


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(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/15-219/OA/2020**

DIN- 20221164WT000000E50A

आदेश की तारीख / Date of Order : 16.11.2022

जारी करने की तारीख / Date of Issue : 16.11.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-25/2022-23

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

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

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

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

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

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

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

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

हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

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

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल, उसकी भी उतनी ही, की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से कम प्रतियाँ संलग्न की जाएंगी म 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. STC/15-219/OA/2020 dated 30.03.2021 issued to M/s. Rajkamal Builders Private Limited, "B/15, Basement, Ajanta Commercial Centre, Ashram Road, Ahmedabad - 380009.

ORDER-IN-ORIGINAL NO. AHM-EXCUS -25/2022-23

M/s. Rajkamal Builders Private Limited, "B/15, Basement, Ajanta Commercial Centre, Ashram Road, Ahmedabad - 380009 were issued Show Cause Notice No. STC/15-219/OA/2020 dated 30.03.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

Brief facts of the case pertaining to Show Cause Notice No. STC/15-219/OA/2020 dated 30.03.2021 are as follows:

1. Analysis of "Sales/Gross Receipts from Services (value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J) and "Gross Value of Services Provided" of M/s. Rajkamal Builders Private Limited, "B/15, Basement, Ajanta Commercial Centre, Ashram Road, Ahmedabad - 380009 (hereinafter referred to as the "Assessee" for sake of brevity) was carried out by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and details of the analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC). On the basis of the data shared by the CBDT, it appeared that the assessee had earned income by providing services on which Service Tax was leviable; it also appeared that the Assessee had rendered such taxable services without obtaining registration and thereby had also not made the payment of applicable Service Tax.
2. Therefore, in order to ascertain the veracity of the all the above issues, letters dated 21.01.2021 & 01.03.2021 were issued to the Assessee by the jurisdictional range office of the Central GST Commissionerate, Ahmedabad (North), Ahmedabad (herein after referred to as the "Department" for sake of brevity), with a request to provide relevant information/details/documents. However, the Assessee did not reply/comply with either of the letters and also did not submit the required information/details/ documents to the department.
3. With effect from 01.07.2012, the negative list regime came into existence under which all services were taxable and only those services that were mentioned in the negative list were exempted. The nature of activities carried out by the Assessee appeared to be covered under the definition of service and not covered under the Negative List as given in the Section 66D of the Finance Act, 1994, as amended from time to time.

4. Since the assessee did not submit the required details of services provided during the Financial Year 2015-16, the service tax liability of the Assessee had to be ascertained on the basis of income mentioned in the ITR returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department was considered as the total taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.
5. By the act of non-compliance and non-submission of any information to the department, it appeared that the Assessee had contravened the following provisions of Chapter-V of the Finance Act, 1994, the Service Tax Rules, 1994:
- i. Section 69(1) of the Finance Act, 1994 read with Notification No. 33/2012-Service Tax dated 26.06.2012 in as much as they had failed to obtain Service Tax Registration
 - ii. Section 67 of the Finance Act, 1994 in as much as they had failed to determine the correct value of taxable service provided by them
 - iii. Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules 1994 in as much as they had failed to assess their tax liability and had also failed to furnish returns in such form i.e. ST3 Returns, in such manner and at such frequency as mandated
 - iv. Section 66B and Section 68 of the Finance Act, 1994 read with Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they had failed to pay the Service Tax at the appropriate rate within the prescribed time and in such manner as provided under the said provision
 - v. Section 77 of the Finance Act, 1994, in as much as they had failed to file correct and true ST3 Returns,
6. No data was shared by the CBDT for the subsequent period of 2016-17 and 2017-18 (Upto June 2017), therefore at the time of issuance of Show Cause Notice it was not possible to quantify non-payment of Service Tax if any, for the period of F.Y. 2016-17 and 2017-18 (Upto June 2017).
7. Unquantified demand at the time of issuance of SCN.
Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified that:
'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the assessee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon

Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'

8. Accordingly, if any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action was to be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period 2016-17 and 2017-18 (upto June-2017) covered under subject Show Cause Notice, was also to be recovered from the assessee.

9. All these acts of contravention of the provisions of Section 68 and 70 of the Finance Act, 1994 read with Rule 6 and 7 of Service Tax Rules, 1994 appeared to be liable for penalty under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time. The said assessee was also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.

10. The assessee had failed to obtain service tax registration/furnish the information called for and contravened various provision of Finance Act, 1994 and Rules made there under, and thereby rendered themselves liable for penalty under Section 77(1)(a), 77(1)(c) and 77(2) of the Finance Act, 1994.

11. Therefore, as per the analysis shared by the CBDT the Service tax payable on the basis of value of "sales of services under Sales/Gross Receipts From Services (Value from ITR)" or "Total Amount Paid/Credited Under Section 194C, 194I, 194H, 194J" for the financial year 2015-16 was assessed as per the Table-A below:-

TABLE-A

(Amount in Rs)

Sl. No.	F.Y.	TOTAL VALUE for TDS (including 194C,194Ia,194Ib,194J,194)	TOTAL SALE OF SERVICES (ITR)	HIGHER VALUE (VALUE OF SALE OF SERVICES) OR (TOTAL VALUE for TDS)	Service Tax rate	Service Tax Payable
1	2015-16	180308369	180308369	180308369	14.5%	26144713/-
TOTAL						26144713/-

12. It appeared that the assessee had not obtained Service Tax Registration from the department for the services provided by them during F.Y. 2015-16 to F.Y. 2017-18 (up to June, 2017). It appeared that the assessee had not paid actual service tax by way of willful suppression of facts and in contravention of provision of the Finance Act, 1994 and rules made there under relating to levy and collection of service tax, with intent to evade payment of service tax. Hence, the service tax amounting to Rs. 2,61,44,713/- appeared to be recoverable from the assessee, under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, alongwith interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. The provisions of Finance Act, 1994 read with Service Tax Rules, 1994 framed there under, were saved by the Section 174(2) of the CGST Act, 2017.

13. The Assessee was also given the opportunity for pre-SCN consultation on 26.03.2021, but they did not avail the same.

14. Therefore, a Show Cause Notice No.STC/15-219/OA/2020 dated 30.03.2021 was issued by the Commissioner, Central GST & Central Excise, Ahmedabad North to the Assessee (M/s. Rajkamal Builders Private Limited) asking them as to why;

- (i) Service Tax of Rs. **2,61,44,713/-** which was not paid for the financial year 2015-16, should not be demanded and recovered from them under the proviso to Sub- Section (1) of Section 73 of Finance Act,1994;
- (ii) Service Tax liability not paid during the Financial Year 2016-17 and 2017-18 (upto June 2017), as and when ascertained in future, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994;

- (iii) Interest at the appropriate rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;
- (iv) Penalty under the provisions of Section 77(1)(a), 77(1)(c) & 77(2) of the Finance Act, 1994 as amended, should not be imposed on them ;
- (v) Penalty under Section 78 of the Finance Act, 1994, as amended, should not be imposed upon them for suppressing the full value of taxable services and material facts from the department resulting into non-payment of Service Tax as explained herein above.

DEFENCE REPLY:

15. The assessee vide their letter dated 04.06.2022 (received by the department on 09.06.2022) submitted their reply to the Show Cause Notice dated 30.03.2021, wherein they have inter alia stated as under –

- a. That they are engaged in providing construction or erection services of building, roads, bridges, drains, culverts etc. as a contractor for Government Authorised or for any person (sic)
- b. That the adjudicating authority has erred in initiation of the proceedings after repeal of the erstwhile Finance Act, 1994 and Rules thereof; that the period of demand from April 2015 to September 2016 has become time barred on 25.10.2019; that the demand proceedings has been initiated after the repeal of the Finance Act, 1994; that Section 174 of the CGST Act contains Repeal and Saving Clauses. Sub-section (1) of Section 174 thereof provides to save in accordance to provisions of CGST Act, 2017 and repeals the erstwhile Act; that Sub-section (2) of Section 174 is a Saving Clause and it inter alia provides that the amendment of the Finance Act, 1994 to the extent mentioned in Sub-section (1) of Section 173, shall not revive anything not in force or existing at the time of such amendment or repeal; that on perusal of the said clause of Sub-section (2) of Section 174 and other clauses, would prima facie show that there was no saving of Rule 5A in such manner that fresh proceeding for audit could be initiated in exercise of powers under the said Rule; that Section 174 only provides saving of proceedings initiated prior to repeal of the Finance Act, 1994; hence the entire proceeding to initiate verification in the case of the assessee is illegal, void and bad in the eyes of law; that they rely on the judgements (i)

OWS Warehouse Services LLP v. Union of India, of the Hon'ble Gujarat High Court (ii) M/s. Sulabh International Social Service Organization Vs. Union of India 1599 of 2019 of Hon'ble Jharkand High Court (iii) M/s. T.R. Sawhney Motors Pvt. Ltd. Versus Union of India and (iv) W.P. (C) 2138/2019 & cm Appl. No. 10002/2019

- c. That the adjudicating authority has erred in proposing levy of service tax of Rs. 2,61,44,713/-; that the summary of details of turnover made and net profit declared is as under :

Particulars	F.Y. 2015-16	F.Y. 2016-17	F.Y. 2017-18
Turnover	18,03,08,369/-	8,26,00,591/-	14,39,21,968/-
Net Profit/ Net Loss	(1,00,15,442/-)	(2,46,96,965/-)	(99,82,035/-)

That they had submitted copy of sales register, profit and loss account, balance sheet and Form 26 AS; that the summary of sales made by them is as under:

Sl. No.	Name of Party	F.Y. 2015-16 Sales (in Rs.)	F.Y. 201-17 Sales (in Rs.)	01.04.2017 to 30.06.2017 Sales (in Rs.)	Work done	Remarks
1	PWD NH Division Bilaspur	2,77,69,814	-	-	Construction of Four Lanning cement concrete road from Raipur to Bilaspur	Work Order
2	PWD Div.1, Raipur	4,56,33,473	2,77,01,000	1,45,78,080	Construction of Six Lanning cement concrete road from Khamtarai to Bhanpuri & Bhanpuri to Dhaneli	Work Order
3	Sew Infrastructure Ltd.	6,49,13,496	1,76,59,658	-	Construction of Sheorinarayan Barrage with Vertical lift Gates and other appurtenant work across Mahanadi River	Work Order
4	Harsi High Level Canal Division-2, Gwalior	3,74,23,529	3,65,85,236	4,78,49,316	Construction of Tunnel	Work Order
5	Patel Infrastructure Pvt. Ltd., Anand	45,68,057	23,23,697	-	Sub Contract receipt for road construction	Invoice
6	Shiv Build (I) Pvt. Ltd.	-	30,00,000	-	Sub contract receipt for road construction	Invoice
7	Gujarat	-	3,31,000	69,09,400	Sub contract	Invoice

	Engineers				receipt for road construction	
	TOTAL SALES	18,03,08,369	8,26,00,591	6,93,36,796		

That they are engaged in providing exempted services in accordance to the Notification No. 25/2012-ST; that from reading of the notification, it is clear that they are exempted from service tax thus they are in turn exempted from levy of service tax on works contract services; that in support of their submission they rely on the judgement of Hon'ble CESTAT, Allahbad in the cases of M/s. Quest Engineers & Consultant Pvt. Ltd. vs. Commissioner, CGST – Final Order No. 70226/2021 dated 28.09.2021

- d. That the adjudicating authority has erred in proposing levy of interest under provision of Section 75 of the Finance Act, 1994 as they are providing exempted service which are not liable for Service Tax and therefore no interest for delayed payment of Service Tax can be charged.
- e. That the adjudicating authority has erred in proposing levy of penalty under provision of Section 77(1)(a), 77(1)(c) & 77(2) of the Finance Act, 1994 in as much as they were not liable to get Service Tax Registration as they were providing exempted service.
- f. That the adjudicating authority has erred in proposing levy of penalty under provision of Section 78 of the Finance Act, 1994 as their case is squarely covered by the decision of the jurisdictional High Court and hence the demand raised would be annulled and once the quantum itself has been settled in their favour, no penalty could have been levied.

16. The assessee, in support of the arguments put forth by them, has submitted the following documents.

- a. Form 26AS the F.Y. 2015-16, 2016-17 and 2017-18
- b. Profit & Loss Account / Balance Sheet for the F.Y. 2015-16, 2016-17 and 2017-18
- c. Receipt Ledger Account for the F.Y. 2015-16 of PWD NH Division Bilaspur, PWD Div.1, Raipur, Sew Infrastructure Ltd., Harsi High Level Canal Division-2, Gwalior and Patel Infrastructure Pvt. Ltd., Anand
- d. Sales Ledger for F.Y. 2017-18 (1.4.2017 to 30.06.2017) of PWD Div.1, Raipur, Harsi High Level Canal Division-2 and Gujarat Engineers

- e. Copy of Work Orders (1) PWD NH Division, Bilaspur (2) PWD Div.1, Raipur (3) E/E Water Resources Division, Janjgir HQ Champa (C.G.) (4) Harsi High Level Canal Division
- f. Subcontract agreement entered by the assessee with M/s. SEW Infrastructure Ltd.
- g. Invoice dtd. 19.02.2016 issued to Shiv Build India Ltd., dtd. 18.11.2015 issued to Patel Infrastructure Ltd., dtd. 10.02.2017 to Gujarat Engineers

PERSONAL HEARING:

17. Personal hearings were granted to the assessee on 08.12.2021, 07.01.2022, 20.04.2022, 17.05.2022, 14.06.2022, 21.07.2022, 01.09.2022. However the Assessee did not appear for personal hearing on any of the above mentioned dates. Finally the personal hearing was fixed on 11.10.2022 and the same was attended by Shri Hem Chhajed, Chartered Accountant on behalf of the Assessee. During the course of personal hearing Shri Hem Chhajed reiterated the contents of their written submission dated 04.06.2022. He also submitted that the service provided by the assessee are exempted vide Notification NO.25/2012-ST, as the assessee was engaged in construction of buildings, bridges, drains on behalf of the government.

17.1 Subsequent to the personal hearing dated 11.10.2022, the Assessee has submitted the following additional documents in support of their say -

- a. R.A. Bill Cash Book Voucher No. 04 dated 03.05.2017 for Rs. 34,89,501/- with regard to their W.O. No. 2240/SAC/2011-12 dated 10.10.2011 of the Executive Engineer, Harsi High Level Canal Division, No. 2, Gwalior (M.P.)
- b. R.A. Bill Cash Book Voucher No. 43 dated 30.05.2017 for Rs. 20,67,425/- with regard to their W.O. No. 2240/SAC/2011-12 dated 10.10.2011 of the Executive Engineer, Harsi High Level Canal Division, No. 2, Gwalior (M.P.)
- c. R.A. Bill No. 37 of 2015 for Rs. 98,83,337/- with regard to their W.O. No. 12/DL/2012-13 dated 18.04.2012 of the Executive Engineer, PWD Div.1, Raipur.
- d. R.A. Bill Voucher No. 39 dated 28.08.2015 for Rs. 37,26,188/- with regard to their W.O. No. 19/DL/2011-12 dated 27.08.2011 of the Executive Engineer, PWD N.H. Division, Bilaspur (C.G.)

- e. Letter dated 19.02.2016 of M/s. Shiv BuildIndia Private Limited regarding Work Order for PQC Laying work
- f. Letter No. PIPL/Wo/94/2015-16 dated 18.11.2015 and 18.01.2016 of M/s. Patel Infrastructure Private Limited regarding Work Order for Concrete Laying work
- g. Letter No. GE/W.O.No./11/2016 dated 01.02.2016 of M/s. Gujarat Engineers regarding Work Order for DLC Laying Work basis for NH-48 Road Project.

DISCUSSION AND FINDINGS:

18. I have carefully gone through the facts of the case and records available in the case file, the Show Cause Notice dated 30.03.2021, the defense reply dated 04.06.2022, the documents submitted alongwith the defense reply dated 04.06.2022 and oral submissions made by the assessee during the course of personal hearing on 11.10.2022 and the additional documents submitted by the Assessee subsequent to the personal hearing dated 11.10.2022. Accordingly, I find that the following issues are required to be decided by me as an adjudicating authority –

- i. Whether the Service Tax has been correctly demanded vide the Show Cause Notice dated 30.03.2021.
- ii. Whether the contention of the Assessee that the services provided by them are exempted as per Notification No. 25/2012 dated 20.06.2012 is sustainable or not.
- iii. Whether the Service Tax can be demanded under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time or not.

19. I find that the genesis of the demand has risen from the analysis of the 26AS and ITR of the Assessee by the CBDT and the same being shared with the department for the period 2015-16. The CBDT found that during the year 2015-16, the Assessee has rendered services and had received income on such services without payment of service tax on such income. Therefore for verification of the apparent non-payment of Service Tax by the Assessee, the department, prior to the issuance of Show Cause Notice, had called for information/documents from the Assessee through its jurisdictional office's letters dated 21.01.2021 and 01.03.2021. However, the Assessee did not submit any reply or information called for by the jurisdictional office. The

Assessee was also given the opportunity for pre-SCN consultation on 26.03.2021, but they did not avail the same. Therefore, the department had no option but to issue a formal demand for recovery of unpaid Service Tax from the Assessee. Accordingly SCN dated 30.03.2021 was issued to the Assessee demanding service tax of Rs. 2,61,44,713/- (Rs. two crore sixty one lakhs forty four thousand seven hundred thirteen only) on the value of taxable service, provided by the Assessee amounting to Rs. 18,03,08,369/- for FY 2015-16.

20. I also find that it has been stated in the SCN that the Service Tax liability not paid by the Assessee during the Financial Year 2016-17 and 2017-18 (upto June, 2017), should be ascertained in future and such Service Tax assessee should be demanded and recovered from the Assessee under proviso to Sub-section (1) of Section 73 of Finance Act, 1994. I find that the Assessee in their reply dated 04.06.2022, has submitted the information regarding income earned by them from the services rendered by them during the period 2015-16, 2016-17 and to 2017-18 (01.04.2017 to 30.0.2017). As per their own admission, their Income from provision of services for the period 2015-16, 2016-17 and 2017-18 (01.04.2017 to 30.06.2017) is as under:

Particulars	F.Y. 2015-16	F.Y. 2016-17	F.Y. 2017-18 (01.04.2017 to 30.06.2017)
Turnover	18,03,08,369/-	8,26,00,591/-	6,93,36,796/-

20.1 Further, the income of the assessee as per Section 194I(a) and 194(C) reflected in Form 26AS and their income as per the P&L Account for the relevant period is as under:

Sl. No.	Name of the deductor as per Form 26AS	Total Income as per Form 26AS as per Section 194I(a) and 194(C)		
		2015-16	2016-17	2017-18 (Upto 30.06.2017)
	Total Income as per Form 26AS	184231489	78709854	38825765
	Income as per Profit & Loss Account	180308369	82600591	69336796

20.2 I also find that the demand for the year 2015-16 in the Show Cause Notice has been raised based on the income reflected in the P&L Account of the Assessee for the relevant F.Y. 2015-16, and therefore, for the sake of consistency in computation of tax for the period 2016-17 and 2017-18 (01.04.2017 to 30.06.2017), I would also rely on the Income reflected in the P&L Account for the period 2016-17 and 2017-18 (01.04.2017 to 30.06.2017 as per details given under:

Sl. No.	Year	Total Taxable Value (Rs.)
1	2015-16	18,03,08,369/-
2	2016-17	8,26,00,591/-
3	2017-18 (01.04.2017 to 30.06.2017)	6,93,36,796/-
	TOTAL	33,22,45,756/-

20.3 Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the taxable value of Rs. 33,22,45,756/- for the Financial Year 2015-16, 2016-17 and 2017-18 (01.04.2017 to 30.06.2017).

21. I find that there is no dispute as far as the receipt of the consideration for provision of service by the assessee is concerned. The Assessee has admittedly stated in their defense reply dated 04.06.2022 that they had provided construction services to government and their only contention is that the services provided by them are exempted services. The Assessee has also contended that the services provided by them were covered under Sr. No. 12(d), 12(e), 12A, and 13(a) of Notification No. 25/2012-ST dated 20.06.2012, accordingly they were not liable to pay service tax on provision of such services. Accordingly, I find that there is no dispute as far as the provision of services and also receipt of income on provision of such services by the assessee for the period from 2015-16 to 30.06.2017 as given below:

Sl. No.	Year	Total Taxable Value (Rs.)
1	2015-16	18,03,08,369/-
2	2016-17	8,26,00,591/-
3	2017-18 (01.04.2017 to 30.06.2017)	6,93,36,796/-
	TOTAL	33,22,45,756/-

22. Therefore, the subsequent issue that needs to be decided is whether the services provided by the assessee were eligible for exemption under Notification No. 25/2012-ST vide Entry 12(d), 12(e), 12A, and 13(a) or otherwise as claimed by the assessee.

22.1 To appreciate the issue in the correct perspectives, relevant extracts / Entries of Notification No. 25/2012-ST are reproduced as follows:

Relevant Entry Numbers of Notification No. 25/2012-ST dated 20.06.2012:

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

- (a)
- (b)
- (c)
- (d) canal, dam or other irrigation works
- (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
- (f)

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

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

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

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

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

Provided that nothing contained in this entry shall apply on or after the 1st April, 2020;]

(Inserted vide Notification No. 9/2016- ST dated, 1.3.2016 w.e.f.1.3.2016.)"

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

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

.....
(e)

23. I find that the Assessee, in support of the arguments put forth by them, have submitted the following documents.

- a. Form 26AS the F.Y. 2015-16, 2016-17 and 2017-18
- b. Profit & Loss Account / Balance Sheet for the F.Y. 2015-16, 2016-17 and 2017-18
- c. Receipt Ledger Account for the F.Y. 2015-16 of PWD NH Division Bilaspur, PWD Div.1, Raipur, Sew Infrastructure Ltd., Harsi High Level Canal Division-2, Gwalior and Patel Infrastructure Pvt. Ltd., Anand
- d. Sales Ledger for F.Y. 2017-18 (1.4.2017 to 30.06.2017) of PWD Div.1, Raipur, Harsi High Level Canal Division-2 and Gujarat Engineers
- e. Copy of Work Orders (1) PWD NH Division, Bilaspur (2) PWD Div.1, Raipur (3) E/E Water Resources Division, Janjgir HQ Champa (C.G.) (4) Harsi High Level Canal Division
- f. Subcontract agreement entered by the assessee with M/s. SEW Infrastructure Ltd.
- g. Invoice dtd. 19.02.2016 issued to Shiv Build India Ltd., dtd. 18.11.2015 issued to Patel Infrastructure Ltd., dtd. 10.02.2017 to Gujarat Engineers
- h. R.A. Bill Cash Book Voucher No. 04 dated 03.05.2017 for Rs. 34,89,501/- with regard to their W.O. No. 2240/SAC/2011-12 dated 10.10.2011 of the Executive Engineer, Harsi High Level Canal Division, No. 2, Gwalior (M.P.)
- i. R.A. Bill Cash Book Voucher No. 43 dated 30.05.2017 for Rs. 20,67,425/- with regard to their W.O. No. 2240/SAC/2011-12 dated 10.10.2011 of the Executive Engineer, Harsi High Level Canal Division, No. 2, Gwalior (M.P.)
- j. R.A. Bill No. 37 of 2015 for Rs. 98,83,337/- with regard to their W.O. No. 12/DL/2012-13 dated 18.04.2012 of the Executive Engineer, PWD Div.1, Raipur.
- k. R.A. Bill Voucher No. 39 dated 28.08.2015 for Rs. 37,26,188/- with regard to their W.O. No. 19/DL/2011-12 dated 27.08.2011 of the Executive Engineer, PWD N.H. Division, Bilaspur (C.G.)
- l. Letter dated 19.02.2016 of M/s. Shiv BuildIndia Private Limited regarding Work Order for PQC Laying work
- m. Letter No. PIPL/Wo/94/2015-16 dated 18.11.2015 and 18.01.2016 of M/s. Patel Infrastructure Private Limited regarding Work Order for Concrete Laying work

n. Letter No. GE/W.O.No./11/2016 dated 01.02.2016 of M/s. Gujarat Engineers regarding Work Order for DLC Laying Work basis for NH-48 Road Project.

24. In order to verify as to whether the income received by the Assessee is exempt from payment of Service Tax in terms of relevant entries of Notification No. 25/2012-ST dated 20.06.2012 and whether such exemption being claimed by the Assessee is corroborated with the documents submitted by them, it is necessary to analyze each and every documents submitted by the Assessee. Accordingly, my observations on the same are as below -

- a. Copies of Work Orders of (1) PWD NH Division, Bilaspur (2) PWD Div.1, Raipur (3) E/E Water Resources Division, Janjgir HQ Champa (C.G.) (4) Harsi High Level Canal Division, submitted by the Assessee are dated 27.08.2011, 18.04.2012, 29.07.2011 and 10.10.2011 respectively. I find that scope of work covered by these work orders are covered under the Notification No. 25/2012 and the same is eligible for exemption. However, the respective receipt ledger of PWD NH Division Bilaspur, PWD Div.1, Raipur, Sew Infrastructure Ltd., Harsi High Level Canal Division-2, Gwalior and Patel Infrastructure Pvt. Ltd., Anand submitted for the year 2015-16 does not have any reference of the Work Orders submitted by the Assessee, which makes it well-nigh impossible for me to infer that the income received from the recipients is for the same referred work orders.
- b. Similarly with regard to Sales Ledger for F.Y. 2017-18 (1.4.2017 to 30.06.2017) of PWD Div.1, Raipur, Harsi High Level Canal Division-2 and Gujarat Engineers there is no reference of work orders of the recipients on the basis of which it can be derived with certainty that the services were provided for a particular work order or for that matter exempted services were provided as claimed by the Assessee.
- c. Similarly the letters and invoices pertaining to Shiv Build India Ltd., Patel Infrastructure Ltd., Gujarat Engineers also do not have any reference of work orders from government authority to these recipients of the Assessee for execution of exempted services on the basis of which it can be derived with surety that the services were provided for a particular work order.
- d. However, I do find that the Assessee has submitted few R.A. Bills on the basis of which it is established that they have rendered exempted services to that extent and that they are eligible for

exemption of the amount involved in such R.A. Bills. The details of such R.A. Bills are as given below:

- i. R.A. Bill Cash Book Voucher No. 04 dated 03.05.2017 for Rs. 34,89,501/- with regard to their W.O. No. 2240/SAC/2011-12 dated 10.10.2011 of the Executive Engineer, Harsi High Level Canal Division, No. 2, Gwalior (M.P.)
- ii. R.A. Bill Cash Book Voucher No. 43 dated 30.05.2017 for Rs. 20,67,425/- with regard to their W.O. No. 2240/SAC/2011-12 dated 10.10.2011 of the Executive Engineer, Harsi High Level Canal Division, No. 2, Gwalior (M.P.)
- iii. R.A. Bill No. 37 of 2015 for Rs. 98,83,337/- with regard to their W.O. No. 12/DL/2012-13 dated 18.04.2012 of the Executive Engineer, PWD Div.1, Raipur.
- iv. R.A. Bill Voucher No. 39 dated 28.08.2015 for Rs. 37,26,188/- with regard to their W.O. No. 19/DL/2011-12 dated 27.08.2011 of the Executive Engineer, PWD N.H. Division, Bilaspur (C.G.)

24.1 After considering/allowing the exemption for the amounts reflected above R.A. Bills, the details of the total client wise taxable services rendered by the Assessee are derived as below -

Sl. No.	Name of Party	F.Y. 2015-16 to 2017-18 (01.04.2017 to 30.06.2017) Total Sales (in Rs.)	Value deductible on the basis of documents given (Rs.)	F.Y. 2015-16 to 2017-18 (01.04.2017 to 30.06.2017) Net Sales (in Rs.)	Work done	Remarks
1	PWD NH Division Bilaspur	2,77,69,814	37,26,188	2,40,43,626	Construction of Four Lanning cement concrete road from Raipur to Bilaspur	Work Order
2	PWD Div.1, Raipur	8,79,12,553	98,83,337	7,80,29,216	Construction of Six Lanning cement concrete road from Khamtarai to Bhanpuri & Bhanpuri to Dhaneli	Work Order
3	Sew Infrastructure Ltd.	8,25,73,154	0	8,25,73,154	Construction of Sheorinarayan Barrage with Vertical lift Gates and other appurtenant work across Mahanadi River	Work Order
4	Harsi High Level Canal Division-2, Gwalior	12,18,58,081	55,56,926	11,63,01,155	Construction of Tunnel	Work Order
5	Patel Infrastructure Pvt. Ltd.,	68,91,754	0	68,91,754	Sub Contract receipt for road construction	Invoice

	Anand					
6	Shiv Build (I) Pvt. Ltd.	30,00,000	0	30,00,000	Sub contract receipt for road construction	Invoice
7	Gujarat Engineers	72,40,400	0	72,40,400	Sub contract receipt for road construction	Invoice
	TOTAL SALES	33,72,45,756	1,91,66,451	31,30,79,305		

The summarized taxable value for the period 2015-16, 2016-17 and 2017-18 (01.04.2017 to 30.06.2017) worked out is as under -

Sl. No.	Year	Gross Total Taxable Value (Rs.)	Value deductible on the basis of documents given	Net Taxable Value (Rs.)
1	2015-16	18,03,08,369/-	1,36,095,25/-	16,66,98,844/-
2	2016-17	8,26,00,591/-	-	8,26,00,591/-
3	2017-18 (01.04.2017 to 30.06.2017)	6,93,36,796/-	55,56,926/-	6,37,79,870/-
	TOTAL	33,22,45,756/-	1,91,66,451/-	31,30,79,305/-

25. I find that the Assessee has contended that the period of demand from April 2015 to September 2016 has become time barred on 25.10.2019. They have relied on the case law 2022 (58) G.S.T.L. 345 (Tri. - All.) in the matter of M/s. Quest Engineers & Consultant Pvt. Ltd. vs. Commissioner, CGST - Final Order No. 70226/2021 dated 28.09.2021.

25.1 I also find that the Assessee has not complied with any request for information sought by the department. The Assessee was also given the opportunity for pre-SCN consultation on 26.03.2021, but they did not avail the same. They have also not co-operated the department in the verification of the issue before the issue of the Show Cause Notice. The basis of the Show Cause Notice is the data shared by the CBDT and not on any data provided by the Assessee. In the case law cited by the Assessee, the appellant i.e. M/s. Quest Engineers & Consultant Pvt. Ltd. had obtained Service Tax registration, whereas in the present issue the Assessee has never obtained Service Tax Registration. Therefore, the reliance on the case law 2022 (58) G.S.T.L. 345 (Tri. - All.) in the matter of M/s. Quest Engineers & Consultant Pvt. Ltd. is not in consonance with the facts of the issue of the current case. Therefore, I hold that the Assessee is guilty of suppression of facts, wilful mis-statement and contravention of provisions of the Finance Act, 1994 and Service Tax Rules, 1994 with intent to evade the payment of Service Tax. Accordingly, I also hold that Service Tax has been correctly demanded vide the SCN dated 30.03.2021 under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time.

26. I also find that the Assessee has also contended that the adjudicating authority has erred in initiation of the proceedings after repeal of the erstwhile Finance Act, 1994 and Rules thereof; that Section 174 only provides saving of proceedings initiated prior to repeal of the Finance Act, 1994; hence the entire proceeding to initiate verification in the case of the assessee is illegal, void and bad in the eyes of law. In support of their contention they have relied on the following judgements -

- (i) OWS Warehouse Services LLP v. Union of India, of the Hon'ble Gujarat High Court
- (ii) M/s. Sulabh International Social Service Organization Vs. Union of India 1599 of 2019 of Hon'ble Jharkand High Court
- (iii) M/s. T.R. Sawhney Motors Pvt. Ltd. Versus Union of India and
- (iv) W.P. (C) 2138/2019 & cm Appl. No. 10002/2019

26.1 I find that the contention of the Assessee is not correct in as much as that the provisions of Section 174(2)(e) empowers the department to initiate inquiry/verification, issue demand and enforce recovery under the erstwhile Acts and Rules. The case laws cited by the Assessee are not relevant in the present situation/context. In a similar matter in the case of JSK Marketing Ltd. v. Union of India [2021 (46) G.S.T.L. 369 (Bom.)] the Hon'ble Bombay High Court had ruled that under the provisions of Section 174(2) of the CGST Act, 2017 the department is empowered to enforce demand and recovery of any non-payment of Service Tax that may have occurred prior to the commencement of CGST Act, 2017 w.e.f. 01.07.2017. The said ruling of the Hon'ble Bombay High Court was upheld by the Hon'ble Supreme Court in the Special Leave to Appeal (C) No. 13774 of 2021. Accordingly, I hold that the demand has been correctly made by the department by invoking the provisions of Section 174 of the CGST Act, 2017.

27. Therefore, on the basis of documents submitted by the Assessee, I hold that out of the total value of services of Rs. 18,03,08,369/- for the period 2015-16, they are eligible for exemption under Notification 25/2012 for the value of Rs. 1,36,09,525/- only, and they are liable to pay Service Tax on the value of Rs. 16,66,98,844/- (Rs. 18,03,08,639/- minus Rs. 1,36,09,525/-). Therefore out of the total demand of Rs. 2,61,44,713/- for the period 2015-16 the Assessee is liable to pay Service Tax of Rs. 2,41,71,332/- (@ 14.5% on Rs. 16,66,98,844/-) and the demand of Service Tax to the tune of Rs. 19,73,381/- (@14.5% on Rs. 1,36,09,525/-) is liable to be dropped.

27.1 Further, I find that due to non-submission of information by the Assessee and also since no data was shared by the CBDT for the period of 2016-17 and 2017-18 (01.04.2017 to 30.06.2018), it was stated in the charging para No. 14(ii) of the SCN dated 30.03.2021 that as and when the Service Tax liability is ascertained in future, the Service Tax would be demanded from the Assessee for period of 2016-17 and 2017-18 (01.04.2017 to 30.06.2018) under the proviso to Sub-section (1) of Section 73 of the Finance Act, 1994. Therefore on the basis data/documents submitted by the Assessee during the adjudication proceedings subsequent to the issue of the SCN, the value of taxable service rendered by the Assessee is Rs. 15,19,37,387/- (Rs. 8,26,00,591/- plus Rs. 6,93,36,796/-) as worked out in para 24.1 above. However, out of the taxable value of Rs. 15,19,37,387/-, the Assessee has submitted the RA Bills for Rs. 55,56,926/- with respect to the work order of Harsi High Level Canal Division-2, Gwalior for construction of Canal as discussed in para 24(d)(i) and 24(d)(ii) above. Therefore, I hold that the Assessee is eligible for exemption under Notification 25/2012 for the value of Rs. 55,56,926/- out of the total value of Rs. 15,19,37,387/- (Rs. 8,26,00,591/- plus Rs. 6,93,36,796/-). Accordingly they are liable to Service Tax on the net value of Rs. 14,63,80,461/- (Rs. 15,19,37,387 minus Rs. 55,56,926/-) after allowing the exemption and the total Service Tax payable by them for the period of 2016-17 and 2017-18 (01.04.2017 to 30.06.2018) is Rs. 2,19,57,070/- (@15% on 14,63,80,461/-)

27.2 Accordingly, the Assessee is liable to pay a total Service Tax of Rs. 4,61,28,402/- for the entire period of 2015-16 to 2017-18 (01.04.2017 to 30.06.2017) and an amount of Rs. 19,73,381/- is liable to be dropped from the demand for the period of 2015-16.

28. Therefore, In view of the discussion and findings in foregoing paras, I hold that the assessee is liable to pay the Service Tax of Rs. 4,61,28,402/- (Rs. Four Crores Sixty One Lakh Twenty Eight Thousand Four Hundred Two Only) under section 66B read with Rule 2 of Service Tax Rules 1994 for rendering taxable services as computed below –

Sl. No.	Year	Gross Total Taxable Value (Rs.)	Value deductible on the basis of documents given	Net Taxable Value (Rs.)	Rate of Service Tax	Service Tax Payable on the Net Taxable Value (Rs.)
1	2015-16	18,03,08,369/-	1,36,095,25/-	16,66,98,844/-	14.5%	2,41,71,332/-
2	2016-17	8,26,00,591/-	-	8,26,00,591/-	15%	1,23,90,089/-
3	2017-18 (01.04.2017 to 30.06.2017)	6,93,36,796/-	55,56,926/-	6,37,79,870/-	15%	95,66,981/-
	TOTAL	33,22,45,756/-	1,91,66,451/-	31,30,79,305/-		4,61,28,402/-

I also hold that the assessee has failed to pay service tax amounting to Rs. 4,61,28,402/-, which was required to be paid under Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules 1994 for taxable services provided during FY 2015-16, 2016-17 and 2017-18 (01.04.2017 to 30.06.2017) by them and the same is required to be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

29. Based on above facts and discussion, I find that the assessee has contravened the provisions of (i) Section 68 and 66B of the Finance Act, 1994 read with Rules 2 and 6 of the Service Tax Rules 1994, in as much as they have not paid service tax to the tune of Rs. 4,61,28,402/- though they were liable to pay the same on provision of taxable services (ii) Section 69 of Finance Act, 1994 read with Rule 4 of Service Tax Rules in as much as they have failed to obtain service tax registration as required for the person liable to pay service tax and (iii) Section 70 of Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994 in as much as they have failed to assess their correct service tax liability and have failed to file ST-3 Returns for the FY 2015-16 and 2016-17.

30. I also find that Section 75 of Finance Act, 1994 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate for the period by which crediting of tax or part thereof is delayed. I thus hold that the assessee is also liable to pay the interest on the demand of service Tax of Rs. 4,61,28,402/-

31. From the facts and discussion aforementioned, I find that in the instant case the assessee had not obtained the service tax registration though they were liable to pay service tax on taxable services rendered by them. Thus, the assessee had failed to pay legitimate service tax due to the government despite the fact that they were engaged in providing taxable services and had wrongly availed the benefit of exemption from service tax. Thus, the assessee had suppressed the material facts from the Department by not obtaining service tax registration and by not filing /showing their actual taxable income in the ST-3 Returns and also by not paying the Service Tax due to the government by them. 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 the assessee has clearly demonstrated

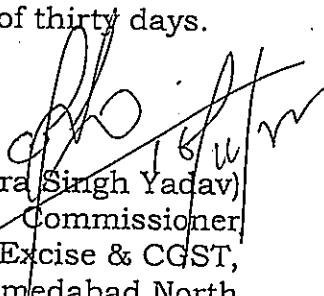
their intention to evade payment of service tax, as they were very much aware of the unambiguous provisions of Finance Act, 1994 and Rules made there under. They have failed to disclose to the department at any point of time, the fact regarding the claiming of exemption without being eligible under Notification No. 25/2012-ST as discussed in forgoing paras during FY 2015-16, 2016-17 and 2017-18 (01.04.2017 to 30.06.2017). These facts would not have come to light if the department had not initiated inquiry on the basis of data shared by the Income Tax Department. 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 have been put in place. Further, the assessee is 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 to be filed online without any supporting documents. All these operate on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provision is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is also evident that such fact of contravention and non paying the service tax by not declaring taxable value of the service provided, as discussed earlier, on the part of the assessee came to the notice of the department only when the inquiry was initiated by the department. 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. 4,61,28,402/- (including cess) is required to be recovered along with applicable interest under Section 75 of the Finance Act, 1994 from the assessee. For the same reasons, all ingredients for imposing penalty on the assessee under Section 78 exists, therefore, the assessee is also liable for penal action under the provisions of Section 78 of the Finance Act, 1994.

32. As regards, the proposal for imposition of penalty under Section 77(1)(a), 77(1)(C) and 77(2) of the Finance Act, 1994, as discussed herein above, I find that the assessee had failed to obtain the service tax registration as required under Section 69(1) of the Finance Act, 1994 as they were liable to pay service tax, thus, the assessee have rendered themselves liable to penal action under Section 77(1)(a) of the Finance Act, 1994; I also find that the assessee has failed to assess their service tax liability and has failed to file correct service tax returns as required under Section 70 of the Finance Act, 1994 read with Rule 7. of Service Tax Rules, 1994, as discussed at length hereinabove, thus, they have rendered themselves liable to penal action under Section 77(2) of the Finance Act, 1994. I also find that the Assessee has failed to furnish records/information called for by the department and thereby have rendered themselves liable for penal action under Section 77(1)(c) as well.

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

- (i) I hereby confirm the demand of service tax of Rs. 4,61,28,402/- (Rs. **Four Crore Sixty One Lakh Twenty Eight Thousand Four Hundred Two only**) for FY 2015-16, 2016-17 and 2017-18 (Upto June 2017) not paid by the assessee and order to recover the same from the assessee under proviso to Sub-section (1) of Section 73 of Finance Act, 1994. I further drop the demand of Service Tax of Rs. 19,73,381/- accordingly.
- (ii) I order to charge Interest at the appropriate rate on the demand of Service tax of Rs. 4,61,28,402/- and to recover the same from the assessee under Section 75 of the Finance Act, 1994;
- (iii) I impose penalty of Rs. 4,61,28,402/- on the assessee under the provision of Section 78 of the Finance Act, 1994.
- (iv) I impose penalty of Rs. **10,000/-** on the assessee under the provision of Section 77(2) of the Finance Act, 1994, for failure to assess their service tax liability and also for failure to file ST-3 Returns.
- (v) I impose penalty of Rs. **10,000/-** on the assessee under the provision of Section 77(1)(a) of the Finance Act, 1994, for failure to obtain service tax registration under Section 69 of the Finance Act, 1994.
- (vi) I impose penalty of Rs. **10,000/-** on the assessee under the provision of Section 77(1)(c) of Finance Act, 1994 for non furnishing of records/information which were called for by the department from the assessee.

34. 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 period of thirty days.


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

By Regd. Post AD./Hand Delivery
F.No. STC/15-219/OA/2020

Date:16.11.2022.

By Registered Post AD/By Hand Delivery

To,
M/s. Rajkamal Builders Private Limited,
"B/15, Basement, Ajanta Commercial Centre,
Ashram Road,
Ahmedabad - 380 009

Copy for information to:

1. The Principal Chief Commissioner of CGST & Central Excise, Ahmedabad Zone.
2. The Deputy/Asstt. Commissioner, Division-VII, CGST & C.Ex., Ahmedabad North.
3. The Superintendent, Range-IV, Division-VII, CGST & C.Ex., Ahmedabad North.
- ✓ 4. The Superintendent (Systems), Hq., CGST & C.Ex., Ahmedabad North.
5. Guard File.