indra have filed ST-3 returns for the period from April-2013 to June-2017 but they had never disclosed the true taxable turnover of their services to the Department. Instead, they had chosen to suppress the true details in the ST-3 returns filed by them with the malafide intention to evade payment of service tax. Had the department not noticed the fact of suppression of the



actual turnover of the services and wrong availment of exemptions, the service tax amount, so evaded would have remained uncollected.

9.3 It is pertinent to mention here that the system of self-assessment is in vogue in respect of service tax. In the scheme of self-assessment, the department comes to know about the service rendered and payment made only during the scrutiny of the statutory returns filed by the service providers. Therefore, it places greater onus on the party/assessee to comply with higher standards of disclosure of information in the statutory returns. It was seen from the facts that emerged during the investigation of the instant case that M/s Indra had not filed the correct Service Tax Returns and in fact they had indulged in under-reporting of their actual turnover and wilfully declaring sale of taxable services as exempted services. Thus, M/s Indra had suppressed the material facts from the Department by not filing correct ST-3 Returns. This appeared to have done intentionally so as to hide their actual turnover of the taxable services provided by them from the Department. Various Courts including the Apex Court have clearly laid down the principle that tax liability was a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. The evaluation of tax behaviour of M/s Indra, has shown clear intent to evade payment of service tax by an act of suppression and omission in as much as M/s Indra though being well aware of the unambiguous provisions of the erstwhile Finance Act, 1994 and Rules made there under, failed to disclose to the department at any point of time, the correct turnover of the taxable services provided by them. Had the investigation proceedings not been conducted by DGGI, Ahmedabad Zonal Unit, these facts would not have ever come to light.

9.4 In view of the above, it was apparent, that M/s Indra had deliberately suppressed the facts of receipt of consideration towards providing taxable services by under-reporting in the ST-3 Returns filed by them and declaring taxable services as exempted services. This amounted to wilful suppression of facts with the deliberate intent to evade payment of service tax. Therefore, the extended period of limitation as envisaged under proviso to Section 73(1) of the erstwhile Finance Act, 1994 read with Section 174 of the CGST Act, 2017 appeared to be invocable to demand service tax for the period from April-2013 to June, 2017.

9.5 Therefore, it appeared that M/s Indra had wilfully suppressed the taxable turnover in the ST-3 returns filed by them by way of under-reporting of



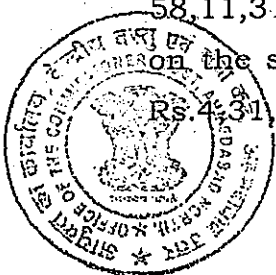
taxable provision of services and mis-declaring taxable services as exempted services with the sole intent to evade payment of service tax and the extended period of limitation of five years as envisaged under proviso to sub-section (1) of Section 73 of Chapter V of the erstwhile Finance Act, 1994 (as it existed up to 30.06.2017) read with Section 174 of Central Goods And Service Tax Act, 2017, for the demand and recovery of service tax (including Cess) as quantified hereinunder appeared applicable in the instant case. Consequently, M/s. Indra were also liable to pay interest as per Section 75 of the Finance Act, 1994 for delayed payment of aforesaid amount of Service tax.

9.6 Further, all the above acts of contravention as detailed hereinunder, with an intent to evade payment of service tax constitute an offence of the nature as described under the provisions of Section 77(1)(b), 77(1)(e) and 76 and/or 78 of the Finance Act, 1994 rendering them liable to penalty; under Section 77 (1)(b) for failure to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made there under; Section 77(1)(e) for failure to issue invoice in accordance with the provisions of the Act or rules made there under, with incorrect or incomplete details or failed to account for an invoice in his books of account and not furnishing the information in respect of above taxable service provided by them and the taxable value thereof in prescribed periodical ST-3 returns as well as under 76 and/or Section 78 of the Finance Act, 1994 for suppression of taxable value of said taxable services provided by them during the period from April, 2013 to June, 2017. M/s Indra also appeared liable to pay interest as per Section 75 of the Finance Act, 1994 for delayed payment of service tax,

9.8 Shri Shrikant Rambhuvan Tiwari, Managing Director of M/s Indra was at the helm of the affairs of his company. During the course of recording of his statement, he had inter alia admitted evasion of service tax by his company and had taken responsibility for the same. As such, he had a decisive role to play in the present evasion unearthed by DGGI, AZU, Ahmedabad. By committing such an act, he appeared to have rendered himself liable to penalty under Section 78A of the Finance Act, 1994.

10. Quantification of Service Tax to be recovered from M/s Indra:

10.1. On the basis of the documentary evidences available on record and the discussions made in the foregoing paras, it appeared that M/s Indra had evaded service tax to the tune of Rs. 5,75,50,059/- (Rs. 5,17,38,740/- + Rs 58,11,319/-) (AS PER TABLE-G & H of the Notice) collected but not paid by them ~~On the suppressed taxable value of Rs. 41,29,27,523/- (Rs. 36,97,60,255/- +~~ Rs. 4,31,67,268/-) during the period from April-2013 to June-2017 and as such



the said amount was required to be recovered from them along with applicable interest and penalty. During the course of recording of statement, Shri Shrikant Rambhuvan Tiwari, Managing Director of M/s Indra had admitted to the short payment of service tax by his company. Also, being the Managing Director of the company, he took the responsibility for the above short/non-payment of service tax. During the course of investigation, M/s Indra had voluntarily paid Rs. 71,20,000/- towards the above service tax liability.

11. CONTRAVENTION OF PROVISIONS OF FINANCE ACT, 1994 AND RULES FRAMED THERE UNDER:-

In view of the facts discussed hereinabove and the material evidences available on record, it appeared that M/s. Indra had contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 read with Section 174 of the CGST Act, 2017, with intent to evade payment of service tax in respect of services provided by them to various clients during the period from April, 2013 to June, 2017:

- (a) Section 67 of the Finance Act, 1994 in as much as they had failed to determine the correct value of taxable services viz. 'Security/Detective Agency Services' and 'Manpower Recruitment/Supply Agency Services' (Fire and Safety Services).
- (b) Section 68 of the Finance Act, 1994 in as much as they had failed to make payment of service tax liability of Rs. 5,75,50,059/- on the services provided by them during the period April-13 to June-17, in such manner and within the period prescribed;
- (c) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they had failed to furnish proper periodical returns mentioning the particulars of the aforesaid taxable service provided by them;
- (d) Rule 6 of the Service Tax Rules, 1994 in as much as they had failed to deposit the payment of service tax to the credit of the Central Government after recovering the same from the clients.

12. Further, all the above acts of contravention constitute an offence of the nature as described under the provisions of Section 77 and 78 of the Finance Act, 1994 thereby rendering them liable to penalty under Section 77 ibid separately for failure to account for the correct taxable value and not furnishing the information in respect of receipt of income for providing taxable service in prescribed periodical ST-3 returns as well as under Section 78 of the Finance Act, 1994 for suppression of taxable value received from taxable services provided during the period from April, 2013 to June, 2017 with intent to evade payment of service tax leviable thereon. M/s Indra also appeared liable to pay interest as per Section 75 of the Finance Act, 1994 for delayed payment of service



13. Therefore, M/s. Indra Security & Allied Services Private Limited, were issued the SCN dated 24.09.2019 calling upon to show cause as to why:

- (i). The service tax amounting to Rs. 5,75,50,059/- (Rupees Five Crore Seventy Five Lakhs Fifty Thousand and Fifty Nine) short/non paid during the period from April-2013 to June-2017 as shown above, should not be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994;
- (ii) The service tax amounting to Rs. 71,20,000/- voluntarily paid by them should not be appropriated against their above mentioned service tax liability of Rs 5,75,50,059 /-.
- (iii). Interest at the appropriate rate under Section 75 of the Finance Act, 1994, should not be demanded and recovered from them on the service tax demanded in (i) above;
- (iv). (a). Penalty should not be imposed upon them for contravention of provisions of the Finance Act, 1994 under Section 77(1) (b) of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017;
- (b). Penalty should not be imposed upon them for contravention of provisions of the Finance Act, 1994 under Section 77 (1) (e) of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017; and
- (v). Penalty should not be imposed upon them under the provisions of Section 76 and/or 78 of the Finance Act, 1994 for willful mis-statement, suppressing the facts and contravention of statutory provisions with the intent to evade payment of service tax;

14. Shri Shrikant Rambhuvan Tiwari, Managing Director of M/s Indra was also called upon to show cause as to why penalty should not be imposed on him under the provisions of Section 78A of the Finance Act, 1994.

DEFENCE REPLY:

15. M/s. Indra vide their letter dated 11.03.2022 have submitted their written submission as under:

- With respect to the allegation that they had not satisfied the condition of the notification 40/2012-ST and 12/2013, they stated that they had provided services to M/s Adani Port, M/s Adani Mundra SEZ Infrastructure and M/s Adani International Container Terminal Ltd., which were exempted as all the companies to whom they had provided services were SEZ Units.
- They were under the bonafide belief that any services provided to SEZ units were exempted from payment of Service Tax. They had by mistake in some of the invoices, charged and collected Service Tax from the SEZ units. The non-submission of Form A1 and A2 was the procedural requirements for



claiming such exemptions but on that ground alone the exemption cannot be denied.

- As per Section 26(1)(e) of Special Economic Zones Act, 2005 read with Rule 31 of Special Economic Zones Rules, 2006 it is clear that the only condition that was required to be satisfied to avail the Service Tax benefit under the said provisions was that the services must have been rendered for the purpose of carrying out "authorized operations in a special economic zone".
- They have relied upon the decision of the Hon'ble High Court of Delhi in the case of **Jindal Stainless Limited v/s Union of India 2017(51)STR 130(Del)**, wherein the court had held that *"the only condition that is required to be satisfied to avail the Service Tax benefit under the said provisions is that the services must be rendered for the purpose of carrying out "authorized operations in a special economic zone"*.
- Section 58 of the SEZ Act provides that any notification, etc., issued under a Central Act would continue to have effect only if it was not inconsistent with the provisions of the SEZ Act. Section 26(1)(e) of the SEZ Act has specifically granted an exemption from service tax on taxable services provided to a Developer or Unit to carry on the authorized operations by the Developer and the Entrepreneur/Unit. The authorized operations are those operations which have been approved by the Board of Approval (hereinafter referred to as the 'BoA') for a Developer and the Development Commissioner for a Unit.
- That Section 26(2) of the SEZ Act has provided the power to the Central Government to prescribe the manner in which and subject to the terms and conditions to which the exemptions was to be granted to the Developer or Unit under Section 26(1). Further, Section 55 of the Act has provided a general power to the Central Government to make rules to carry out the provisions of the Act. Under the powers of Section 55 of the SEZ Act, the Central Government has introduced the SEZ Rules. Rule 31 of the SEZ Rules has prescribed the manner in which, and the terms and conditions, subject to which, the service tax exemption is available to a Developer or a Unit. This Rule provides that exemption from service tax shall be available on the rendition of all taxable services by any service provider to a Developer or a Unit for the purpose of carrying on authorized operations of the SEZ.
- As per Section 26(1)(e) of the SEZ Act read with Rule 31, of the SEZ Rules, the only condition to be satisfied was that the services should be utilised for carrying out the authorised operations by the developer/ entrepreneur for



availing exemption from payment of Service Tax. The location of the service provider or the place of service was entirely irrelevant for the purpose of this exemption. The impugned Show Cause Notice has gone ahead in denying tax exemptions to SEZs. They have provided the services of Manpower to SEZ units and the payment received therein certifies such receipt of service by the SEZ unit and so in such a case the demand issued is not justifiable, illegal and without jurisdiction. The departmental officers in the instant Show Cause Notice were seeking to deny the tax benefits which are otherwise available to SEZs under the statutory provisions of the SEZ Act and the SEZ Rules. They were a service provider to SEZ unit and the department's insistence in the impugned show cause notice for discharging service tax despite the fact that there was a clear exemption from service tax available to them under the statutory provisions of the SEZ Act/Rules was thus violative of law of natural justice and seems to be a colorable exercise of powers.

- The Section 51 of SEZ Act, has expressly provided that the provisions of SEZ Act will have effect and will override any other law for the time being in force which is inconsistent with the provisions of the Act. Therefore, the impugned Notice is illegal and is liable to be overridden by the provisions of Section 51 read with Section 26(1)(e) of the SEZ Act read with Rule 3 of the SEZ Rules.
- They have sated that the provisions of an Act which provide for an exemption from a tax have to be interpreted strictly. It is a well settled legal principle that in a taxing statute, one has to look merely at what is clearly said. There is no room for any intendment. In this regard they have relied upon the decision of the Hon'ble Supreme Court in case of CIT v. Ajax Products , reported at 55 ITR 741, 747 (SC); CIT v. Shahzada Nand , reported at 60 ITR 392, 400 (SC) and State of Punjab v. Jaswant , reported at 186 ITR 655. In view of the plain language of the SEZ Act/SEZ Rules, there is no scope of an interpretation of such provisions to include a condition for availing such exemption for reasons of non-submission of Form A-1 and A-2. The impugned Notice has no nexus with the object and purpose of SEZ Act and SEZ Rules which was to provide impetus to exports. By the impugned Notice, the department has virtually attempted to defeat the object with which the SEZ Act/SEZ Rules were formed.
- They have further argued that it was a well settled legal principle that no additional condition could be read into an exemption notification. They have placed reliance on the decision of the Hon'ble Supreme Court in the case of Hansraj Gordhandas v. H.H. Dav, Asstt. CCE , Surat reported at 1969 (2) SCR 253 = 1978 (2) E.L.T. (J350) (S.C.), and CCE, Baroda v. Vipul Shipyard ,



reported at 1997 (10) SCC 337 = 1996 (88) E.L.T. 640 (S.C.). The exemption from service tax was provided in the SEZ Act and SEZ Rules for carrying out the authorized operations of the developer/Unit. The procedural requirement of submission of Form A-1 and A-2 thus can be condoned as the exemption from payment of service tax has been provided by the statutory provisions of the SEZ Act read with SEZ Rules

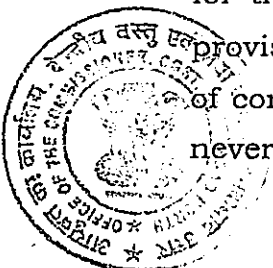
- The Hon'ble Supreme Court in the case of Tata Teleservices Ltd. v. Commission of Customs , reported at (2006) 1 SCC 746 [2006 (194) E.L.T. 11 (S.C.)] and in the case of Union of India & Ors. v. Inter Continental (India) , reported at C.A. 6529/2002 [2008 (226) E.L.T. 16 (S.C.)] has held that "to impose a limitation on the exemption notification which the exemption notification itself did not provide and therefore it was not open to the Board to whittle down the exemption notification in such a manner".
- The expression "authorized operations" refers to those operations which are to be carried out inside the Special Economic Zones, hence the words "in Special Economic Zone" as they appear in Section 26 and Rule 31 are to be read with "taxable services" so as to mean that the exemption is available only with regard to those services that are rendered in a special economic zone. The services of Manpower have been provided by them to the SEZ unit, within the Zone and therefore exemption was clearly available to them. It is a well-established law that statutes have to be given strict interpretation. If the words of a statute are precise and clear, they must be accepted as declaring the express intention of the legislature. It is equally well-settled that a subject is not to be taxed unless the words of a taxing statute unambiguously impose the tax on him. In the case of Ajmera Housing Corpn. v. CIT reported at (2010) 8 SCC 739, the Apex Court observed that "*36. It is trite law that a taxing statute is to be construed strictly. In a taxing Act one has to look merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment.*"
- They also relied on the following judgments:
 - Hansraj & Sons v. State of J&K , reported at (2002) 6 SCC 227
 - A.V. Fernandez v. State of Kerala - AIR 1957 SC 657 : 1957 SCR 837 observed : (AIR p. 661, para 29)
 - Lord Russel of Killowen in IRC v. Duke of Westminster - 1936 AC 1: 1935 All ER Rep 259 : 104 LJ KB 383 (HL), AC at p. 24 : (AIR p. 661, para 27)
 - Privy Council in Bank of Chettinad Ltd. v. CIT - AIR 1940 PC 183: (1940) 8 ITR 522.



- o CWT v. Ellis Bridge Gymkhana - (1998)1SCC 384
- o Diwan Bros. v. Central Bank of India - (1976) 3 SCC 800
- o A.V. Fernandez v. State of Kerala and in State of Maharashtra v. Mishrilal Tarachand Lodha - AIR 1964 SC 457 : (1964)5 SCR 230: (AIR p. 459, para 9), wherein it was observed that:

"7. These observations manifestly show that the courts have to interpret the provisions of a fiscal statute strictly so as to give benefit of doubt to the litigant. The principles deducible from the decisions referred to above are well established and admit of no doubt."

- They have stated that the SEZ Act has provided exemption form payment of service tax for services rendered to SEZ units/ Developer and has an overriding effect over all other acts/law. It is trite law that a subordinate legislation has to conform to the parent statute and any subordinate legislation inconsistent to the provisions of the parent statute is liable to be set aside. It is equally well settled that circulars being executive/administrative in character cannot supersede or override the Act and the statutory rules. A division Bench of the Court in decision dated 4-3-2011 in the case of Federation of Indian Airlines v. Union of India - [WP (C) No. 8004/2010] has elaborately discussed the above proposition of law.
- That in Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra reported at (2009) 5 SCC 24, the Apex Court has held that circulars are administrative in nature and cannot alter the provisions of a statute nor can they impose additional conditions.
- A SPECIAL LAW SHALL PREVAIL OVER THE GENERAL AND PRIOR LAWS SPECIAL ACT (SEZ ACT AND RULES) OVERRIDES GENERAL CLAUSE ACT (PROCEDRAL RULES UNDER CENTRAL EXCISE)
- "Generalia specialibus non derogant" is a Latin maxim which means universal things do not detract from specific things. This maxim of law says that when a matter falls under any specific provision; then it must be governed by that provision and not by the general provision. The general provisions must acknowledge the specific provisions of law. It is a basic principle of statutory interpretation. The maxim "generalia specialibus non derogant" means that, for the purposes of interpretation of two statutes in apparent conflict, the provisions of a general statute must yield to those of a special one. In the case of conflict between an earlier and a later statute, a repeal by implication is never to be favoured and is only achieved where the provisions of the later



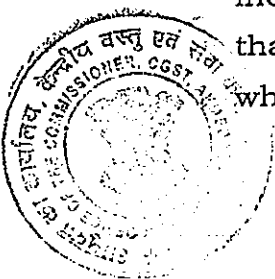
enactment are so inconsistent with, or repugnant to, those of the earlier that the two cannot stand together... Special Acts are not annulled by general Acts unless there is some express reference to the previous legislation or an essential inconsistency in the two Acts standing together which prevents the maxim "generalia specialibus non derogant" being applied. The principle is applied when there is a conflict between two statutes or two provisions of the same statute. They have placed reliance on the following case laws :

- o Paradip Port Trust v. Their Workmen AIR 1977 SC 36,
 - o Dharam Pal Sat Dev v. CIT [1974] 97 ITR 302 (P&H) and Nandlal Sohanlal v. CIT [1977] 110 ITR 170 (P&H),
 - o Ispat Industries Ltd. v. Commissioner of Customs (2006) 202 ELT 561 SC. Hon'ble Justice Markandey Katju has mentioned to Mimansa rules of interpretation of the ancient times while deciding an appeal under Custom Tariffs Act, 1975. The question of decision elaborated the interpretation of Section 14 of the Customs Act and some relevant rules especially Rule 9(2)(a) of the Customs Valuation (Determination of Prize of Imported Goods) Rules, 1988. According to the Court, every legal system has a hierarchy of norms.
- In Dilawar Singh vs. Parvinder Singh @ Iqbal Singh & Anr .AIR 2006 SC 389, with reference to the maxim 'Generalia Specialibus non Derogant' the Court held that if a special provision has been made on a certain matter, that matter is excluded from the general provisions.
 - In view of above legal standings, it is aptly clear that the provisions of the SEZ Act and Rules would override the provision of General Clause Act i.e the Central Excise Act and Rules and therefore the insistence on form A-1 and A-2 would be termed as procedural in nature and the actual condition as laid under the governing provisions of SEZ Act and Rules have been duly fulfilled by them and therefore the issue raised herein has no merit.
 - They have produced copies of approval certificates as SEZ Units (to the unit whom they had provided services of Manpower and other services) and the value of the services provided to SEZ units as certified by the Chartered Accountant. They had declared the claim of exemption in the ST-3 returns filed. They have availed the exemption correctly, and had declared the availment of exemption in their ST-3 returns.
 - In view of the fact that certificates evidencing approval of SEZ units along with Chartered Accountant's Certificate certifying the value of services provided to such units and the SCNs do not contain any specific details about



the unit wise value, their claim that they had availed the exemption from Service Tax for services provided to SEZ units correctly has firm ground to hold. They have stated that the service supplied was Security Agency Service and Manpower Recruitment Service to SEZ unit and the exemption claimed was rightfully claimed."

- They have made disclosure of turnover in ST-3 returns, the disclosure of exemption notification, production of SEZ certificates and therefore there was no suppression of facts with intention to evade tax. The allegation of suppression of facts and mala fide intention with intent to evade payment of tax is not sustainable in view of the fact that proper disclosure have been made in the ST-3 returns.
- They had claimed the exemption under Notification No. 40/2012-ST for providing services to SEZ units/ Developer. Further, the exemption from payment of service tax on services rendered for carrying "authorised operations" was available under Section 26 of SEZ Act, read with Rule 31 of SEZ Rules without any restriction regarding the consumption of services [Norasia Container Lines v. CCE (2011) 23 STR 295 (Tri-Del)].
- The onus was on the SEZ unit for issuance of Form A-1 and A-2. It was stipulated that in order to claim ab initio exemption from payment of service tax on services used by it for its authorized operations, they had to get an approval from the 'Approval Committee' of the SEZ of the list of services used for authorized operations and they had to furnish a declaration in Form A-1 specified under notification verified by the SEZ officer to the jurisdictional Dy. CCE. The Dy. CCE was to issue the certificate in Form A-2 under the above notification to the SEZ unit without making any further enquiry. The onus for the same was on the SEZ unit.
- The exemption claimed by them was under reasonable belief that supplies made to SEZ unit was exempted from payment of service tax.
- The producing of the prescribed documents was procedural in nature, and facts remained that they had supplied the service to SEZ units. They have produced approval from the Approval Committee in respect of the SEZ units. The services were provided to these SEZ units and based on the certificate from the Chartered accountant, exemption need to be allowed to them. Services provided were deemed to be export of services, thus the same was exempt from service tax.
- They stated with respect to the allegation that they had suppressed their income by not reflecting their taxable income correctly in their ST-3 Returns, that the figures shown in our Sales Ledgers and 26AS were gross figures, wherein the Service Tax component was included in the figures. However,



the actual income of M/s. Indra was recorded in the Sales Ledgers. That they were paying service tax as per their bona fide understanding that the service tax was to be paid on the receipts retained by them and not on reimbursement expenses. Further the matter of calculation adopted by the investigating officer is not clear to them. Therefore, they had been filing their service tax returns on the basis of the actual receipts retained by them and thus adopted the correct method of computing the service tax. Therefore, the allegation of suppression, misstatement was wrongly attributed to them.

- As a law abiding assessee, on the insistence of the department they had made substantial deposits of Rs 71.20 Lacs towards the differential service tax and have cleared all the dues including the interest even before the issuance of the show cause notice. Therefore, no interest was chargeable for the amount deposited prior to the issuance of the show cause notice still entire interest was paid. Relying upon the judgment of the Larger Bench of the CESTAT rendered in the case of CCE, Delhi-III Vs. Machino Montell (I) Ltd. reported at 2004 (168) ELT 466 (Tri-LAB), they have submitted that since they had discharged their full duty and interest liability, that itself showed their bona fide. Therefore, the case fell within the parameters of Section 80 of the Finance Act, which provides non imposition of penalty. They have relied upon the following case laws as regards to non imposition of penalty:

- Akber Travels of India (P) Ltd. Vs. Commissioner of Customs and Central Excise, Cochin, 2008 (11) STR 42 (Tri. Bang.)
- Eta Engineering Ltd. Vs. CCE, Chennai-2004 (1740 ELT 19 (Tri-LB.)
- CCE, Meerut-II, Vs. R.N. Katayal-2006 92) STR 77 (Tri-Del).
- Urban Improvement Trust Vs. CCE, Jaipur-2006 930 STR 248 (Tri-Del).
- Sri Venkateswar Hi-tech Machiner Vs. CCE, Coimbatore-2007 (6) STR 139 (T)
- Commr. S.T. Kol-I Vs. Pee Kay & Co.-2007 (7) STR 540 (T-kol).
- CCE, Nashik Vs. Bapu Transport-2007 97)Tri-Mum)
- Niki Associates Vs. CCE, nashik-2007 (7) STR 662 (Tri-Mum).
- CCE Bhopal Vs. Maharashtra Samaj Bhawan Trust-2007 (5) STR 651 (Tri-Del).
- Lakmichand Dharshi Vs. CCE, Mumbai-2007 (5) STR 128(Tri-Mum).
- CCE, Bhopal Vs. Bharat Security Services & Workers" Cont.-2006 (3) STR 703 (Tri-Del).
- CCE, Bhopal Vs. R.K. Electronic Cable Network-2006 (2) STR 153 (Tri-Del.)

CCE & C.V. Mukul S. Patil-2008 (10) STR 115 (Bom).

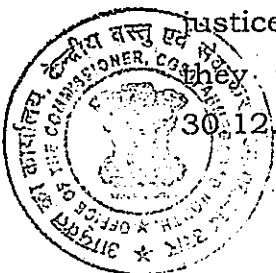


- o A.R. Ashish V. Patil Vs. CCE, Nashik-2006 (3) STR 184 (Tri-Mum).
 - o Union of India Vs. TPL Industries Ltd. 2007 (214) ELT 506 (Raj.)
 - o CCE, Ludhiana Vs. Sigma Steel Tubes-2007 (82) RLT 361 (P &H)
 - o Union of India Vs. perfect Thread Mills Ltd.-2009 (234) ELT 49 (Raj.)
- As regards non payment of service tax on Conveyance Bill raise by them, non payment of service on reimbursement , Misc, Income, and some invoice which were not figuring in the sales ledger, they have stated that since no Service Tax was collected separately, no Service Tax had been paid on this income. They have also stated that the Hon'ble Supreme Court has held that no service tax was payable on reimbursable expenditure or cost incurred by the service provider.
 - They further stated that the demand is time barred.

16. Further, Shri Rambhuvan Tiwari, Managing Director has also submitted the affidavit alongwith the written submission, wherein Shri Rambhuvan Tiwari has stated that his statements recorded during the investigation was under pressure, and wrong promise and temptation and by applying coercion to him he was made to sign the statements. He does not understand English, as such what was recorded in English was not known to him. He has also stated that they do not have any knowledge with respect to Balance sheet or 26AS of their firm.

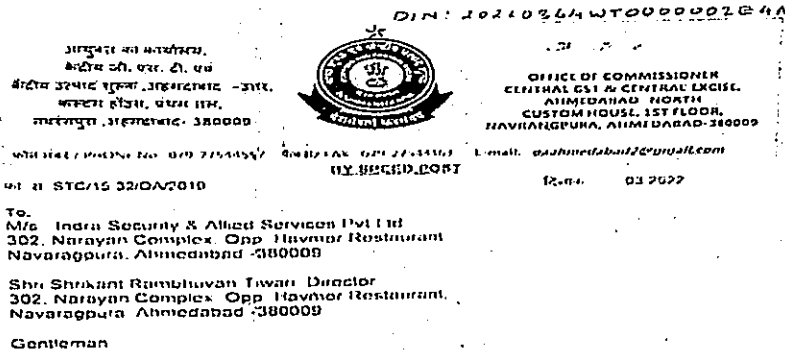
PERSONAL HEARING:

17. Personal hearing was granted to M/s. Indra vide letter dated 17.01.2020, but in reply, they vide their letter dated 04.02.2020 informed and requested to defer the personal hearing as they had filed an application under Sabka Vishwas Scheme 2019. Thenafter, they were granted personal hearings vide letters dated 25.08.2020, 11.09.2020, 05.10.2020, 27.10.2020 and 24.03.2021. However, they did not respond to any of these letters except to letter dated 24.03.2021. In connection with letter dated 24.03.2021, they sought copies of relied upon documents and sought extension of time till the Covid Pandemic situation got normalized. They were again granted personal hearing vide letters dated 28.05.2021 and 16.06.2021, but no response/reply from M/s. Indra was received. The demand for RUD after almost two years from the date of issuance of SCN appeared strange, however, without going into whether they had received the RUD or otherwise at the time of issuance SCN, they were asked vide letter dated 15.11.2021 to collect the RUD from the office, in the interest of justice. They accordingly collected the documents only 21.01.2022. Meanwhile, they were granted personal hearing vide letters dated 06.12.2021 and 30.12.2021. In reply to letter dated 30.12.2021, they sought extension of time.



Therefore, they were again granted personal hearing on 24.01.2022, but they again sought extension of time. Finally, they were granted personal hearing vide letter dated 02.03.2022 by the adjudicating authority himself in the interest of justice as under and it was conveyed to them that if the personal hearing was not attended, the matter would be taken up exparte. However, again they did not appear for the personal hearing fixed on 11.03.2022.

Image of letter dated 02.03.2022



Sub: Intimation regarding Fixing of Personal Hearing m/cag.

Please refer to the SCN No DGO/AZU/Gr-A/36 03/ 2019-20 dated 24 04 2019 issued to you by the Additional Director General, Ahmedabad Zonal Unit, DGGI, Ahmedabad. Please also refer to letters of avon no dated 25 08 2020, 11 09 2020, 05 10 2020, 27 10 2020, 24 03 2021, 28 05 2021, 16 06 2021, 06 12 2021, 30 12 2021 and 24 01 2022 vide which dates of personal hearing were communicated to you so that you could have your say vis-à-vis the charges levailed in the SCN

In this connection, it is to mention that you have neither filed your defence reply nor have attended any of the numerous personal hearings fixed in the matter. Since, a substantial amount of govt. revenue is involved in the matter, you are once again requested to file your defence reply if any and also appear for personal hearing on any working day, but not later than 11.03.2022. You may also take note that this is the last and final opportunity given to you to defend your case in person in the interest of justice. In case you fail to appear for personal hearing before 11.03.2022, the undersigned as an adjudicating authority would have no recourse left but to adjudicate the case on the basis of available records ex-parte.

02.03.2022
R.R.G.D.
@ OPY

Your sincerely,
(Signature)
(Upendra Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North

Copy to: The Deputy Commissioner, Central Excise & CGST, Div. VII, Ahmedabad North, Ahmedabad for serving the letter on the notice.

18. In response to the above letter M/s. Indra sought another extension and requested for personal hearing to be fixed on 21.03.2022. The request of M/s. Indra was acceded to and vide mail dated 17.03.2022, they were requested to attend the personal hearing on 21.03.2022. However, again they did not attend the personal hearing fixed on 21.03.2022 and they vide their mail dated 17.03.2022 sought last/final postponement of PH fixed on 21.03.2022 to 23.03.2022. The request of M/s. Indra was again acceded to in the interest of justice. Finally, personal hearing was attended by Shri-Sachin Dutt Shama Authorised Representative and Shri Chetan Khandelwal, CA on behalf of M/s. Indra on 23.03.2022. During the course of personal hearing they reiterated the gist of the written submission dated 11.03.2022. They stated that they had



supplied service to SEZ, though the procedures/stipulations governing the same may not have been adhered to. They requested to provide exemption from service to them in view of the fact of supply of services to SEZ by them.

DISCUSSION AND FINDINGS:

19. I have carefully gone through the facts of the case and records available in the case file, which include SCN, the defence replies dated 11.03.2022, documents submitted, oral submission made during the course of personal hearing.

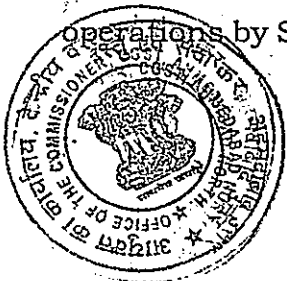
20. On going through the SCN, I find that basically the essence of the case is that the investigation by the DGGI Office was carried out against M/s. Indra, who were engaged in providing service under category "Security/ Detective Agency Services" and "Manpower Recruitment/supply agency Services". I also find that the SCN has alleged that M/s. Indra has resorted to evasion of service tax (i) by claiming wrong exemption from payment of service tax in respect of service provided to SEZ units / Developers and educational institutes, without supporting documents or without being eligible to avail the same. It was observed they have not mentioned any notification number as required in ST-3 Returns filed by them, by which they had availed the exemption without supporting documents. However, it was observed that the exemption to service provided to SEZ units/Developer could have been availed under Notification No. 40/2012-ST dated 20.06.2012 and 12/2013-ST dated 01.07.2013 by satisfying the conditions laid down thereunder, and with respect to service provided to educational institute, they could have claimed exemption under Sr. 9(b) of Notification No. 25/2012-ST dated 20.06.2012 in respect of provision of service to educational institution (ii) by claiming exemption from service tax in respect of service provided to non SEZ units in guise of SEZ sale (iii) by claiming exemption in guise of export of service in FY 2017-18 (upto June 17) (iv) by not accounting some of invoices in their sales ledger and not showing correct value of provision of services in ST-3 returns filed by them (v) by not including the miscellaneous income received towards reimbursement of expenses like telephone charges, insurance charges, Medical expenses etc. in the taxable value of service as required under Section 67 of the Finance Act, 1994 (vi) by suppressing taxable value of services/ under reporting the taxable value in ST-3 Returns filed by them. Therefore, the SCN dated 24.04.2019 proposing the demand of Service Tax of Rs. 5,75,50,059/- and applicable interest and penalty was issued. Therefore, the issues for determination in the subject SCN dated 24.04.2019 before me are (i) whether the benefit of exemption under Notification 40/2012-ST dated 20.06.2012 and 12/2013-ST dated 01.07.2013,



Sr. No. 9(b) of Notification No. 25/2012-ST, was available to M/s. Indra or otherwise (ii) whether amount of reimbursement are includible in the value of taxable service provided by M/s. Indra or otherwise, in terms of Section 67 ibid (iii) whether M/s. Indra had not accounted the income or not declared the correct value of service in their sales ledger and ST-3 Returns respectively or otherwise (iv) Whether M/s. Indra had indulged in suppression of taxable value /under reporting the correct value of service in ST-3 Returns (v) whether M/s. Indra had exported service or otherwise.

21. As is evident from the records available, the major part of the total turnover during FY 2013-14 to 2017-18 (upto June 2017) was claimed to be exempt income/turnover by M/s. Indra in their ST- Returns filed by them and Sales ledger maintained by them during the said period. Further, it was observed and evident from the records that out of the total exempt turnover, the major part of exempt turnover pertained to the provision of service purportedly to SEZ/ Units, and the rest of the exempt turnover pertained to provision of service to educational institutes. It was also observed that the sale pertaining to SEZ/Developer were booked under the head of SEZ Sales in sales ledger and sale pertaining to educational institutes were recorded under the head of Exempted Sales in sale ledger. It was further observed that M/s. Indra had not mentioned/declared the number of exemption notification and its serial number of notification as required in ST-3 Returns filed by them, under which they had availed the exemption. However, it was observed that the benefit of exemption from payment of service tax was available under Notification No. 40/2012-ST and 12/2013-ST for the provision of service to SEZ/Developer for carrying out the authorised operations by them. Similarly, the exemption from payment of service was also available under Sr. No. 9(b) of Notification No. 25/2012-ST for the provision of "Security" service to educational institutes.

22. With respect to the claiming of the exemption from payment of service tax for rendering the services to SEZ units/ developer, M/s. Indra have contended that they have provided the services of "Security and Manpower" to M/s Adani Port, M/s Adani Mundra SEZ Infrastructure and M/s Adani International Container Terminal Ltd., who were SEZ units. Further, they have argued that production of A1 & A2 under Notification no. 40/2012-ST or 12/2013-ST were mere procedural requirements, however, in terms of 26(1)(e) of SEZ Act, read with Rule 31 of SEZ Rules, the only condition to be satisfied to avail exemption was that the services were rendered for carrying out for authorised operation by SEZ units. The services provided by them were for carrying out the authorised operations by SEZ units. They have also tendered arguments that the exemption



in respect of services provided to SEZ were available to them as per 26(1)(e) read with Rule 31 of SEZ Rules, and by virtue of Section 51 of the SEZ Act, the Section 26(1)(e) had overriding effect over any law/act which was not consistent with SEZ Act. They have also stated that the SEZ Act is specific act hence it always prevail over the subordinate / general act in nature, In support of their arguments, they have cited various case laws.

23. I find from the statement dated 25.10.2018 of Shri Shrikant Rambhuwan Tiwari, Managing Director of M/s. Indra, which was recorded under Section 14 of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, that he had stated that they had provided services to SEZ units viz. M/s. Adani Port and Special Economic Zone Ltd, M/s. Adani Mundra SEZ Infrastructure and M/s. Adani International Container Terminal Ltd. He had also stated that service provided to them were exempt service.

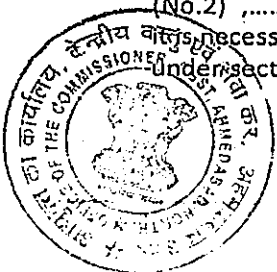
24. It was observed from the sales ledger that, M/s. Indra had claimed the exemption in respect of the following service recipient of service provided by them under the head "SEZ Sales" during FY 2013-14 to FY 2017-18 (up to June-2017):

- (a) Adani Kandla Bulk Terminal Private Limited.
- (b) Adani Ports and Special Economic Zone Private Limited.
- (c) Adani Gas Limited.
- (d) Adani Transmission Limited.
- (e) Adani Murmugao Port Terminal Private Limited.
- (f) Adani Hazira Port Private Limited.
- (g) PMC Projects.
- (h) Adani Petronet Dahej Private Limited.
- (i) Chetan Engineers.
- (j) Electrotherm India Limited.
- (k) Gujarat Chemical Port Co. Ltd.
- (l) Adani Foundation.
- (m) Adani Mundra Hospitals Pvt Ltd.
- (n) Adani Mundra SEZ Infrastructure Pvt Ltd

25. In view of the above, I find that the first issue basically concerns the availability or otherwise of exemption available under Notification No. 40/2012-ST dated 20.06.2012 and Notification 12/2013-ST dated 01.07.2013. Therefore, the relevant excerpts of the said notifications are reproduced for ready reference as under:

Notification No. 40/2012-ST dated 20.06.2012.

G.S.R. (E). – 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) read with sub-section 3 of section 95 of Finance (No.2) Central Government, on being satisfied that necessary in the public interest so to do, hereby exempts the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter



referred to as SEZ) or Developer of SEZ and used for the authorised operations, from the whole of the service tax, education cess and secondary and higher education cess leviable thereon.

2. The exemption contained in this notification shall be subject to the following conditions, namely:-

(a) the exemption shall be provided by way of refund of service tax paid on the specified services received by a unit located in a SEZ or the developer of SEZ and used for the authorised operations:

Provided that where the specified services received in SEZ and used for the authorised operations are wholly consumed within the SEZ, the person liable to pay service tax has the option not to pay the service tax ab initio instead of the SEZ unit or the developer claiming exemption by way of refund in terms of this notification.

(b)

(c) for the purpose of claiming exemption, the Unit of a SEZ or developer shall obtain a list of services that are liable to service tax as are required for the authorised operations approved by the Approval Committee (hereinafter referred to as the specified services) of the concerned SEZ;

(d) for the purpose of claiming ab initio exemption, the unit of a SEZ or developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, in addition to the list specified under condition (c); the unit of a SEZ or developer who does not own or carry on any business other than the operations in SEZ, shall declare to that effect in Form A-1

.....

3. The following procedure should be adopted for claiming the benefit of the exemption contained in this notification, namely:

(a).....

.....

(h) a service provider shall provide the specified services falling under wholly consumed category, under ab initio exemption granted by this notification, to a unit of a SEZ or developer, for authorised operations, subject to the submission of list specified in condition (c) under paragraph 2 and a declaration in Form A-1:

Notification No. 12/2013-ST dated 01.07.2013. (which rescinded the Notification No. 40/2012-ST dated 20.06.2012)

G.S.R.....(E). 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) read with sub-section 3 of section 95 of Finance (No.2), Act, 2004 (23 of 2004) and sub-section 3 of section 140 of the Finance Act, 2007 (22 of 2007) hereby exempts the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ Unit) or Developer of SEZ (hereinafter referred to as the Developer) and used for the authorised operation from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon.

2. The exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations:

Provided that where the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax ab initio, subject to the conditions and procedure as stated below.

This exemption shall be given effect to in the following manner:



(I) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.

(II) The ab-initio exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely:-

(a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I);

(b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;

(c) the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;

26. On perusing the above excerpts of the notification, it is seen that the exemption from service tax has been provided to the services received by SEZ units/ Developers for use in authorised operations, by way of granting refund or ab-initio exemption from payment of service tax, subject to them following certain procedures and conditions laid down in the aforesaid notifications. It is also discerned from the notifications that SEZ unit/ Developer will get services which are required for authorised operations approved by the Approval Committee. Thenafter, the SEZ unit /developer is required to submit /make declaration in Form A-1, duly verified by the Specified Officer of the SEZ alongwith the list of specified services (services required for authorised operations) to Jurisdictional Central Excise Assistant /Deputy Commissioner. As per clause 3 (h) of Notification No. 40/2012-ST, the service provider shall provide the service to SEZ/Developer without payment of service tax by submitting the Declaration in Form A-1 and List of approved services. The procedure/condition laid down in Notification No. 12/2013-ST was somewhat different. The SEZ unit /Developer is required to get the services required for authorised operation approved by the Approval Committee. Thenafter, SEZ Unit/Developer had to submit the declaration in Form A-1 alongwith the list of approved services to Jurisdictional Central Excise authority. On the basis of Declaration in Form A-1, the Jurisdictional Assistant/Deputy Commissioner would issue the authorisation in Form A-2. The service provider on the strength of A-2, was required to provide service to SEZ unit / Developer without payment of service tax. From the above provisions contained in both the notification, Declaration in Form-A1 and Authorisation in Form A-2 are extremely vital documents required for claiming the exemption from payment of service tax.



27. I also find that the M/s. Indra have argued that the Service tax exemption has been granted to SEZ unit/ Developer under Section 26(1)(e) readwith Rule 31 of SEZ Rules, and they have also argued that as per Section 51 of SEZ Act, the SEZ Act has overriding effect over the other Acts/Laws which are inconsistent with the SEZ Act. I would like to re-produce the said sections of the SEZ Act for ready reference as under:

“Section 26 of SEZ Act, 2005

26. Exemptions, drawbacks and concessions to every Developer and entrepreneur: –

(1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be **entitled to the following exemptions, drawbacks and concessions, namely:-**

(a)

(e) exemption from service tax under Chapter V of the Finance Act, 1994 (32 of 1994) on taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone;

(g)

(2) The Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions, concessions, drawback or other benefits shall be granted to the Developer or entrepreneur under sub-section (1).”

“Rule 31 of SEZ Rules 2006.

31. The exemption from payment of service tax on taxable services under Section 65 of the Finance Act, 1994 (32 of 1994) rendered to a Developer or a Unit (including unit under Construction) by any service provider shall be available for the authorised operations in a Special Economic Zone.”

“Section 51 of SEZ Act,

51. Act to have overriding effect- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any instruments having effect by virtue of any law other than this Act”



28. It is seen from the above that when there is a conflict between the SEZ Act and other Act/law, then Section 51 has overriding effect over the other act. I find that there is no inconsistency between SEZ Act and Finance Act 1994. Section 26 of the SEZ Act has made provisions for exemption in respect of receipt of service by SEZ unit/developer from DTA and Notification No. 40/2012-ST or 12/2013-ST have been issued under Section 93 of Finance Act, 1994 in line with SEZ Act, providing for exemption for the service provided by DTA to SEZ units/developers thereby removing any conflict between the two enactments and rules. Therefore, there is no inconsistency whatsoever.

29. I find that if there is conflict between SEZ Act and other enactments relating to SEZ units or developer, the provisions of SEZ Act may be applicable in terms of Section 51. The applicability of the provision of service to SEZ developer/unit does not mean that only SEZ Act becomes applicable and provisions of Finance Act, 1994, and rules made thereunder and Central Excise Act, 1944 and rules made thereunder would not be applicable. In this regard, I rely on the decision of the Tribunal in the case of M/s. SOBHA DEVELOPERS LTD reported at [2012 (25) S.T.R. 136 (Tri. - Bang.)]. The decision of the Tribunal was also upheld by the Hon'ble High Court of Karnataka [2013 (30) S.T.R. J83 (Kar.)]

30. I also draw support from the decision of the Hon'ble Tribunal in the case of M/s. DHL LEMUIR LOGISTICS PVT. LTD. reported at [2012 (28) S.T.R. 135 (Tri. - Mumbai)], wherein it was held that "*Assessee's contention of Notification to be read with provisions of Special Economic Zone Act, 2005 and Special Economic Zone Rules, 2006 devoid of merit - Conditional Notification issued under Section 93 of Finance Act, 1994 cannot be interpreted on basis of provisions of SEZ Act or Rules - If intention of legislation to align impugned Notification with Section 26 of said Act or Rule 31 of said Rules amendment of Notification would have been carried out*".

31. I also place reliance on the ratio of decision of the Hon'ble Gujarat High court in the case of M/s. ESSAR STEEL LIMITED reported at [2010 (249) E.L.T. 3 (Guj.)], wherein it was held that *Section 51 of the SEZ Act, 2005 providing that the Act would have overriding effect does not justify adoption of a different definition in the Act for the purposes of another statute. A non-obstante clause only enables the provisions of the Act containing it to prevail over the provisions of another enactment in case of any conflict in the operation of the Act containing the non-obstante clause.* The relevant para of decision is reproduce as under:

"41.3.3 Section 51 of the SEZ Act, 2005 providing that the Act would have overriding effect does not justify adoption of a different definition in the Act for the purposes of another statute. A non-obstante clause only enables the provisions of the Act containing it



to prevail over the provisions of another enactment in case of any conflict in the operation of the Act containing the non-obstante clause. In other words, if the provision/s of both the enactments apply in a given case and there is a conflict, the provisions of the Act containing the non-obstante clause would ordinarily prevail. In the present case, the movement of goods from the Domestic Tariff Area into the Special Economic Zone is treated as an export under the SEZ Act, 2005, which does not contain any provision for levy of export duty on the same. On the other hand, export duty is levied under the Customs Act, 1962 on export of goods from India to a place outside India and the said Act does not contemplate levy of duty on movement of goods from the Domestic Tariff Area to the Special Economic Zone. Therefore, there is no conflict in applying the respective definitions of export in the two enactments for the purposes of both the Acts and therefore, the non-obstante clause cannot be applied or invoked at all."

I also find that this case was upheld by the Apex Court reported at [2010(255)ELTA115(SC)].

32. I find that there is no dispute regarding provision of service by M/s. Indra. The service tax on making provision of service is leviable under Section 66B of the Finance Act, 1994, unless it is covered under negative list of service or exempt service. Therefore, any service for a consideration is taxable service. As regards, the provision of service to SEZ units/ Developer for carrying out the authorized operation by SEZ/Developer, the exemption from payment of service tax is available to the service provided to SEZ unit/developer under notification no, 40/2012-ST or 12/2013-ST, subject to certain procedures and conditions laid down under the said notifications. The same has been discussed hereinabove.

33. I find that the exemption has been made available to SEZ unit/Developer under Finance Act, 1994 for receiving the service tax free, which is in line with the provisions contained in Section 26 of the SEZ Act. I do not find any conflict in the provisions in this regard. In view of the legal position as discussed above, the subject conditional notifications issued under Section 93 of Finance Act, can not be interpreted on the basis of SEZ Act and SEZ Rules. For availing the benefit of exemption under respective notification, the conditions and procedures laid down must be adhered to. I find that laying down of certain condition and procedure by the statute is for monitoring purpose so as to prevent any misuse, ensuring use of services for the intended purpose or for accounting of tax free supply to such receiver of service.

34. Now, it is pertinent to mention here that exemption available to SEZ unit/Developer under Section 26(1) are subject to provisions of sub-section (2) of Section 26 of the SEZ Act. Accordingly to Sub-section (2), the exemption, concessions, drawback or other benefit have been granted subject to manner, terms and condition prescribed by the Central Government. I find that Chapter of SEZ (Rule 22 to Rule 46) contains the terms and conditions subject to which



Entrepreneur And Developer are entitled to exemption, Drawbacks and Concessions. I also find it necessary to mention here that as per Rule 25 of SEZ Rules, SEZ Units/ Developer have to refund the amount equal to the benefits of exemptions, concession availed by them in case of goods/services on which exemptions, concession have been availed and the said goods/ services have not been utilised in authorised operations or unable to account for the same by SEZ Units/Developer.

35. I find that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A person claiming exemption has to bring himself under the ambit of the notification. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly. If exemption is available on complying with certain conditions, the conditions have to be complied with. In this regard, I rely on decision of the Supreme Court in the matter of Commissioner of C.Ex., New Delhi vs. Hari Chand Shri Gopal, reported in [2010(260)ELT3(SC)].

36. Similar view has been taken by the Hon'ble Apex court in the following cases:

(i) Any exemption notification has to be interpreted based on the language used therein. The Supreme Court in the case of *Hemraj Gordhandas v. H.H. Dave, Asst. Collector of Central Excise & Customs* [1978 (2) E.L.T. (J350) (S.C.)] laid down the following principle:-

"It is well-established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority."

(ii) in the case of *Mangalore Chemicals & Fertilizers Ltd. v. Dy. Commissioner* reported in 1991 (55) E.L.T. 437 (S.C.), the Apex Court held as follows :-

"It appears to us the true rule of construction of a provision as to exemption is the one stated by this Court in *Union of India & Ors. v. Wood Papers Ltd. & Ors* - 1991 JT (1) 151 at 155".....Truly, speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction..."



(iii) In the case of *Bombay Chemical Pvt. Ltd. v. C.C.E., Bombay* reported in 1995 (77) E.L.T. 3 (S.C.), the Hon'ble Apex Court *inter alia* held as follows :

"One of the settled principles of construction of an exemption notification is that it should be construed strictly, but once a goods is found to satisfy the test by which it falls in the exemption notification then it cannot be excluded from it by construing such notification narrowly".

(iv) In the *Sarabhai M. Chemicals v. C.C.E., Vadodara* reported in 2005 (179) E.L.T. 3 (S.C.) a three judge Bench of the Hon'ble Apex Court held as follows :-

"It is well-settled that an exemption notification has to be strictly interpreted. The conditions for taking the benefit of the exemption have to be strictly interpreted."

(v) The same view was re-iterated by the Hon'ble Apex Court in the case of *Gujarat State Fertilizers Co. v. C.C.E.* reported in 1997 (91) E.L.T. 3 (S.C.) wherein it was held that -

"an exemption notification has to be interpreted by taking into consideration, the language of the notification which has to be given its due effect. Supposed object and purpose of the exemption has to be culled out from the said language."

37. I also find that the reliance placed by M/s. Indra on various case laws does not help when one applies the principles of statutory interpretation laid down by the Hon'ble Apex Court. The law laid down by the Hon'ble Apex Court is binding on all lower courts /appellate authorities, and quasi judicial authorities.

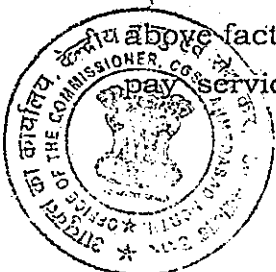
38. M/s. Indra in their defence reply dated 11.03.2020 at page 23, have mentioned that they are producing the copies of approval certificates as SEZ units. However, M/s. Indra have not provided any copies of approval certificate as SEZ, rather they have blandly enclosed list of 20 functional SEZs. The part of the said list is reproduced as under:



Notified Special Economic Zones (Functional)							
Sr.No.	Developer	Location	Sector & Area recommended by GoG (in hectares).	Status of approval by GoI	District	Investment (In Crore)	Employment
1	Zydus Infrastructure Pvt.Ltd.	Chacharwadi-Vasno, Sorli, Matoda.	- Pharma - 48.83 hoc	Notified and operational in area of 48-43-00 hectares vide notification No. 1630(E) dated 28/9/05	Ahmedabad	3404.00	5470
2	AHMEDABAD APPREAL PARK Gujarat Industrial Dev. Corpn	Ahmedabad	- Apparel	Notified and operational in area of 38-04-13 hectares vide notification No. 513(E) dated. 10/04/2007.	Ahmedabad	125.45	1483
3	Ganesh Infrastructure Pvt. Ltd	Tragad and Chharodi	- ITITES	Notified and operational in area of 32-71-23 hectares vide notification No. S.O.1011 (E) dated 22/06/2007	Ahmedabad	154.27	207
4	E Complex Private Ltd	Rampara & Lunapur	- Engineering	Notified and operational in area of 124-11-99 hectares vide Notification No. S.O.9 (E) dated 2/01/2008	Amreli	1465.16	97
5	DAHEJ SEZ Dahej SEZ Limited	Dahej, Ambhela, Luvara, Suva, Lakhigam, Jageshwar,	- Multi-product	Notified and operational in area of 1718-93-87 hectares vide Notification No. S.O.89 (E) dated 02/11/2008	Bharuch	40229.61	6256
6	Sterling SEZ Infrastructure Pvt Ltd	Vakpor and Savod	- Multi-product	Notified and operational in area of 1263-17-00 hectares vide Notification No. S O 89 (E) dated 02/11/2008	Bharuch	3368.56	518
				Notified and operational in area of 107-16-50			

39. Based on above legal position, submission made by M/s. Indra, and discussion hereinabove, I am of the view that the benefit of exemption from service tax on provision of services to SEZ unit/ Developer for authorized operations, can be granted only under subject Notifications 40/2012-ST dated 20.06.2012 and 12/2013-ST dated 01.07.2013, and that too only if conditions/procedures as laid down are followed while providing service to SEZ unit/Developer. Therefore, the arguments of M/s. Indra that the production of A1/A2 under Notification No. 40/2012-ST and 12/2013 was mere procedural lapse is not sustainable. In the instant case it evident and admitted position from the defense reply dated 11.03.2022 and the documents relied upon in the matter that the procedure/ conditions have not been followed or adhered to in respect of service purportedly provided to SEZ unit/ Developer. Further, it is evident that M/s. Indra had charged service tax in the invoice raised on various cases for provision of service purportedly to SEZ units, hence, their arguments of availing ab-initio exemption is not sustainable. In absence of any documentary evidence, it cannot even be said that the provision of service by M/s. Indra was for authorized operation by SEZ units/Developer. In view of the

above factual matrix and legal position, I find that M/s. Indra, who was liable to pay service tax, has failed to establish their case with respect to claim of



exemption under subject notifications. Therefore, I find that the benefit of exemption from service tax under Notification 40/2012-ST and 12/2013-ST on service provided to SEZ/Developer as claimed by M/s. Indra, is not available to them. Thus, they are liable to pay service tax on such service purportedly rendered to SEZ Unit/Developer.

40. I find that SCN has also alleged that M/s. Indra has shown the export of service to the tune of Rs. 2,70,06,256/- in ST-3 returns filed for FY 2017-18 (upto June 2017), however, they have not explained as to how the provision of service by them to SEZ is qualified to be export of service as per provisions of Finance Act, 1994 and rule made thereunder. In this regard, I find that M/s. Indra have also contended that the Service provided to SEZ/Developer were deemed to be export of services, thus the same was exempt from service tax. M/s. Indra was service provider and registered under Finance Act, 1994 for providing taxable service. Therefore, the provisions under Finance Act, 1994 were applicable to them for levy of tax as well as for availing exemption from service tax. As per Rule 6A of Service Tax Rules, 1994, any service provided is treated to be export of service only if criteria (a) to (f) laid down thereunder are satisfied. The Rule 6A ibid is reproduced for ready reference as under:

"RULE [6A. Export of services. — (1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-

- (a) the provider of service is located in the taxable territory,*
- (b) the recipient of service is located outside India,*
- (c) the service is not a service specified in the section 66D of the Act,*
- (d) the place of provision of the service is outside India,*
- (e) the payment for such service has been received by the provider of service in convertible foreign exchange, and*
- (f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65B of the Act."*

41. M/s. Indra have not brought out any evidence showing that the criteria laid down are satisfied by them. Further, the service tax is leviable under Finance Act, 1994, therefore, for claiming the exemption from service tax, the adoption of the different definition contained in SEZ Act, when it is defined in the Finance Act, 1994 is not justified. The ratio of the judgement of the Hon'ble High Court of Gujarat in the case of M/s. ESSAR STEEL LIMITED reported at [2010 (249) E.L.T. 3 (Guj.)], as discussed hereinabove, is squarely applicable in the present case. Therefore, I find no force in the arguments put forth by them.

42. Now coming to the second issue of exemption claimed by M/s. Indra for provision of service to educational institutes. I find that the SCN mentioned that the benefit of exemption from payment of service tax was available to M/s. Indra under Sr. No. 9(b) of the Mega Exemption Notification No. 25/2012-ST dated



20.06.2012 for provisions of service of "Security Service" to educational institutes. For the sake of ready reference, the relevant portion of the exemption notification is reproduced as under:

Sr. No. 9 of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 (upto to 11.07.2014)

"9. Services provided to an educational institution in respect of education exempted from service tax, by way of

- a) auxiliary educational services; or
b) renting of immovable property"

"auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution"

(oa) "educational institution" means an institution providing services specified in clause (l) of section 66D of the Finance Act, 1994 (32 of 1994) [Inserted w.e.f. 11.07.2014 vide Notification No.06/2014-STdated 11.07.2014]

Further Section 66D (l) of the Finance Act, 1994 reads as under:

"(l) Services by way of-

- (i) pre school education and education up to higher secondary school or equivalent;
(ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;"
(iii) education as a part of an approved vocational education course.

CBEC Board's circular no. 172/7/2013-T dated 19.09.2013,

Relevant portion of the said circular is as below:

"By virtue of the entry in the negative list and by virtue of the portion of the exemption notification, it will be clear that all services relating to education are exempt from service tax. There are many services provided to an educational institution. These have been described as "auxiliary educational services" and they have been defined in the exemption notification. Such services provided to an educational institution are exempt from service tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the transport services provided by the transport operator to the school are exempt by virtue of the exemption notification.

In addition to the services mentioned in the definition of "auxiliary educational services", other examples would be hostels, housekeeping, **security services**, canteen, etc.

Amendment in Sr. No. 9 of Mega Exemption Notification 25/2012-ST dated

20.06.2012



Sr. No 9 of Notification No. 25/2012-ST was amended vide Notification No. 06/2014 dated 11.07.2014. The said amendment is reproduced as under:

"9, Services provided,

- a) *by an educational institution to its student, faculty and staff;*
- b) *to an educational institution, by way of,*
 - (i) *transportation of students, faculty and staff;*
 - (ii) *catering, including any mid-day meals scheme sponsored by the Government;*
 - (iii) *security or cleaning or house-keeping services performed in such educational institution;*
 - (iv) *services relating to admission to, or conduct of examination by, such institution,";*

Amendment in the definition of educational institution

Further, clause (oa) of the Notification No. ST-25/2012 dated 20.06.2012 was amended by Notification No. ST-09/2016 dated 01.03.2016 w.e.f. 14.05.2016 wherein the definition of "educational Institution" was amended and read as under:

(oa) "educational institution" means an institution providing services by way of

- a) *pre-school education and education up to higher secondary school or equivalent;*
- b) *education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;*
- c) *education as a part of an approved vocational education course;*

Further Amendment in Sr. No. 9 of the Mega Exemption Notification:

Sr. No 9 of Notification No. 25/2012-ST was amended vide Notification No. 10/2017 dated 08.03.2017. The said amendment is reproduced as below:

"In the said notification, in the opening paragraph, in entry 9, in clause (b), after sub-clause (v), the following proviso shall be inserted, namely:"

Provided that nothing contained in clause (b) of this entry shall apply to an educational institution other than an institution providing services by way of preschool education and education up to higher secondary school or equivalent;"

This notification shall come into force on the 1s day of April, 2017".

43. I find that M/s. Indra has not provided any defence with respect to this allegation levelled against them. I therefore find that they do not have any arguments to put forth. I also find from the random scrutiny of sales ledger vis-a-vis invoices available on records, that M/s. Indra have charged the service tax in the invoices raised by them to educational institutes. Further, it is observed that the income form service provided to such institutes has been booked under the head of "SEZ Sale" in sales ledger. Further, they have not produce all the invoices for verification. Therefore, the charges levelled against M/s. Indra is found justifiable. I also find that once the service tax has been collected the same is required to be deposited with the government. In view of these factual position, the benefit of exemption from payment of service tax is not justifiable



to M/s. Indra. Therefore, M/s. Indra is liable to pay service tax on service provided to educational institutes, income of which are booked under the head of exempted sale of sales ledger.

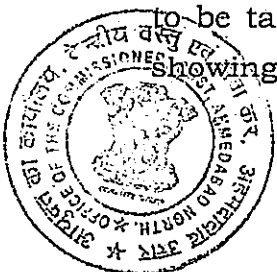
44. I find from the subject SCN that the total value of service on which exemption has been claimed are as per Table -G to the SCN. As discussed hereinabove, the exemption is not available to provision of service to SEZ units/Developer, educational institutes or export of service, therefore, the total service tax of Rs. 5,17,38,740/- as worked out in Table -G of the SCN for rendering services purportedly to SEZ units/developer and educational institutes, is liable to be paid by M/s. Indra. The said table -G is re-produced as under:

Table-G

FY	Exempted SEZ Sales as per Sales Ledger	Exempted Sales (Other Than SEZ) as per Sales Ledger	Net Exempted Turnover as per Sales Ledger	Service Tax Evaded by claiming wrong & Fraudulent exemption
1	3	4	5=3+4	6
2013-14	5,15,76,530	0	5,15,76,530	63,74,859
2014-15	5,21,88,468	0	5,21,88,468	64,50,495
2015-16	11,49,66,289	25,68,645	11,75,34,934	1,66,87,850
2016-17	11,50,30,464	5,48,674	11,55,79,138	1,72,93,358
2017-18 (upto June-17)	3,25,44,781	3,36,404	3,28,81,185	49,32,178
Total	36,63,06,532	34,53,723	36,97,60,255	5,17,38,740

45. I find that it was also alleged in the SCN that the Service tax was charged separately in invoices issued to SEZ unit by M/s. Indra in majority of the cases, the said income was booked under head of "SEZ Sale" Category in the sales ledger. In some of cases, the invoice value inclusive of service tax has been booked in Sales Ledger. Therefore, it was alleged that in some of cases though they have charged service tax in invoices raised they have shown as exempt income/ sez sale in sales ledger. It was further alleged that they have not charged the service tax in invoice issued to same SEZ unit in some cases, to which they have charged service tax as well. The invoices issued to Educational institutes also contained the service tax components, however M/s. Indra claimed the exemption on such income for provision of services. Further, it was also observed that the income booked under the head of SEZ sales in ledger was not pertaining to SEZ units.

46. In order to examine the allegation, random check of invoices and corresponding entries/posting in sales register/ledger was carried out. The allegation contained in the SCN was found correct. Similarly the income/sale considered for computing the service tax liability in the Table-G, was also found to be tallying with sales ledger/register. Some of the data are given below for showing the correctness of allegation made in the subject SCN.

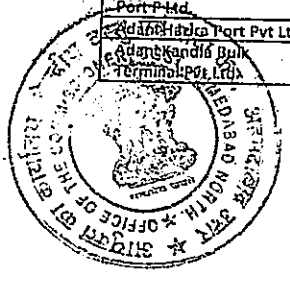


2013-14		Invoice Details				Head in Sales ledger entries			
Recipient of service	Invoice No.	Date	Value of service	Tax	Invoice total	Date	Sale (taxable)	Sales SEZ	Sales Exempted
National Handloom Corporation	ST/04/01	01/05/2013	157716	19493	177210	01/05/2013		177210	
Adani Mundra SEZ Infrastructure P L	2013-14/ST/04/08	01/05/2013	822697	0	822697	01/05/2013		822697	
Adani Ports & Special Economic Zone Ltd	2013-14/ST/05/55	01/06/2013	883042	0	883042	01/06/2013		883042	
Adani Hazira Port Pvt Ltd.	ST/05/105	01/06/2013	408737	50519	459257	01/06/2013		459257	
D B Hospitality	ST/12/714	01/01/2014	20425	0	20425	01/01/2014		20425	
Adani Ports & Special Economic Zone Ltd	2013-2014/ST/01/715	01/02/2014	1296521	0	1296521	01/02/2014		1296521	
Adani Ports & Special Economic Zone Ltd	2013-2014/ST/01/178A	01/02/2014	23900	2954	26854	01/02/2014		26854	
Adani Hazira Port Pvt Ltd.	ST/01/767	01/02/2014	449983	55617	505602	01/02/2014		505602	
Adani Hazira Port Pvt Ltd.	ST/02/834	01/03/2014	401232	49591	450824	01/03/2014		450824	

2014-15		Invoice Details				Head in Sales ledger entries			
Recipient of service	Invoice No.	Date	Value of service	Tax	Invoice total	Date	Sale (taxable)	Sales SEZ	Sales Exempted
Adani Hazir Port Pvt Ltd.	ST/4/35	01/05/2014	479783	59301	539085	01/05/2014		479783	
Adani Mumrugao Port Terminal Pvt Ltd.	2014-15	01/05/2014	385712	50726	461139	01/05/2014		461139	
Adani Kandla Bulk Terminal Pvt Ltd.	2014-15/ST/05/156	01/06/2014	325517	40234	365751	01/06/2014		365751	
Adani Gas Limited	2014-15/ST/07/314	01/08/2014	430170	53168	483339	01/08/2014		483339	
Adani Hazir Port Pvt Ltd.	2014-15/ST/07/335	01/08/2014	151226	18691	169917	01/08/2014		169917	
Adani Hazir Port Pvt Ltd.	2014-15/ST/07/334	01/08/2014	531063	65639	596703	01/08/2014		531063	
Adani Hazir Port Pvt Ltd.	2014-15/ST/07/334	01/08/2014	189234	23389	212624	01/08/2014		212624	
Adani Murmu Gao Port Terminal Pvt Ltd	2014-15/ST/07/307	01/08/2014	462516	57136	519402	01/08/2014		519402	
Adani Murmu Gao Port Terminal Pvt Ltd	2014-15/ST/12/720	01/01/2015	477467	59015	536481	01/05/2015		536481	

2015-16		Invoice Details				Head in Sales ledger entries			
Recipient of service	Invoice No.	Date	Value of service	Tax	Invoice total	Date	Sale (taxable)	Sales SEZ	Sales Exempted
C.U.Shah Medical College	38	15/04/2015	98000	0	98000	15/04/2015			98000
C.U.Shah Medical College	2015-16/ST/07/305	01/08/2015	230000	0	230000	01/05/2015			230000
Adani Hazir Port Pvt Ltd.	ST/4/80	01/05/2015	800190	98902	899093	01/05/2015		899093	
Adani Petronet (Dahej) Port P L	ST/07/280	01/08/2015	569554	79737	649293	01/08/2015		649293	
Chetan Engineers (new Rob)	ST/08/396	01/09/2015				01/09/2015		375163	
Adani Foundation	ST/09/501	30/09/2015	36511	5111	41622	30/09/2015		41622	
Adani Gas Ltd (SEZ)	2015-16/09/467	01/10/2015	429821	60175	489996	01/10/2015		489996	
Adani Ports And Special Economic Zone Ltd (APSEZ GEN AREA)	ST/10/553/A	01/11/2015	2077896	290905	2368801	01/11/2015		2077896	
Adani Enterprise	2015-16/10/547	01/11/2015	68626	9608	78234	01/11/2015		68626	
Adani DAV School	2015-2016/ST/03/1025	31/03/2016	20613	2989	23602	31/03/2016		20613	
Adani Ports And Special Economic Zone Ltd	2015-16/ST/03/1032	31/03/2016	15010	2176	54361	31/03/2016		15010	
Adani Mumrugao Port Terminal Pvt Ltd	ST/03/993	31/03/2016	463325	67183	530508	31/03/2016		530508	
Adani Mumrugao Port Terminal Pvt Ltd	ST/03/994	31/03/2016	93435	13548	106983	31/03/2016		106983	
Adani Hazira Port	2015-16/03/1016	26/03/2016	596125	86439	682564	26/03/2016		682564	
Adani Petronet	ST/02/855	01/03/2016	535673	77672	613346	01/03/2016		613346	

2016-17		Invoice Details				Head in Sales ledger entries			
Recipient of service	Invoice No.	Date	Value of service	Tax	Invoice total	Date	Sale (taxable)	Sales SEZ	Sales Exempted
Adani Petronet (Dahej) Port P Ltd.	ST/04/01	01/05/2016	531498	77056	608566	01/05/2015		608566	
Adani Hazira Port Pvt Ltd.	ST/04/21	01/05/2016	889572	128987	1018560	01/05/2015		1018560	
Adani Kandla Bulk Terminal Pvt Ltd	2016-2017/ST/06/248	25/07/2016	1261897	189014	1451182	25/07/2016		1451182	



Adani Ports & Special Economic Zone Ltd	2016-2017/ST/07/321	01/08/2016	1209499	181424	1390924		01/08/2016		1390924	
Adani Foundation	2016-17/ST/08/347	01/09/2016	181523	0	181523		01/09/2016			181523
Adani Murmu Gao Port Terminal Pvt Ltd	ST/09/467	01/10/2016	473843	71076	544920		01/10/2016		544920	
Adani Hazira Port Pvt Ltd.	ST/12/729	01/01/2017	377380	56605	433988		01/01/2017		433988	

47. I also find that the SCN has alleged that M/s Indra have (i) willfully suppressed the quantum of taxable turnover reported in the ST-3 returns filed by them by way of under-reporting of the taxable turnover reported in the Sales Ledger (ii) not accounted (Annexure-D to SCN) of certain invoices in sales ledger and (iii) not included the reimbursement income such as telephone, medical and insurance expenses, which was recovered from the service recipients to whom they were providing services. During the period from FY 2013-14 to FY 2017-18 (up to June-17), M/s Indra have under-reported a net taxable income of Rs. 4,31,67,268/- and service tax liability involved was worked out to be Rs. 58,11,319/- as detailed in Para [F] and Table-H of the SCN, the same is reproduced as under:

Table-H

Comparison of the Taxable Turnover as reflected in the periodical ST-3 Returns filed by M/s Indra for the period from FY 2013-14 to FY 2017-18 (up to June-17) vis-a-vis the Taxable Turnover reflected in Sales Ledger maintained by them & Unaccounted Invoices (All values in INR).									
FY	Taxable Turnover (Accounted in Sales Ledger & Unaccounted Invoices)						Taxable Turnover Reflected in the ST-3 Returns	Differential Taxable Value Suppressed	Service Tax Short Paid/Not paid
	Sales of services - Accounted in Sales ledger, including those claimed as exempted	Sale of services - unaccounted in Sales ledger	Telephone Mobile Expenses	Insurance Reimbursement Income	Medical Reimbursement Income	Total			
1	2	3	4	5	6	7=2+3+4+5+6	8	9=7-8	10
2013-14	7,63,72,643	3,07,608	1,400	0	0	7,66,81,651	7,63,61,020	3,20,631	12,847
2014-15	7,84,77,433	2,80,62,131	0	0	0	10,65,39,564	7,84,77,434	2,80,62,130	34,68,480
2015-16	6,20,53,137	1,15,82,117	0	0	0	7,36,35,254	6,34,24,582	1,02,10,672	16,29,545
2016-17	7,24,10,665	32,82,778	0	2,53,287	9,000	7,59,55,730	7,13,81,895	45,73,835	7,00,447
2017-18 (upto June-17)	98,40,563	2,02,667	0	0	0	1,00,43,230	1,38,09,392	----	----
Grand Total	29,91,54,441	4,34,37,301	1,400	2,53,287	9,000	34,28,55,429	30,34,54,323	4,31,67,268	58,11,319

*Detailed working of the service tax was as per Annexure -C to the SCN

48. In this regard, M/s. Indra have contended that the actual income of theirs had been recorded in sales ledger and stated to have produced chartered accountants certificate certifying the same. They have further stated that they used to pay service tax on the receipt retained by them and not on reimbursement of expenses. I find that the reply of M/s. Indra is vague and without support of any documents or financial statements. The value suppressed as per the SCN issued was to the tune of Rs. 4,31,67,268/- as tabulated above. They have enclosed the sales reconciliation without any supporting documents. The Certificate of chartered accountant has also not been enclosed as stated to have been enclosed by them. The image of reconciliation submitted by M/s. Indra is reproduced herein as under:



Indra Security				
Sales Reconciliation (SEZ sales)				
Period	As per Showcause Notice (Pg 50)	As per Audited Financials (SEZ sales)		Difference
2013-14	51,576,530	51,576,341		189
2014-15	52,188,468	52,188,467		1
2015-16	114,966,289	111,747,392		3,218,897
2016-17	115,030,464	114,977,384		53,080
2017 to June 18				
TOTAL	333,761,751	330,489,584		3,272,167

49. With respect to collection of additional charges (telephone reimbursement, insurance), M/s. Indra have stated that they have not collected service tax, hence they have not paid service tax on these incomes. Further, they have stated that the reimbursement of expenses are not taxable, and service tax was not payable on such reimbursement in view of the Supreme Courts/Delhi High Courts decision. They have also stated that the service tax was not payable under Section 67 of Finance Act, 1994 read with Rule 5 of Service tax (Determination of Value) Rules, 2006. I find that M/s. Indra in their support have not cited any specific case law or decision as claimed by them. I find that the as per Rule 5(1) of Service Tax (Determination of Value) Rules 2006, "where any expenditure or costs are incurred by the service provider in the course of providing service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value of for the purpose of charging service tax on the said service". In view of this legal provision, any expenditure incurred by M/s. Indra, which were reimbursed by the recipient of service, were includible to the value for the purpose of charging service tax. However, I also find that as per Sub-Rule (2) of Rule 5 of Service Tax (Determination of Value) Rules 2006, the expenditure or cost incurred by the service provider was excludible from the value of the taxable service if the conditions (i) to (viii) laid down thereunder are satisfied. The Sub-Rule (2) of Rule 5 of Service Tax (Determination of Value) Rules 2006 is reproduced for ready reference as under:

"(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely :-

- (i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;
 - (ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
 - (iii) the recipient of service is liable to make payment to the third party;
 - (iv) the recipient of service authorises the service provider to make payment on his behalf;
- the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;*



- (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- (viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation 1. - For the purposes of sub-rule (2), "pure agent" means a person who -

- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- (b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;
- (c) does not use such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services."

50. I also find that definition of "Consideration" provided under Section 67 of the Finance Act, includes any reimbursable expenditure or cost incurred by service provider and charged in the course of providing taxable service except in case of prescribed circumstances and conditions laid down. Therefore, as per Rule 5 Service Tax (Determination of Value) Rules, 2006 read with section 67 of the Finance Act, 1994, the reimbursement of expenses is not includible to the value of service provided if the condition laid down under said Rule 5(2) are satisfied. I find that M/s. Indra have not provided any documentary evidences showing that they had complied with conditions laid down in this regard. They have not provided any records/documents buttressing their argument that the income was against the expenditure incurred by them. I also find that such income otherwise is not found to be exempt income under negative list or exemption notification. Thus, the said income is liable to be included in taxable value of service for purpose of charging service tax under Section 67 of the Finance Act, 1994 read with Rule 5 of Service Tax (Determination of Value) Rules, 2006. Therefore, I find that that M/s. Indra are liable to pay service tax of Rs. 58,11,319/- (as per Table -H) on (i) suppressed value of services (ii) income for reimbursement of expenses (like telephone charges, Insurance) and (iii) Value of non accounted invoices, under Section 67 and 68 read with Section 66B of the Finance Act, 1994.

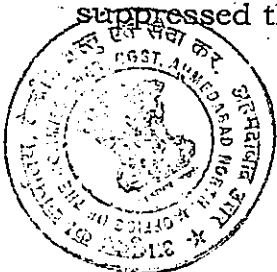
51. In view of the above discussion, submission made by M/s. Indra, documents available on records, and legal position /precedents as discussed, I find that M/s. Indra had availed the exemption from payment of service tax for providing services to SEZ units /Developer without satisfying the conditions /procedures laid down under Notification No. 40/2012-ST dated 20.06.2012 and 40/2013-ST dated 01.07.2013. Therefore, it is established that the exemption



had been wrongly availed on service provided to the SEZ units/Developer. Similarly, they have wrongly claimed the exemption for provision of service to educational institutes, though they had charged the service tax in the invoices raised to recipient of service. Further, I find that that M/s. Indra are liable to pay tax on (i) suppressed value of services (ii) income for reimbursement of expenses (like telephone charges, Insurance) and (iii) Value of non accounted invoices, under Section 68 read with Section 66B of the Finance Act, 1994. In view of the above factual matrix, M/s. Indra are liable to pay service tax on their entire income as per sales ledger during the period from April 2013 to June 2017, after deducting /adjusting the service tax liability already discharged by them. Therefore, I hold that they are liable to pay service tax of Rs. 5,75,50,059/- (Rs. 5,17,38,740/- + Rs 58,11,319/-) (as per Table-G & H of the notice) under the proviso to Section 73(1) of the Finance Act, 1944 as proposed in the subject SCN. I also find that the provisions of Section 75 of the 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, thus hold that the assessee is also liable to pay the interest on Service Tax of Rs. 5,75,50,059/-. I also find that the SCN has proposed to appropriate the amount of Rs. 71,20,000/- towards their service tax liability. I find that at para 12.2 of the SCN, it has been mentioned that M/s. Indra have paid Rs. 71,20,000/- towards payment of their service tax liability. In view of this fact, I hold the said amount Rs. 71,20,000/- liable to be appropriated against the service tax liability of M/s. Indra.

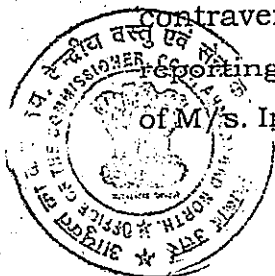
52. From the above facts and discussion, I find that M/s. Indra have contravened that provision of (i) Section 67 of the Finance Act, 1994 in as much as they had failed to determine the correct taxable value of taxable service and declare the same to the department (ii) Section 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they had failed to pay the service tax on the taxable services provided to SEZ units /Developer by them (iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they had failed to furnish correct and proper periodical returns in form ST-3 mentioning the particulars of the aforesaid taxable service provided by them, correct value of taxable service provided and other particulars in the manner as provided therein.

53. From the facts and discussion aforementioned, I find in the instant case that M/s Indra had failed to declare the actual taxable income in the ST-3 Returns filed by them and had not paid appropriate Service Tax despite the fact that they were engaged in providing taxable services. Thus, M/s Indra had suppressed the material facts from the Department by not showing their actual



taxable income in the ST-3 Returns by way of claiming exemptions wrongly, by not paying the Service Tax due to them and also suppressed the taxable value in the ST-3 Returns. They also deliberately had not accounted for certain invoices. This appears to have been done intentionally so as not to bring their taxable activities to the notice of the Department, though they were engaged in providing taxable services, as discussed here-in-above. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax payers' behaviour. The responsibility on the tax payer to voluntarily make information disclosures is much greater in the system of self-assessment. The omission or commission on the part of M/s Indra has clearly demonstrated the intention of M/s. Indra to evade payment of service tax, though they were very much aware of the unambiguous provisions of Finance Act, 1994 and Rules made there under. M/s. Indra have failed to disclose to the department at any point of time, regarding the claiming of exemption without satisfying the conditions stipulated under Notification 40/2012-ST and 12/2013-ST for provision of service purportedly to SEZ units, claiming of the exemption from service to the educational institutes despite they were collecting service tax on it, and non-payment of service tax on reimbursement of expenses and other misc. income recovered by them, during the period from April 2013 to June, 2017. They also failed to declare the correct value of service rendered thereby under reporting the value of service. These facts would not have come to light but for the investigation conducted by DGGI officers. Moreover, 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 are 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 excise & Service tax laws. Moreover, returns are also filed online without any supporting documents. All these operates 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 provisions 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 also evident that such facts of

contravention and short/non paying the service tax by short declaring /under reporting taxable value of the service provided, as discussed earlier, on the part of M/s. Indra came to the notice of the department only when the DGGI initiated

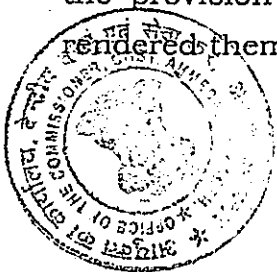


the investigation against M/s. Indra. In the case of *Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241*, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In *2009 (23) STT 275, in case of Lalit Enterprises vs. CST Chennai*, it 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 proviso to Section 73(1) of the Finance Act, 1994. By invoking the extended period of time of 5 years, service tax totally amounting to Rs 5,75,50,059/- (including cess) is required to be recovered along with applicable interest under Section 75 of the Finance Act, 1994 from M/s. Indra. For the same reasons, all ingredient for imposing penalty on M/s. Indra under Section 78 exists, therefore M/s. Indra is also liable for penal action under the provisions of Section 78 of the Finance Act, 1994.

54. As far as the imposition of penalty under Sec. 76 of the Finance Act, 1994 is concerned, I find that Section 78B of the Finance Act, 1994 stipulates that the provisions of the amended Section 76 and 78 will be applicable in cases where the order is passed after the date on which the Finance Bill, 2015 receives the assent of the President. The Finance Bill, 2015 received the assent of the President on 14.05.2015. Therefore, the amended provisions of Section 76 and 78 are applicable in the present case.

55. In view of the above, the penalty under Sec. 76 is imposable only in cases where the non-payment/ short-payment of service tax is on account of reasons other than fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there-under with the intent to evade payment of service tax. In the instant case, as I have already discussed hereinabove, the non-payment/ short-payment of service tax is on account of suppression of facts and contravention of the provisions of law with an intent to evade payment of service tax and as such the provisions of Sec. 76 of the Finance Act, 1994 will not be applicable to the facts of the present case and no penalty can be imposed under Sec. 76 of the Finance Act, 1994.

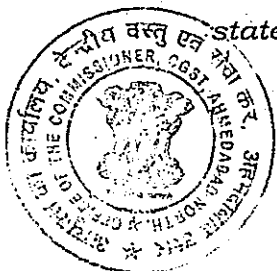
56. As far as the proposal for imposition of penalty under Section 77(1)(b) and Section 77(1)(e) is concerned, I find that M/s. Indra had failed to keep, maintain or retain books of account and other documents as required in accordance with the provision of Act and Rules made thereunder. Thus, the assessee have rendered themselves liable to penalty under Section 77(1)(b) of the Finance Act,



1944. Further, M/s. Indra had failed to issue invoices in accordance with the provisions of Finance Act, with correct and complete details, they have also failed to account for invoices in their books of account. Thus they have also rendered themselves liable to penalty under Section 77(1)(e) of the Finance Act, 1994.

57. I also find that Shri Shrikant Rambhuvan Tiwari, Director of M/s Indra was at the helm of the affairs of his company. During the course of recording of his statement, he had interalia admitted evasion of service tax by his company and admitted that he was in know of the fact that his company had claimed exemptions wrongfully, collected service tax from the recipients but had not deposited the same to the exchequer and had taken responsibility for the same. As such, he had a decisive role to play in the present evasion unearthed by DGGI, AZU, Ahmedabad. By committing such an act, he has rendered himself liable to penalty under Section 78A of the Finance Act, 1994.

58. As regard the plea of Shri Rambhuvan Tiwari, Managing Director that statements recorded during the investigation from him were under pressure, and wrong promise and temptation and by applying coercion, to him and that he was made to sign the statements. From the records, it can be discerned that statements were recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, and he never retracted his statements nor raised any complaint of recording of statements under threat, stress or duress by the officers of DGGI, till the case has come to the undersigned for final stage of adjudication. Therefore, the plea taken by the assessee that the statement were given under stress, pressure and duress is not acceptable as the same appears to be an afterthought. I find that the proceedings under Section 14 of Central Excise Act, 1944 is deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860) and if any retraction of the confession has to be made, the same should be made before the same authority who originally recorded the statement. I am of the view that merely alleging the recording of the statement being done under pressure or stress at the adjudication stage, can not take away the evidential value of the statements. Therefore, I find that the statements recorded during the investigation process have vital evidence value and can be relied upon in the adjudication process. In this regard, I rely on the decision of the Tribunal in the case of P.B. NAIR C&F PVT. LTD. Vs. Commissioner of Custom (General), Mumbai reported at 2015 (318) E.L.T. 437 (Tri. - Mumbai), wherein the tribunal at para 5.5 held that the *Confessional statements never retracted before the authority before whom the statement was recorded, belated retractions of statements after about one and half years cannot take away the evidentiary value*



of original statement. I also taken support of the decision of the Hon'ble High Court of Delhi in the case of H.R. SIDDIQUE Vs. DIRECTOR, ENFORCEMENT DIRECTORATE reported at 2015 (318) E.L.T. 182 (Del.), wherein the Hon'ble High court observed that "Had the appellant subjected to threat, coercion or pressure, as alleged by him rather belatedly, he would have retracted his confessional statement soon after making the same once the alleged threat, coercion or pressure ceased to influence the action of appellant - Appellant failed to disclose as to how he was pressurized, coerced, or tortured, and by whom, when he made the earlier confessional statement".

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

ORDER

- (i) I confirm the demand of Service Tax of Rs. 5,75,50,059/- (Rupees Five Crore Seventy Five Lakhs Fifty Thousand and Fifty Nine) not paid/short paid on providing taxable services during the period from April, 2013 to June, 2017 and order to recover the same from M/s. Indra under proviso to Section 73(1) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017;
- (ii) I order to appropriate the Service Tax amount of Rs. 71,20,000/- (Including Cess) voluntarily paid by M/s Indra during investigation, their Service Tax liability;
- (iii) I order to charge Interest and order to recover the same from M/s. Indra under Section 75 of the Finance Act, 1994, read with Section 174 of CGST Act, 2017 on the Service Tax amount at (i) above;
- (iv) (a). I impose Penalty of Rs. 10,000/- on M/s. Indra for contravention of provisions of the Finance Act, 1994 under Section 77(1)(b) of the Finance Act, 1994, read with Section 174 of CGST Act, 2017;
- (b). I impose Penalty of Rs. 10,000/- on M/s. Indra for contravention of provisions of the Finance Act, 1994 under Section 77(1) (e) of the Finance Act, 1994, read with Section 174 of CGST Act, 2017; and
- (v) I impose penalty of Rs. 5,75,50,059/- on M/s. Indra under Section 78 of the Finance Act, 1994, read with Section 174 of CGST Act, 2017, for suppression and mis-declaration of correct taxable. value and evasion of Service Tax with deliberate intention to evade Service Tax on the aforesaid taxable services. I refrain from imposing penalty on M/s. Indra under



Section 76 of the Finance Act, 1994, read with Section 174 of CGST Act, 2017.

- (vi) I impose Penalty of Rs. 1,00,000/- on Shri Shrikant Rambhuvan Tiwari, Director of M/s Indra under Section 78A of the Finance Act, 1994, read with Section 174 of CGST Act, 2017 for wilfully suppressing the facts and thereby evading Service Tax liability.

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.

Date: .03.2022.

By Regd. Post AD./Hand Delivery
F. No. STC/15-32/OA/2019

To
M/s. Indra Security & Allied Services Private Limited
302, Narayan Complex, Opp. Havmor Restaurant,
Navrangpura, Ahmedabad -380009

Shri Shrikant Rambhuvan Tiwari, Director
M/s. Indra Security & Allied Services Private Limited,
302, Narayan Complex, Opp. Havmor Restaurant,
Navrangpura, Ahmedabad -380009
Copy to:

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



