


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods &amp; Services Tax &amp; Central Excise, Ahmedabad North, Custom House(1<sup>st</sup> Floor) Navrangpura, Ahmedabad-380009</p>
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निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO. STC/15-18/OA/2022-Denovo

DIN :20230264WT000000F2DA

आदेश की तारीख

/ Date of Order : 08.02.2023

जारी करने की तारीख

/ Date of Issue : 08.02.2023

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव

/ UPENDRA SINGH YADAV

आयुक्त

/ COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 42 /2022-23

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

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

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

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

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

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

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

हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अंग्रेषित 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 एक प्रतियाँ संलग्न की जाएंगी 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- Denovo Proceedings initiated vide CESTAT, Ahmedabad's Final Order No. A/10224/2022 dated 08.03.2022, arising out of Order In Original No. STC/6/Commr/Ahd/2011 dated 15.03.2011 passed by the Commissioner, Service Tax, Ahmedabad (SCN No. STC/4-67/O&A/2009 dated 18.11.2009) against M/s Aaryavart Infrastructure Private Limited, 2, Dipawli Centre, Opp. Old High Court, Ahmedabad.

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 42 /2022-23**

M/s Aaryavart Infrastructure Private Limited, 2, Dipawli Centre, Opp. Old High Court, Ahmedabad, were issued SCN F. No. STC/4-67/O&A/2009 dated 18.11.2009 by the then Commissioner, Service Tax, Ahmedabad. The said SCN was adjudicated by the then Commissioner of Service Tax vide Order In Original No. STC/6/Commr/Ahd/2011 dated 15.03.2011. The demand of Service Tax of Rs. 25,96,316/- was confirmed on merit by classifying the services rendered to be "Site Formation and Clearance, Excavation and Earth Moving and Demolition Services. The rest of the demand (Service tax amounting to Rs. 2,30,731/- on differential amount of taxable services, Rs. 6,51,213/- short/not paid on GTA service and Cenvat Credit of Rs. 50,02,041/- wrongly taken by the assessee) was dropped by the Commissioner vide the aforementioned order in original. The subject OIO issued by the Commissioner as adjudicating authority was accepted by the department on 23.05.2011. However, aggrieved by the Order In Original confirming the demand of Rs. 25,96,316/- passed by the Commissioner, the assessee had preferred an appeal against the same in CESTAT. The Hon'ble Tribunal vide its Order No. A/10224/2022 dated 08.03.2022 has remanded the matter for passing a fresh order as regard to actual date of services provided by the assessee.

**BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S AARYAVART INFRASTRUCTURE PRIVATE LIMITED, ARE AS FOLLOWS:**

M/s Aaryavart Infrastructure Private Limited, 2, Dipawli Centre, Opp. Old High Court, Ahmedabad (hereinafter referred to as 'the said assessee') were engaged in providing the services of Site Formation and Clearance Services, Canstruction Services in respect of Commercial or Industrial buildings and Civil Structures and GTA and were having STC number AADCA4844QST001.

2. During the course or audit, it was observed that M/s Aryavart Infrastructure Pvt. Ltd, A'bad had received Work Order from M/s Adani Energy Ltd. Vide WO. No. Proj/GAEL/Land/03 dated 20.04.05 for providing service of Digging, Excavation Back filling, sand filling, Compaction, stabilization at Various Stations. The said assessee had subsequently subcontracted the said work to M/s. S. R. Construction, Karelibaug, Vadodara for Rs. 24,75,00,000/- vide WO.No. Proj/Aipl/Contract/ 05/00063 dt. 16.05.2005. Accordingly, M/s S.R. Construction carried out the said work on behalf of the said assessee, for which they had issued RA. bills to the said assessee. The said assessee then subsequently issued RA Bills to M/s Adani Energy Ltd., and received an amount

of Rs. 2,80,50,390/- towards the services provided. The said activity carried out by the assessee appeared to be falling within the category of taxable service of "Commercial Constructions", which was made taxable w.e.f. 10.9.2004, as defined under Section 65 (105) (zzzza) of the Finance Act, 1994. Since the said assessee had not paid service tax leviable thereon at the relevant time, the service tax amounting to Rs.25,96,316/- appeared to be recoverable from them along with interest. It further appeared from the table below that, the said assessee had manipulated the dates of R. A. Bills by showing the dates prior to issuance of R.A Bill of sub contractor M/s. S. R. Construction, however, the description of work done, as shown in R.A. bills of both the parties were same. The details of R.A. Bills, Amt. received and service tax appeared leviable were as under :-

Description of work	S.R. Construction to M/s. Aaryavart		Aaryavart to Adani Energy		Date of receipt of payment by M/s. Aaryavart	Amount (Rs.)	Service tax Payable @10.2%
	RA Bill & Date	Amount	RA Bill & Date	Amount			
Jamalpur Vejalpur CNG Station	15/06.07.05	5907456	14/06.07.02	6003205	16.12.06	2400000	555651
-do-	16/12.7.05	8861363	15/05.06.05	9004990	20.12.05	2400000	833493
-do-	17/15.7.05	2565041	16/07.06.05	2606675	21.12.05	1800000	241271
Gota CNG Station	18/20.7.05	5070970	17/08.07.05	5153475	27.12.05	2700000	477000
Sarkhej CNG Station	19/03.08.05	5197490	18/10.06.05	5282045	05.01.06	2600000	488901
					10.01.06	2700000	
					12.04.06	2400000	
					18.01.06	2600000	
					23.01.06	2700000	
					02.02.06	1600000	
					06.02.06	2900000	
					10.02.06	4000000	
		27602320		28050390		30800000	2596316

Therefore, it appeared that the Service Tax amounting to Rs.25,96,316/- was required to be recovered and demanded from them.

3. It was also observed that the figures shown in the Balance Sheet and figures reported to the department vide ST-3 returns filed were different. This difference was due to the short payment of service tax on Taxable income received from M/s Adani Energy Ltd. & M/s Suzlon Ltd. for the financial year 2006-07 to 2007-08. The difference of Rs. 2,30,731/- in the Service Tax payable and service tax paid by the assessee was worked as under:

Sr. No.	Description	2006-07	2007-08
1.	Gross Taxable Income as per B/s. Contact	187642223	128950841
Add	Other Income	1296440	1265971
	Total Taxable Income	188938663	130216812
2.	Less: Non/ taxable Contraction of dams & Canals	74598898	66241539
	Less: Other Income	1296440	1265971

3	Taxable Income (1-2)	113043325	62709302
4	Add. O.B. Debtors (i) Adani (ii) Suzlon		4680622 + 6063123
5	Less: (I) Closing Debtors (i) Adani (ii) Suzlon	4680622 + 6063123	1643858 136096
6	Net taxable Income as per Sr. (3+4+5)	102299581	71673093
7	As per ST-3 Returns	102299581	71666270
8	Diff. Value		6823
9	ST Payable as per Sr. 6	12521469	8858794
10	S.T. paid as ST-3 Returns	12334276	8815256
11	Diff. of S.T. to be paid (9-10)	187193	43538

Therefore, it appeared that the differential Service Tax amounting to Rs. 2,30,731/- was required to be recovered from them along with interest.

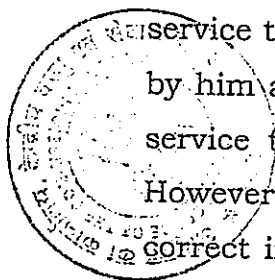
4. It was further observed that the figures were shown in the B/S from 01.01.2005 to 2007-08 towards Transportation Expenses but the said assessee had not paid service tax on Transportation Expenses during the period from 01.01.05 to 31.03.08. Total service tax payable was worked out to be Rs. 6,51,213/- as under:

Sr. No.	Description	2004-05 (01.01.05 to 31.05.05)	2005-06	2006-07	2007-08
1	Transport charges expenses as per B/s.	2486010	8308333	5830426	6393128
2	Value as per ST.3				
3	Diff. Value (1-2)	2486010	8308333	5830426	6393128
4	Value after 75% abatement as per Sr. No. 03 i.e. (100 -75) 25%	621502	2077083	1457606	1598282
5	S.T. to be payable as per Sr. No. 4	63393	211862	178411	197547
6	Interest to be payable				

Thus, it appeared that the said assessee was required to pay the service tax on GTA services amounting to Rs. 6,51,213/- along with interest.

5. As per the provisions of Section 68 of Finance Act, 1994 read with Rule 6 of Service Tax Rule 1994 as amended, the person providing taxable service to any person was liable to pay service tax at the rate prescribed in Section 66 to Central Government by the 5<sup>th</sup> of the month/quarter immediately following the calendar month / quarter in which the payments were received towards the value of taxable Services (except for the month of March which is required to be paid on 31<sup>st</sup> March).

6. As per Section 70 of the Finance Act, 1994, every person liable to pay service tax was required to assess himself the tax due on the services provided by him and thereafter furnish a return to the jurisdictional Superintendent of service tax by disclosing wholly & truly all materials facts in ST-3 returns. However, it appeared that the said assessee had not disclosed full, true and correct information about the value of the service provided by them. Thus, it appeared that there was a deliberate withholding of essential and material



information from the department about services provided and value realized by them. It appeared that all these material information had been concealed from the department deliberately, consciously and purposefully to evade payment of service tax. Therefore, in this case all essential ingredients appeared to be existing to invoke the extended period in terms of Section 73(1) of Finance Act, 1994 to demand the Service Tax short paid.

7. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed is liable to pay interest at applicable rate for the period by which such crediting of the tax or any part thereof is delayed.

8. It appeared that the said assessee had not declared the correct value received by them for rendering taxable services and not discharged their service tax liability on the said amount for Commercial or Industrial Construction Services in periodical ST-3 returns filed by them and thereby, they had contravened the provision of 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; Section 68 of the Finance Act, 1994 read with rule 6 of the Service Tax Rules, 1994, in as much as they had failed to determine and pay the correct amount of service tax.

9. It was also noticed that the assessee had wrongly availed and utilized service tax credit on the basis of following R.A. Bills of M/s. S. R. Construction, Vadodara as the said provider was not registered with service tax department and had not paid service tax leviable thereon. M/s. S. R. Construction, Vadodara had obtained service tax registration on 20.03.06 i.e. after issuance of R. A. bills and the said Bills were not issued as per Rule 4A of the Service Tax Rules, 1994. Therefore, the Cenvat Credit on the basis of such bills appeared to be not admissible and appeared to be recoverable along with interest. The Cenvat credit wrongly availed and utilised by them was worked out to Rs. 50,02,041/- as under:

DETAILS OF WRONG CENVAT CREDIT WITHOUT PAYMENT SERVICE TAX BY SERVICE PROVIDER				
Sr. No.	Date of taking cenvat credit	RA Bill No. of M/s. S.R. Construction	Amt of services received	ST Involved
1	23.1.06	1,2 & 20/22.10.05	6627093	675963
2	23.2.06	1,2 & 20/22.10.05	2737226	279197
3	28.3.06	3&4/21.11.05	39675289	4046881
				5002041

10. It also appeared that the assessee had certified in Para 7(b) of ST-3 Returns filed by them that they had assessed and paid the service tax and/or availed and distributed Cenvat credit correctly as per the provisions of the Finance Act, 1994 and the rules made thereunder. Therefore, in this case all essential ingredients appeared to be existing for invoking the extended period in terms of Section 73(1)(e) of Finance Act, 1994 for demanding service tax credit wrongly availed by them.

11. The deliberate efforts on the part of the assessee, for availing the inadmissible credit was in utter dis-regard to the requirements of law and breach of trust reposed in them. Such outright act in defiance of the law appeared to have rendered them liable for stringent penal action under the provisions of Section 78 of Finance Act, 1994 for suppression or concealment of material facts from the department with intent to avail the wrong credit.

12A. Further, in view of Rule 14 of the CENVAT credit Rules, 2004, the contention of the assessee that "since at the relevant point of time they had a substantial CENVAT credit balance lying in their CENVAT account, consequently there was no revenue loss and hence no interest was payable", appeared to be not correct. Hence, as per the provisions of Rule 14 of the CENVAT credit Rules, 2004 the assessee appeared liable to pay interest on such wrongly taken/utilized CENVAT Credit.

Thus, it appeared that the assessee had contravened the provisions of Rule 3 of the CENVAT Credit Rules, 2004 in as much as they had taken the CENVAT credit of the input Service which were not used in or in relation to providing output services. Thus, they had wrongly taken CENVAT credit during the period from Financial Year 2005-06 as discussed herein above.

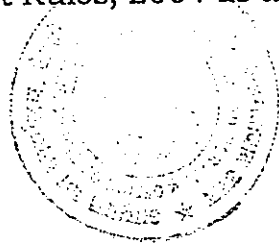
12B. Therefore, the said CENVAT credit wrongly taken by the assessee was required to be demanded and recovered from them with interest under the proviso to Section 73(1)(e) read with Rule 14 of the CENVAT credit Rules, 2004 and Section 75 of the Finance Act, 1994 by invoking extended period of five years in as much as the said assessee had contravened the provisions of the Finance Act, 1994 and Cenvat Credit Rules, 2004. It appeared that all these acts of contravention of the provisions of Rule 3 of the CENVAT Credit Rules, 2004 were punishable under the provisions of Section 78 of the Finance Act, 1994 read with Sub-rule (4) of Rule 15 of the CENVAT Credit Rules, 2004.

13. As per the Section 69(1) of the Finance Act, 1994, every person liable to pay the service tax under this chapter or the rules made there under shall within such time and in such manner and in such form as may be prescribed make an application for registration to the Superintendent of Service Tax.

13B. It also appeared from the records that, the said assessee had applied for registration under the service categories of Site Preparation & Clearance (SPC) & Commercial and Industrial Construction (CCS) late. Therefore, the assessee appeared liable for penal action under Section 77 of the Finance Act, 1994.

14. Therefore, M/s Aaryavart Infrastructure Private Limited, 2, Dipawil Centre, Opp. Old High Court, Ahmedabad were called upon to show cause vide Show Cause Notice F.No. STC/4-67/O&A/2009 dated 18.11.2009, as to why—

- (i) total Service Tax amounting to Rs. 25,96,316/- not paid on Commercial Construction services should not be demanded and recovered from them under Section 73(1) of the Finance Act, 1994.
- (ii) the differential amount of Service Tax of Rs. 2,30,731/- short paid should not be demanded and recovered from them under section 73(1) of the Finance Act, 1994.
- (iii) the service tax on GTA services amounting to be Rs. 6,51,213/- short paid/ not paid by them should not be demanded and recovered from them under Section 73(1) of the Finance Act, 1994.
- (iv) interest as applicable rate should not be charged and recovered from them, under Section 75 of the Finance Act, 1994.
- (v) penalty should not be imposed upon them under Section 76 of the Finance Act 1994, for their failure to make the payment of Service Tax in prescribed time limit.
- (vi) penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for suppressing the value of taxable services provided by them before the department with an intent to evade payment of Service Tax
- (vii) the CENVAT Credit amounting to Rs. 50,02,041/- (Rupees Fifty Lacs two thousand and forty one only) wrongly taken by the said assessee, should not be recovered and demanded from them under the provisions of Section 73(1) of the Finance Act, 1994, as amended and read with Rule 14 of the Cenvat Credit Rules, 2004.
- (viii) interest at the prescribed rate chargeable under the provisions of Section 75 of the Finance Act, 1994 read with Rule 14 of the CENVAT Credit Rules, 2004 as amended, should not be recovered from them;





- (ix) penalty under Section 78 of the Finance Act, 1994, as amended, read with Sub-rule (4) of Rule 15 of the CENVAT credit Rules, 2004 as amended, should not be imposed on them for wrong availment of Cenvat Credit.
- (x) Penalty under Section 77 of the Finance. Act, 1994 as amended should not be imposed upon them for contravention of Section 69 of the Finance Act,1994.

**Defence Reply and Personal Hearing (at the time of adjudication proceedings held before the then adjudicating authority) :**

15. The said assessee vice their letter dated 15.06.2010 filed a defence reply. The para wise submissions made in the said letter were as under:

Reply to SCN-Para2.

They had submitted that the officer in charge had classified their services under "Commercial Construction Services, w.e.f. 10.09.2004" and noted that the short payment of service tax was of RS.2596316/- plus interest, whereas the taxable business carried out by them was in the nature of "Soil Stabilization" and "horizontal drilling for the passage of cables or drain pipes" which was defined under the service definition of "Site Formation and Clearance Service" (defined U/s. 65(97a) and taxable event defined U/s. 65(105)(zzza)) and taxable w.e.f. 16.06.2005. They had drawn the attention towards Para 2 of the show cause notice, which reads as:

*"During the course of audit of records maintained by the assessee, it was observed that M/s. Aaryavart Infrastructure Pvt. Ltd. A'bad has received Work order from M/s. Adani Energy Ltd. Vide WO. No. proj/GAEL/Land/03, dated 20.04.2005 for providing service of Digging Excavation Back Filling, Sand filling, compaction, stabilization at various CNG Stations."*

They submitted that the activity which is defined under the Work Order, itself was coverable/classifiable U/s. 65(97a) w.e.f. 16.06.2005, as under,

*"Section 65(97a), "site formation and clearance, excavation and earth moving and demolition" includes, —*

- (i) drilling, boring and core extraction services for construction, geophysical, Geological or similar purposes; or*
- (ii) soil stabilization; or*
- (iii) horizontal drilling for the passage of cables or drain pipes; or*
- (iv) land reclamation work; or*
- (v) contaminated top soil stripping work; or (vi) demolition and wrecking of building, structure or road,*

*but does not include such services provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies*

They had further submitted that total 5 invoices for the services provided prior to the date of introduction of the levy were picked and the difference was worked out as stated above. They had submitted that no attempt had been made

by the department to understand the correct classification of the nature of service provided and totally wrong classification had been done.

They submitted that the allegation that they were carrying out the work of Construction Service (w.e.f. 10.09.2004) was totally wrong and misleading as they had never carried out any work of construction as defined in the prevailing law (defined U/s. 65(30a), taxable event defined U/s. 65(105)(zzq).

With regard to the allegation of manipulation of the dates of RA Bills, they had clarified that the entries invoices were issued on actual dates, however there was a delay in punching entries into the system. They had also questioned as to how mere delay in punching the entries into the system would lead to manipulation of the dates of R.A. Bill?

Reply to SCN Para 3:

They submitted that there was a calculation mistake in the difference as worked out by the audit team which was reflected in the SCN. They had already provided the reconciliation from 2005-2006 to 2007-2008 vide their letter dated 20.11.2008, which showed that there was no difference in all these years.

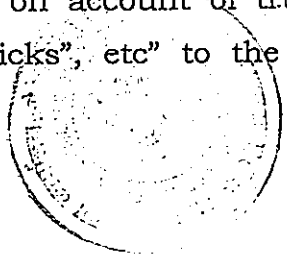
Reply-to SCN Para 4.

They submitted that GTA liability of Rs.6,51,213/- was shown as payable for the period 2004-2005 (from 01.01.2005 to 31.03.2005) to 2007-2008, however none of the figures of transportation charges were verified by the audit team from the available documents at the registered premises and simply the figures were picked from the available balance sheet and placed in the audit report.

They submitted that the figures for the period 2004-2005 (from 01.01.2005 to 31.03.2005) had not been verified by the audit team as the total figures for the whole year were simply divided by 4 and placed in the audit report.

They submitted that for the later three years (i.e. 2005-2006 to 2007-2008) also there was no verification of the documents available at the registered premises, simply the figures were picked from the balance sheet available and placed in the audit report.

They submitted that the transportation charges debited to the profit and loss account were on account of truck load ordered for bringing "Reti (Sand), "Kapchi", Bricks", etc" to the site of Narmada Project against which the



transporter provided the monthly bills; On re-verification of the invoices on the basis of the "Trip Details" they found transportation charges ranged from Rs.250 to Rs.1000 per trip.

They submitted a C.A. Certificate from the Statutory Auditor dated 18<sup>th</sup> November, 2009, that the transportation charges had been re-verified by them and none of the expenses "Per Trip" were exceeding the exemption limit of Rs.1500/- as defined by Notification No. 34/2004, date 03.12.2004 per trip. They submitted that the benefit of the same was available and service tax under GTA was not payable by them.

Reply to SCN Para 6.

They submitted that it had been wrongly alleged that they had not disclosed full, true and correct information about the value of the service provided, as all the information in relation to the taxable value of services was correctly, fully and truly disclosed in the periodic returns filed with the department. They had denied the allegation levelled in the said SCN.

Reply to SCN Para 8.

They submitted that they were not covered under the category of Commercial Construction Service hence not declaring the value of the same does not stand correct as the value was totally not taxable under service tax law for the time during which the levy was introduced.

They submitted that the allegation of the SCN was not correct.

Reply to SCN Para 9.

They submitted that the officer in charge had pointed out that they had wrongly availed and utilized the cenvat credit to the tune of Rs.50,02,041/- on the basis that the provider of service M/s S. R. Construction had got registration late on 20.03.2006 and invoices were issued before the date of registration.

They submitted that following points have been totally ignored in this issue:

The period for which the documents / invoices were issued was during very early days of understanding of services tax in totality.

Service Tax was charged by M/s. S R Construction and the same was paid to them and subsequently they were also ready to provide the copies of challan

from M/s. S R Construction confirming that the service tax was paid by them along with all applicable interest thereon.

- There was only a procedural lapse for getting registered late, and there were no outstanding dues left with the party.

- Due to the same, this was totally a Revenue Neutral Case. If the same was demanded from them, then logically / legally the same would be available to them as re-credit on the basis of valid duty paying document.

- They had stopped providing any taxable services, they would seek refund of the "Unutilized Cenvat Credit" u/s Rule 5 of the Cenvat Credit Rules 2004 as the same was not utilizable in near future also.

- They had previously also confirmed and they again confirm that they are ready to pay the applicable interest on the same. For the same, they drew attention to the rule 14 of the Cenvat Credit Rules, which says as under,

*"Where the Cenvat Credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or provider of the output service and the provisions of sections 11A and 11AB of the Excise Act or section 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries."*

The Rule says that, if the Cenvat Credit is wrongly taken or utilized then the same is recoverable along with interest, as in their case the duty is already paid by the service provider, they accepted their liability for payment of the interest for wrong availment of and utilization of the same.

However, they would also like to clarify that the same was done totally unintentionally and the credit was taken on the basic understanding that the same was available on their payment to the service provider and it is the responsibility of the service provider to discharge the same to the account of the central govt.

They had requested to drop the above revenue paras of the SCN, on the grounds provided above.

16. A personal hearing was held before the then adjudicating authority on 18.11.2010, which was attended by Shri Pravin Dhandharia, Chartered Accountant on behalf of the said assessee. He had explained the earlier reply

dated 15.6.2010 to the show cause notice. In support of their defence, he had filed the relied upon documents on 19.11.2010.

17. The then adjudicating authority vide OIO NO. STC/06/Commr/Ahd/2011 dated 15.03.2011 had decided the SCN No. STC/04-67/O&A/2009 dated 18.11.2009. The adjudicating authority had ordered as under:

- (i) Confirmed the demand of service tax of Rs.25,96,316/- (Rupees Twenty five lakh ninety six thousand three hundred sixteen only) under 73 of the Finance Act, 1994, by invoking the extended period of five years as per proviso sub-section (1) of Section 73 of the said Act;
- (ii) Ordered for recovery of interest on Rs.25,96,316/- (Rupees Twenty five lakh ninety six thousand three hundred sixteen only) at the prescribed rate from the said assessee Section 75 of the Finance Act, 1994.
- (iii) Imposed penalty of Rs.100/- (Rupees One hundred only) per day for the period during which failure to pay the tax had continued, upon the said service provider under Section 76 of the Finance Act, 1994. Provided the total amount of penalty payable in terms of this section shall not exceed Rs.25,96,316/- (Rupees Twenty five lakh ninety six thousand three hundred sixteen only) i.e. the amount of service tax recoverable from the assessee.
- (iv) Imposed penalty of Rs. 5,96,316/- (Twenty five lakh ninety six thousand three hundred sixteen only) on them under Section 78 of the Finance Act, 1994. In the event of the said service provider opting to pay the amount of service tax along with all other dues as confirmed and ordered to be recovered, within thirty days from the date of communication of the order, the amount of penalty liable to be paid by them under section 78 of the Finance Act, 1994 shall be 25% of the said amount. However, the benefit of reduced penalty shall be available only if the amount of penalty is also paid within the period of thirty days from the communication of this order, otherwise full penalty shall be paid as imposed in the above order.
- (v) Dropped the demand of Rs. 2,30,731/- (Two lakh thirty thousand seven hundred thirty one only).
- (vi) Dropped the demand of Rs. 6,51,213/- (Rupees Six lakh fifty one thousand two hundred thirteen only).
- (vii) Dropped the demand of recovery of Cenvat credit of Rs. 50,02,041/- (Rupees Fifty lakh Two thousand Forty one only).
- (viii) Imposed penalty of Rs.1000/- (Rupees One thousand only) on the said assessee for late obtaining registration under the category of Site Formation and Clearance, Excavation and Earth moving and Demolition Services" under Section 77 of the Finance Act, 1994

18. The Order in Original No. STC/06/Commr./Ahd/2011 dated 15.03.2011 was accepted by the department on 23.05.2011. However, the assessee being aggrieved with the above OIO, had filed an appeal before Tribunal and Tribunal vide its Final Order No. A/10224/2014, dated 08.03.2022 has remanded back the matter to the adjudicating authority for reconsidering the matter as regard to the actual date of service provided by the assessee. Primarily, the grounds on which the matter has been remanded back is that the assessee had argued before the Tribunal that the actual date of service provided can be ascertained from the Measurement Sheet of the work executed by the subcontractors. They had also filed an affidavit for certifying the actual date of completion of service, but the same was filed after passing of order in original. Thus, the Tribunal observed that the adjudicating authority had not considered the measurement sheet and affidavit, as the same were not available before the adjudicating authority. Accordingly, the Tribunal remanded the matter for re-considering the matter as regard to the actual date of service.

**Defence Reply :**

19. The assessee vide their letter dated 12.01.2023 have forwarded the following documents for consideration.

- Copy of synopsis which was submitted before the Hon'ble Tribunal on 21.01.2022 by them.
- Copy of appeal memo filed before Hon'ble CESTAT
- Copies of self certified invoices and Measurement Sheets.

They have also requested to drop the proceedings considering the above documents in view of the direction of the Hon'ble CESTAT.

**PERSONAL HEARING:**

20. The personal hearing was granted to the assessee on 05.01.2023, which was attended by Shri Pravin Dhadharia, CA on behalf of the assessee. During the personal hearing, he requested to drop the charges framed in the SCN on the basis of facts/details mentioned in the Measurement Sheet of the work executed as also the affidavit which has been filed in the subject matter. His main contention was that the actual date of service provided was much before the time the said service was made taxable.

**DISCUSSION AND FINDINGS:**

21. I have carefully gone through the facts of the case, material on record and the submissions made by the assessee. I have also gone through the Order-in-Original No. STC/06/Commr./Ahd/2011 dated 15.03.2011, which has been

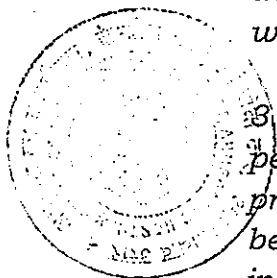
remanded back to the adjudicating authority vide CESTAT order No. A/10224/2014, dated 08.03.2022.

22. I find that the then adjudicating authority had vide Order in Original No. STC/06/Commr/Ahd/2011 dated 15.03.2011, confirmed the demand of service tax amounting to Rs. 25,96,316/- by classifying the service to be "Site Formation and Clearance, Excavation and Earth Moving and Demolition Services" and also ordered for recovery of interest and imposition of penalty. The other demands of service tax and recovery of cenvat credit wrongly taken as sought to be demanded vide SCN dated 18.11.2009, were dropped on merit. The assessee had filed an appeal before the Hon'ble Tribunal against the impugned OIO. The Hon'ble Tribunal vide its Order No. A/10224/2022 dated 08.03.2022 has remanded the matter for passing a fresh order as regard actual date of services provided by the assessee.

23. I also find it essential to comprehend the rationale behind CESTAT's decision to remand the impugned OIO to the adjudicating authority. On going through the Tribunal's order, it can be seen from para 3, 3.1 & 5.1 of the Tribunal's order that the arguments tendered by the representative of the assessee and subsequent production of records before the Tribunal, are the main grounds/ reasons for remanding back the matter by the Tribunal for re-consideration of the matter. The said para 3, 3.1 & 5.1 are also reproduced hereinunder for ready reference.

*"3. Shri Pravin Dhandharia, Learned Chartered Accountant appearing on behalf of the appellant submits that summary of measurement sheet along with affidavit of the sub-contractor clearly shows that the date of completion of work of Bill No. 15 dated 06.07.2005, 16 dated 12.07.2005, 17 dated 15.07.2005, 18 dated 20.07.2005 and 19 dated 03.08.2005 is before the cut-off date i.e. 16.06.2005. On measurement sheet period of work done is clearly mentioned i.e. from 1st April till 31st May 2005 the same is not disputed by the Respondent. There is clear mention of contract number Proj/GAEL/Land/03 dated 20.04.2004 on all invoices of the appellant. He also submits that the measurement are taken on daily basis in presence of both the parties which are signed by both the parties at the day end and on the basis on which measurement summary is prepared and on the basis of which actual invoices is prepared. He submitted the said details.*

*3.1 He also submitted that payment is released approximately within period of 30 to 60 days from the date of invoice, hence the Appellant had prepared all invoices on time and there is delay in preparing invoices on behalf of sub-contractor which should not be termed as manipulation of invoices as there is no area of manipulation, as all quantities are matched exactly in both the invoices."*



*"5.1 In the present appeal the appellant vehemently submitted that the date of actual service provided can be ascertained from the Measurement Sheet of the work executed by the Sub-Contractors. The appellant in this regard also filed an affidavit but the same was filed after the OIO was passed. We find that the Adjudicating Authority has not considered the Measurement Sheet as well as the affidavit which of course is not available before the Adjudicating Authority. Therefore, we are of the view that matter needs to be re-considered as regard the actual date of service provided. Accordingly, we set aside the impugned order and remand the matter to the Adjudicating Authority for passing a fresh order after observance of Principles of Natural Justice.*

*6. Appeal is allowed by way of remand to the Adjudicating Authority."*

Thus, I find that as per the direction of the Tribunal, the date of provision of service is to be determined in view of the measurement sheets and affidavit which were not considered by the then adjudicating authority as the same were not made available before the said adjudicating authority.

24. Before moving ahead to decide the matter, it is also imperative to understand the basic issue involved in the matter. On going through the impugned OIO and SCN, I find that the audit of the records of assessee was carried out by the department and as per the audit observations, the SCN dated 18.11.2009 was issued to the assessee, however, only one observation was found to be sustainable on merit by the adjudicating authority. The brief issue involved under the said audit observation, relevant to the instant matter, was that during the course or audit, it was observed that M/s Aryavart Infrastructure Pvt. Ltd, A'bad had received Work Order from M/s Adani Energy Ltd. Vide WO. No. Proj/GAEL/Land/03 dated 20.04.05 for providing service of Digging, Excavation Back filling, sand filling, Compaction, stabilization at Various Stations. The said assessee had subsequently subcontracted the said work to M/s. S. R. Construction, Karelibaug, Vadodara for Rs. 24,75,00,000/- vide WO.No. Proj/Aipl/Contract/ 05/00063 dt. 16.05.2005. Accordingly, M/s. S.R. Construction had carried out the said work on behalf of the said assessee, for which they had issued RA bills to the said assessee. The said assessee then subsequently had issued RA Bills to M/s Adani Energy Ltd., and received an amount of Rs. 2,80,50,390/- towards the services provided. The said activity carried out by the assessee appeared to be falling within the category of taxable service of "Commercial Constructions", which was made taxable w.e.f. 10.9.2004, as defined under Section 65 (105) (zzzza) of the Finance Act, 1994. Since the said assessee had not paid service tax leviable thereon at the relevant time, the service tax amounting to Rs.25,96,316/- appeared to be recoverable



from them along with interest. It further appeared from the table below that, the said assessee had manipulated the dates of R. A. Bills by showing the dates prior to issuance of R.A Bill of sub contractor M/s. S. R. Construction, however, the description of work done, shown in R.A. bills of both the parties were same. The details of R.A. Bills, Amt. received and service tax which appeared leviable are as under :-

Description of work	S.R. Construction to M/s. Aaryavart		Aaryavart to Adani Energy		Date of receipt of payment by M/s.Aaryavart	Amount (Rs.)	Service tax Payable @10.2%
	RA Bill & Date	Amount	RA Bill & Date	Amount			
Jamalpur Vejalpur CNG Station	15/06.07.05	5907456	14/06.07.02	6003205	16.12.06	2400000	555651
-do-	16/12.7.05	8861363	15/05.06.05	9004990	20.12.05	2400000	833493
-do-	17/15.7.05	2565041	16/07.06.05	2606675	21.12.05	1800000	241271
Gota CNG Station	18/20.7.05	5070970	17/08.07.05	5153475	27.12.05	2700000	477000
Sarkhej CNG Station	19/03.08.05	5197490	18/10.06.05	5282045	05.01.06	2600000	488901
					10.01.06	2700000	
					12.04.06	2400000	
					18.01.06	2600000	
					23.01.06	2700000	
					02.02.06	1600000	
					06.02.06	2900000	
					10.02.06	4000000	
		27602320		28050390		30800000	2596316

Therefore, the service tax amounting to Rs. 25,96,316/- appeared recoverable from them.

25. I find from the records that there is no dispute as far as the date of issuance of invoices either by the assessee or by the sub contractor of the assessee (M/s. S.R. Construction) is concerned. Therefore, as discussed in forgoing paras and as per the direction of Tribunal, the only issue that needs be determined is the date of provision of service by the assessee in view of Measurement Sheet and Affidavit provided by the assessee and accordingly tax liability has to be ascertained. I find that before introduction of Point of Taxation Rules, 2011, there was no specific provision in the law to determine the Point of Taxation in the statute. However, for charging the service tax, the receipt of payment was to be considered for charging the service tax on provision of service. The legal provision existing at the material time and which I find relevant in the matter are reproduced herein under for ready reference.

**Section 66 of the Finance Act, 1994, which provided levy of service tax.**

**Charge of Service Tax.**

66. "There shall be levied a tax (hereinafter referred to as the service tax) at the rate of ten per cent. of the value of taxable services referred to in sub-

clauses ..... of clause (105) of section 65 and **collected** in such manner as may be prescribed.

**Section 65(105)** defines the "taxable service", which reads as under

**65(105):** "taxable service" means any service provided

**Section 68 of the Finance Act, 1994, provided for payment of service tax.**

**Payment of service tax.**

**68. (1)** Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed.

**Rule 6 of Service Tax Rules, which provided manner and time period for payment service tax:**

**Payment of service tax.**

**6. (1)** The service tax shall be paid to the credit of the Central Government by the 5<sup>th</sup> of the month immediately following the calendar month in which the payments are received, towards the value of taxable services:

*Provided that where the assessee is an individual or proprietary firm or partnership firm, the service tax shall be paid to the credit of the Central Government by the 5<sup>th</sup> of the month immediately following the quarter in which the payments are received, towards the value of taxable services:*

*Provided further that notwithstanding the time of receipt of payment towards the value of services, no service tax shall be payable for the part or whole of the value of services which is attributable to services provided during the period when such services were not taxable:*

**25.1** From the above legal provisions, an inference can be drawn that the liability (levy) of service tax arises as soon as the services are rendered but the tax can be collected at later date as prescribed under the statutes. More specifically, as per section 66, service tax liability arises on provision of services, but the payment of service tax is to be made on receipt of payment against the provision of services by the provider of service, as prescribed under Section 68 of Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994. In other words, the "taxable event" is the provision of services specified under section 66 of the Finance Act, 1994.

**26.** I find from the order passed by the then adjudicating authority that while deciding the matter, he had observed in para 19(ii) of the said OIO that the assessee had neither in their written submissions nor during the course of personal hearing produced any evidence to prove that the said service were provided before 16.06.2005 so as to remain outside the purview of the cut off

date of 16.06.2005. In view of the same the adjudicating authority had concluded the date of invoice to be the date of provision of services i.e. the taxable event in the instant case had been considered as the date of invoice raised by the assessee/subcontractor in respective cases. In this regard, the relevant extract of para 19(ii) of the said order is reproduced below for ready reference.

*"..... I also observe that the said assessee neither in their written submissions nor during the course of the personal hearing produced any evidence to prove that the said services were provided before 16.6.2005 so as to remain outside the purview of the cut-off date of 16.6.2005, the date from which the said services were made taxable. I reproduce the relevant portion of Rule 6 of the Service Tax Rules, 1994 "Provided further that notwithstanding the time of receipt of payment towards the value of services, no service tax shall be payable for the part or whole of the value of services, which is attributable to services provided during the period when such services were not taxable".*

*In view of the above, I arrive at the conclusion that the said services were provided after 16.06.2005 and the date of completion of service can only be the dates of the R.A. Bills issued by the said sub contractor and not the dates of R.A. Bills issued by the said assessee. Therefore, the said assessee is liable to pay service tax of Rs. 25,96,316/- which is liable to be recovered from them under the proviso to Section 73(1) of the Finance Act, 1994.*

*I further find that in the case before me, the services to be provided under the said work order were actually provided by the subcontractor and the said assessee only earned the difference between the work-order given by M/s. Gujarat Adani Ltd and the work-order given by the said assessee to M/s S.R. Construction. Therefore, the dates of R.A. Bills issued by M/s. Aryavart can not be at a date prior to the date of issuance of R.A. Bills by S.R. Construction, who actually is responsible for provision and completion of services, unless the same are manipulated by the former. Therefore, the charge of manipulation of dates by the said assessee gets proved. I hold the said assessee liable to penalty".*

27. As per the legal provisions discussed earlier, it can be inferred that the taxable event is the date of provision of service only. I am of the considered view that the phrase "**collected** in such manner as may be prescribed" refers to the documenting the taxable event for collection of tax from the recipient of service. In this regard, I take support from Rule 4A(1) of service tax rules 1994, which provides for the time period for issuance of invoice, bill or challan, with reference to the completion of service /receipt of payment. The said Rule 4A(1), in force at the material time, reads as under:

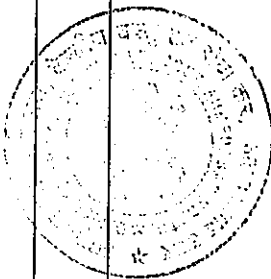
"4A(1) Every person providing taxable service, not later than fourteen days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, shall issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorised by him in respect of such taxable service provided or to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely:"

From the rule cited above, it is apparent that the date of invoice may or may not be the date of rendering of the services. It is also seen that the statute itself provides for issuance of invoice at a later date.

28. In support of their plea of having rendered services much prior to the date of invoice, the assessee has submitted the self certified copies of RA bills issued to M/s. Gujarat Adani Energy by them and Measurement Book alongwith corresponding Daily Measurement Sheets prepared by the assessee and their sub contractor. On perusing the same, following facts seem to be emerging from the said documents:

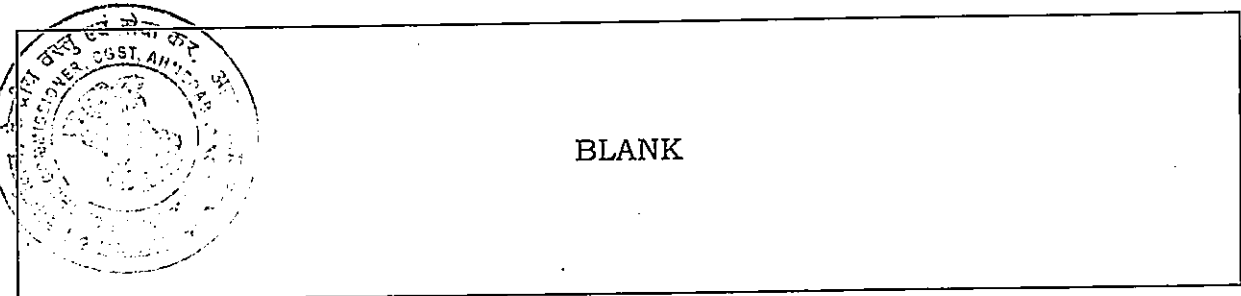
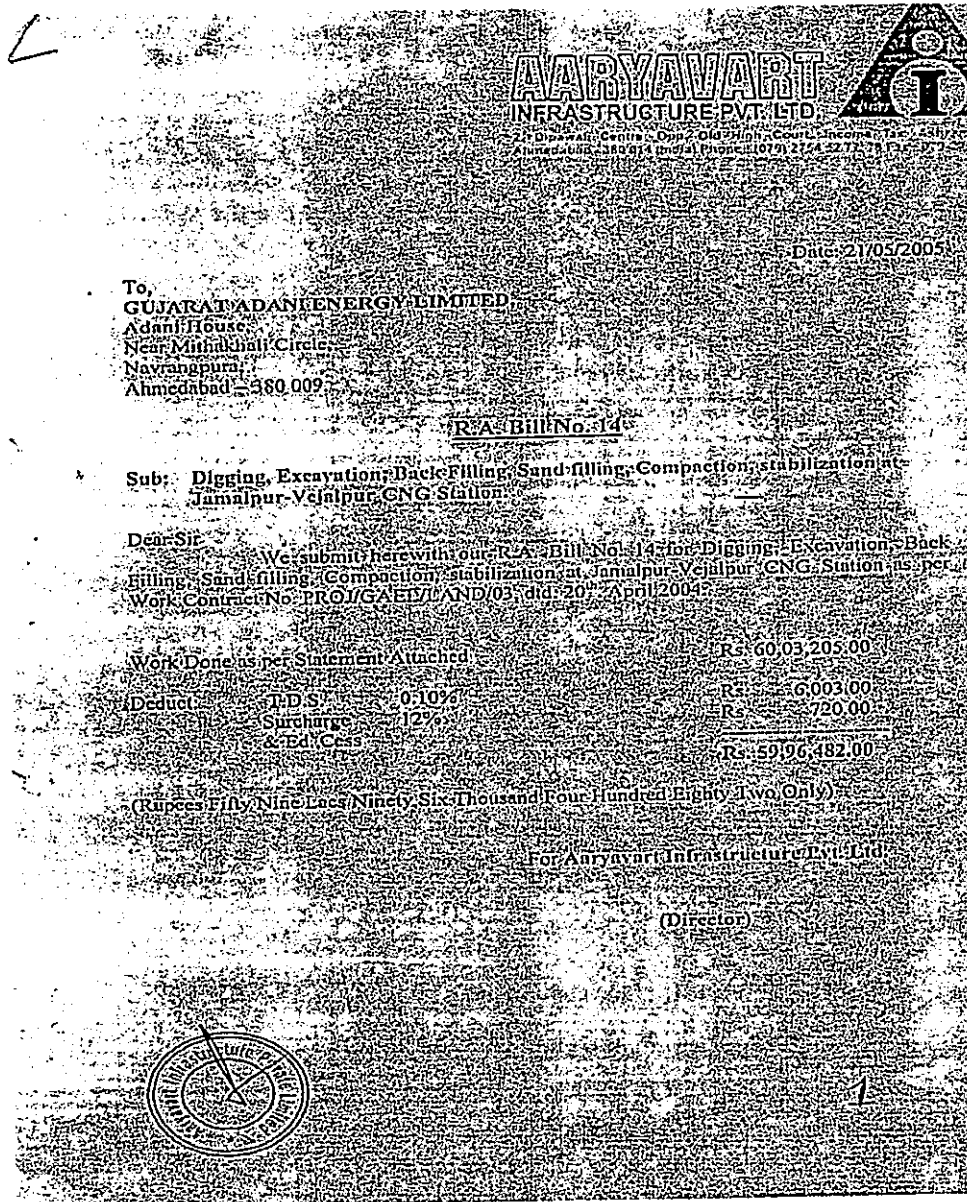
Sr. No.	RA Bill No. and date	Observations
1	14/ 21.05.2015	<p>-The date of RA bill has been shown as 06.07.2005 in OIO/SCN, but the as per the bill, it is 21.05.2005. The RA bill has been issued by the assessee to M/s. Gujarat Adani Energy Ltd. for Digging, Excavation, Back Filling, sand filling Compaction, stabilisation at <u>Jamalpur-Vejalpur CNG station</u> for charging Rs. 59,96,482/- for the services rendered. RA Bill Mentions the work order No. as Proj/GAEL/LAND/03 dtd. 20.04.2005. RA Bill contains the detail of item wise, quantum of work carried out during the period of bill.</p> <p>-The corresponding Measurement Book contains the details of quantum of work carried out, date wise &amp; item wise. The period covered under the bill is from 03.04.2005 to 10.05.2005. The said book also mentions the Work Contract No. and Name of the work, which is found to be same as the RA Bill. The work book is consolidation of data of Daily Measurement sheet.</p> <p>- Daily measurement sheets have been prepared on daily basis. The sheet contains the quantum and nature of work done on the said date. The said measurement sheets have been signed by the assessee and their sub contractor (M/s. S.R. Constructions). The information /data mentioned in the documents are found to be matching with each other</p>
2	15/ 05.06.2005	<p>- The RA bill has been issued by the assessee to M/s. Gujarat Adani Energy Ltd. for Digging, Excavation, Back Filling, sand filling Compaction, stabilisation at <u>Jamalpur-Vejalpur CNG station</u> and for charging Rs. 89,94,904/- for the services rendered. RA Bill Mentions the work order No. as Proj/GAEL/LAND/03 dtd. 20.04.2005. RA Bill contains the detail of item wise , quantum of work carried out during the period of bill.</p> <p>-The corresponding Measurement Book contains the details of quantum of work carried out, date wise &amp; item wise. The period covered under the bill is from 11.05.2005 to 31.05.2005. The said book also mentions the Work Contract No. and Name of the work, which is found to be same as the RA Bill. The work book is consolidation of data of Daily Measurement sheet.</p>

		<p>- Daily measurement sheets have been prepared on daily basis. The sheet contains the quantum and nature of work done on the said date. The said measurement sheets have been signed by the assessee and their sub contractor (M/s. S.R. Constructions). The information /data mentioned in the documents are found to be matching with each other</p>
3	16/ 07.06.2005	<p>- The RA bill has been issued by the assessee to M/s. Gujarat Adani Energy Ltd. for Digging, Excavation, Back Filling, sand filing Compaction, stabilisation at <u>Jamalpur-Vejalpur CNG</u> station for charging Rs. 26,03,755/- for the services rendered. RA Bill Mentions the work order No. as Proj/GAEL/LAND/03 dtd. 20.04.2005. RA Bill contains the detail of item wise, quantum of work carried out during the period of bill.</p> <p>-The corresponding Measurement Book contains the details of quantum of work carried out, date wise &amp; item wise. The period covered under the bill is from 18.05.2005 to 28.05.2005. The said book also mentions the Work Contract No. and Name of the work, which is found to be same as the RA Bill. The work book is consolidation of data of Daily Measurement sheet.</p> <p>- Daily measurement sheets have been prepared on daily basis. The sheet contains the quantum and nature of work done on the said date. The said measurement sheets have been signed by the assessee and their sub contractor (M/s. S.R. Constructions). The information /data mentioned in the documents are found to be matching with each other.</p>
4	17/ 08.06.2005	<p>- The date of RA bill has been shown as 08.07.2005 in OIO/SCN, but the as per the bill, it is 08.06.2005. The RA bill has been issued by the assessee to M/s. Gujarat Adani Energy Ltd. for Digging, Excavation, Back Filling, sand filing Compaction, stabilisation at <u>GOTA CNG</u> station for charging Rs. 51,47,703/- for the services rendered. RA Bill Mentions the work order No. as Proj/GAEL/LAND/03 dtd. 20.04.2005. RA Bill contains the detail of item wise, quantum of work carried out during the period of bill.</p> <p>-The corresponding Measurement Book contains the details of quantum of work carried out, date wise &amp; item wise. The period covered under the bill is from 05.05.2005 to 30.05.2005. The said book also mentions the Work Contract No. and Name of the work, which is found to be same as the RA Bill. The work book is consolidation of data of Daily Measurement sheet.</p> <p>- Daily measurement sheets have been prepared on daily basis. The sheet contains the quantum and nature of work done on the said date. The said measurement sheets have been signed by the assessee and their sub contractor (M/s. S.R. Constructions). The information /data mentioned in the documents are found to be matching with each other.</p>
5	18/ 10.06.2015	<p>- The RA bill has been issued by the assessee to M/s. Gujarat Adani Energy Ltd. for Digging, Excavation, Back Filling, sand filing Compaction, stabilisation at <u>SARKHEJ CNG</u> station for charging Rs. 52,76,129/- for the services rendered. RA Bill Mentions the work order No. as Proj/GAEL/LAND/03 dtd. 20.04.2005. RA Bill contains the detail of item wise, quantum of work carried out during the period of bill.</p> <p>-The corresponding Measurement Book contains the details of quantum of work carried out, date wise &amp; item wise. The period covered under the bill is from 03.05.2005 to 30.05.2005. The said book also mentions the Work Contract No. and Name of the work, which is found to be same as the RA Bill. The work book is consolidation of data of Daily Measurement sheet.</p>



- Daily measurement sheets have been prepared on daily basis. The sheet contains the quantum and nature of work done on the said date. The said measurement sheets have been signed by the assessee and their sub contractor (M/s. S.R. Constructions). The information /data mentioned in the documents are found to be matching with each other.

**Sample Images of RA Bill & Daily Measurement Sheet:**



**M. S. ARYA VARTI INFRASTRUCTURE PVT. LTD.**  
 2, DEEPAWAL CENTER, OPP. OLD HIGH COURT, NEAR INCOME TAX CIRCLE, AHMEDABAD.  
 14th F.A. Bill

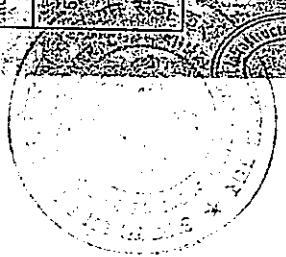
**NAME OF WORK: DIGGING, EXCAVATION, BACK FILLING, SAND FILLING, COMPACTION, STABILIZATION**  
**AT: Jambhalpur, Gujarat**  
**WORK ORDER NO.: PRCM/CA&E/LAND/03/DTD/2076/2024**

ITEM NO.	WORK DONE (QTY) FOR THIS BILL	QTY. EXECUTED UP TO DATE	DESCRIPTION OF ITEM IN SHORT	RATE FOR UNIT THIS BILL	AMOUNT UP TO DATE	AMOUNT UP TO DATE PREVIOUS BILL
172	29336.00	364010.00	Shipping/transportation charges for surface and disposing the same as directed for Leaks and with all lifts to complete.	81.00	30240850.00	2192664.00
173	26881.00	218992.00	Back filling with approved material in maximum including spreading up to 100mm for Leaks and with all lifts to complete.	123.00	19708380.00	182630.00
174	10681.00	218992.00	Back filling with approved material in maximum including spreading up to 100mm for Leaks and with all lifts to complete.	10.00	2192664.00	168810.00
175	9253.00	129267.00	Supplying and laid 10mm sand in uniform layers as directed for security.	71.50	2291729.00	2003254.00

ITEM NO.	WORK DONE (QTY) FOR THIS BILL	QTY. EXECUTED UP TO DATE	DESCRIPTION OF ITEM IN SHORT	RATE FOR UNIT THIS BILL	AMOUNT UP TO DATE	AMOUNT UP TO DATE PREVIOUS BILL
176	823.00	129507.00	Compaction of sand filling including watering with 10 tonne capacity roller to required density till complete.	150.00	1943905.00	123195.00
<b>TOTAL AMOUNT</b>					<b>87174305.00</b>	<b>6003205.00</b>
<b>DEDUCT PREVIOUS BILL</b>					<b>80171300.00</b>	<b>6003205.00</b>
<b>NET PAYABLE AMOUNT</b>					<b>6003205.00</b>	<b>6003205.00</b>

**TOTAL AMOUNT: 87174305.00**  
**DEDUCT PREVIOUS BILL: 80171300.00**  
**NET PAYABLE AMOUNT: 6003205.00**

(Rupees Sixty Lacs Three Thousand Two Hundred Five Only)



GUJARAT ADANI ENERGY LIMITED  
 Name of work: Digging, Excavation, Back filling, sand filling, Compaction, Stabilization at  
 JAMALPUR-VEJALPUR CNG Station  
 Contract No.: PROJ/GAEL/LAND/03, Dt.20.04.2004

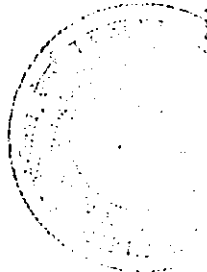
Name of Contractor: Aaryavart Infrastructure Pvt. Ltd, Ahmedabad. R.A. BILL NO.14  
 MEASUREMENT BOOK

Date	Description of Item	INO	Rate	C. A. B.	D	Quantity
	Item No.1: Digging, excavation work on existing surface & disposing the same as directed in all leads & lifts etc. completed.					
03.04.2005	DO	148.00	7.10	0.89		5935.21
04.04.2005	DO	145.00	7.05	0.90		920.03
05.04.2005	DO	149.00	7.10	0.91		5962.69
06.04.2005	DO	151.50	7.10	0.88		964.89
07.04.2005	DO	142.00	7.80	0.88		952.54
08.04.2005	DO	146.00	6.90	0.92		926.81
12.04.2005	DO	148.10	6.95	0.90		988.12
13.04.2005	DO	151.00	7.05	0.98		1043.26
14.04.2005	DO	138.00	8.10	1.05		1173.69
17.04.2005	DO	129.00	7.90	0.91		1056.51
18.04.2005	DO	135.00	7.85	0.82		940.95
19.04.2005	DO	140.00	7.70	0.65		700.70
20.04.2005	DO	160.00	7.80	0.75		816.00
24.04.2005	DO	145.00	7.10	0.89		916.26
25.04.2005	DO	137.00	8.10	0.72		798.98
26.04.2005	DO	144.00	9.10	0.69		825.55
27.04.2005	DO	180.00	8.77	0.55		868.23
28.04.2005	DO	172.00	8.10	0.65		995.58
29.04.2005	DO	177.00	8.05	0.68		968.90
30.04.2005	DO	167.00	7.00	0.55		642.95
01.05.2005	DO	168.00	7.05	0.56		663.26
03.05.2005	DO	165.00	7.10	0.54		632.61
04.05.2005	DO	166.00	7.05	0.54		631.96
05.05.2005	DO	165.00	7.10	0.53		620.90
06.05.2005	DO	164.00	7.10	0.56		652.08
07.05.2005	DO	167.00	7.05	0.55		647.54
08.05.2005	DO	170.00	6.90	0.51		598.23
09.05.2005	DO	159.00	6.90	0.53		581.46
10.05.2005	DO	193.00	7.10	0.55		753.67
					Total Qty.	25036.11
					Cum.	

GUJARAT ADANI ENERGY LIMITED  
 Name of work: Digging, Excavation, Back filling, sand filling, Compaction, Stabilization at  
 JAMALPUR-VEJALPUR CNG Station  
 Contract No.: PROJ/GAEL/LAND/03, Dt.20.04.2004

Name of Contractor: Aaryavart Infrastructure Pvt. Ltd, Ahmedabad. R.A. BILL NO.14  
 MEASUREMENT BOOK

Date	Description of Item	INO	Rate	C. A. B.	D	Quantity
	Item No.2: Back filling the selected natural murrum in spreading in layers with all leads & lifts as per drawing etc. completed.					
05.04.2005	DO	148.00	7.10	0.61		640.99
06.04.2005	DO	145.00	7.05	0.62		633.80
07.04.2005	DO	149.00	7.12	0.63		668.35
08.04.2005	DO	151.00	7.09	0.62		663.77
09.04.2005	DO	151.00	7.05	0.60		638.73
10.04.2005	DO	142.00	7.80	0.58		642.41
11.04.2005	DO	146.00	6.90	0.64		644.74
12.04.2005	DO	149.00	6.95	0.66		683.46
13.04.2005	DO	151.00	7.05	0.70		745.19
14.04.2005	DO	138.00	8.10	0.71		793.64
15.04.2005	DO	129.00	7.90	0.69		731.43
16.04.2005	DO	135.00	7.85	0.56		642.60
17.04.2005	DO	140.00	7.70	0.64		647.82
18.04.2005	DO	160.00	7.80	0.51		554.88
19.04.2005	DO	145.00	7.10	0.61		638.00
20.04.2005	DO	137.00	8.10	0.49		543.75
21.04.2005	DO	144.00	8.10	0.48		563.47
22.04.2005	DO	180.00	7.80	0.58		613.01
23.04.2005	DO	172.00	8.10	0.44		543.01
27.04.2005	DO	177.00	8.05	0.46		565.43
28.04.2005	DO	167.00	7.00	0.38		444.23
29.04.2005	DO	168.00	7.05	0.38		450.02
30.04.2005	DO	190.00	8.10	0.65		1000.35
02.05.2005	DO	131.00	8.20	0.62		666.00
03.05.2005	DO	165.00	7.10	0.56		721.74
04.05.2005	DO	166.00	7.15	0.56		721.91
05.05.2005	DO	164.00	7.15	0.58		745.59
08.05.2005	DO	116.00	7.80	0.34		268.19
					Total Qty.	16881.33
					Cum.	
05.04.2005 to	Item No.2: Watering & compaction of earthwork in back filling with suitable type of roller at required dry density etc. completed.				Qty. Same as Item No.2	16881.00
10.05.2005 to						22.33





**GUJARAT ADANI ENERGY LIMITED**  
 Name of work: Digging, Excavation, Back filling, Sand filling, Compaction, Stabilization at  
 JALAMPUR-VJALPUR CNG Station  
 Contract No.: PROJ/GAEU/LAND/03-DT-20.04.2004

Name of Contractor: Aaryavai Infrastructure Pvt. Ltd. Ahmedabad  
 I.R.A. BILL NO. 14

Date	Description of Item	No.	Rate	QTY	AMOUNT	QTY	AMOUNT
	Item No.4: Supplying & filling Sand in 100mm layers as per direction etc. upto 100mm						
07.04.2005	DO	148.00	7.10	1028	7294.22		
08.04.2005	DO	145.00	7.05	1025	7255.56		
09.04.2005	DO	149.00	7.12	1029	7307.66		
10.04.2005	DO	145.00	7.09	1030	7308.42		
11.04.2005	DO	151.00	7.05	1029	7308.72		
12.04.2005	DO	142.00	7.80	1030	7332.28		
13.04.2005	DO	135.00	6.90	1030	7279.45		
14.04.2005	DO	135.00	6.95	1029	7272.09		
16.04.2005	DO	151.00	7.05	1028	7298.07		
17.04.2005	DO	138.00	8.10	1029	7248.18		
18.04.2005	DO	129.00	9.00	1030	7348.30		
19.04.2005	DO	135.00	8.50	1029	7327.78		
20.04.2005	DO	140.00	7.70	1030	7323.40		
21.04.2005	DO	130.00	6.80	1028	7247.52		
22.04.2005	DO	140.00	7.10	1026	7258.44		
23.04.2005	DO	137.00	8.30	1030	7329.91		
24.04.2005	DO	144.00	9.10	1028	7366.91		
25.04.2005	DO	136.00	8.80	1027	7323.14		
26.04.2005	DO	140.00	8.10	1030	7340.20		
29.04.2005	DO	135.00	8.05	1024	7260.82		
30.04.2005	DO	167.00	7.00	1030	7350.70		
01.05.2005	DO	142.00	7.03	1029	7289.50		
02.05.2005	DO	135.00	8.10	1028	7306.18		
03.05.2005	DO	131.00	8.20	1030	7322.26		
04.05.2005	DO	140.00	7.10	1031	7308.14		
06.05.2005	DO	135.00	7.10	1030	7287.55		
08.05.2005	DO	132.00	7.15	1029	7279.70		
				Total Qty:	78253.08		
					Cum.		
07.04.2005 to 08.5.2005	Item No.5: Compaction of Sand Incl. watering with 30 tonne capacity vibrator roller upto required density etc. completed			Qty is same as Item No.4	78253.08		
					Cum.		

**S.R. CONSTRUCTION**  
 Govt. Approved Engineer's Contractor

2107, Jalaram Complex, Nr. Jalaram Temple, Korailbaug,  
 Vadodra-390018, Phone: (0) 431 993 4263 44

**DAILY MEASUREMENT SHEET**  
 Date: 03/04/2025  
 Location: Jamalpur-Vjalpur CNG Station  
 Ahmedabad


Measurement shall be taken jointly and agreed to both the parties

Sr. No.	Nature of work/Activity	No.	Length (C) mt	Breadth (B) mt	Depth (D) mt	Total Quantity (LxWxD) cum
1	Excavation 100mm	1	198	7.10	0.89	1255.51

Measurement taken & Prepared by: \_\_\_\_\_  
 Checked by: \_\_\_\_\_  
 For: Aaryavai Infrastructure Pvt. Ltd.  
 Director / Authorized Signatory

**S. R. CONSTRUCTION**





# SR

## CONSTRUCTION

Govt. Approved  
Engineers & Contractor

107, Jalaram Complex, Nr. Jalaram Temple, Karallbaud,  
Vadodra-390018 Phone: (o) 431593, 426341

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**DAILY MEASUREMENT SHEET**

Date: 07/04/2005

Location: Talabpur, Vyalpur, CNG Station  
Ahmedabad

Measurement shall be taken jointly and agreed to both the parties.

Sr. No.	Nature of work/Activity	No.	Length (L) mtr.	Breadth (B) mtr.	Depth (D) mtr.	Total Quantity (LxBxD) cum
1	Digging/Excavation work	1	151.00 mtr.	7.70 mtr.	0.88 mtr.	946.57 cum
2	Back Filling work	1	149.00 mtr.	7.12 mtr.	0.63 mtr.	668.35 cum
3	Supplying of sand filling	1	148.00 mtr.	7.70 mtr.	0.25 mtr.	294.25 cum


Measurement taken & Prepared by: \_\_\_\_\_

For S.R. Construction: \_\_\_\_\_

**S.R. CONSTRUCTION**

For: Aaryavart Infrastructure Pvt. Ltd.

Director/Authorised Signatory: \_\_\_\_\_



29. From the above documentary evidences, more specifically from the daily measurement sheet and measurement book, it can be seen that the services were provided/completed either by the assessee or the sub-contractor of the assessee (M/s. S.R. Construction) on or before 31.05.2005 in respect of all RA bills in questions. I also find from the copy of affidavit dated 05.07.2011 filed & notarised by M/s. S.R. Construction, sub contractor of the assessee that they had declared that the services were completed on 10.05.2005, 31.05.2005,

28.05.2005, 30.05.2005 and 30.05.2005 in respect of invoices no. 15/06.07.2005, 16/12.07.2005, 17/15.07.2005, 18/20.07.2005 and 19/03.08.2005 raised to the assessee. It is also pertinent to mention here that M/s. S.R. Construction had mentioned the Work Contract No. to be Proj/AIPL/Contract/05/00063 dated 16.05.2005, however, it is apparent from the synopsis filed by the assessee before Tribunal that they had brought to the notice of the Tribunal regarding mistake in mentioning incorrect work contract number as there were two contracts which were running contracts. The dates of completion of service by the subcontractor as mentioned in the affidavit are also found to be tallying with the Measurement Book produced by the assessee. I find that the said affidavit also corroborates the completion of the services in questions on or before 31.05.2005. I also note here that the then adjudicating authority before concluding the date of invoice to be the date of service, had categorically mentioned that the assessee had not produced any evidence to prove that the services were provided before 16.6.2005 so as to remain outside the purview of the cut-off date of 16.6.2005, the date from which the said services were made taxable. In view of the documents produced and legal provisions as discussed in forgoing paras, I also find that the observation of the then adjudicating authority that the date of invoices issued by the assessee are dated prior to the date of invoices by their subcontractor, has now no relevance with regard to the taxable event in the matter.

**30.** From the above factual matrix, legal provision in force at the material time and documentary evidences produced by the assessee, it can be concluded that the services were provided on or before 31.05.2005, whereas the "Site formation and clearance, excavation and earth moving and demolition services" was made taxable with effect from 16.06.2005. As discussed above, further proviso provided under Rule 6 of Service Tax Rule, 1994, stipulates that no service tax shall be payable for the part or whole of the value of services which is attributable to services provided during the period when such service were not taxable. In the instant case, the provision of service was prior to the imposition of service tax on the services provided by the assessee. Hence, I am of the view that the assessee is not liable to pay service tax on services provided under the subject RA bills. Accordingly, I hold that assessee is not liable to pay service tax as demanded and confirmed under Order in Original No. STC/06/Commr/Ahd/2011 dated 15.03.2011 by the then Adjudicating Authority in the subject SCN. Thus, the subject demand is liable to be dropped on merits being incorrect and legally not sustainable. Further, since there is no short payment of tax by the assessee and for failure to obtain service tax

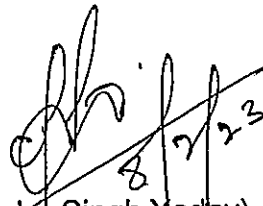
registration, as alleged in the SCN/OIO, accordingly no penalty is imposable under Section 76,78 and 77 as proposed/imposed in the impugned SCN/OIO. Similarly, no interest is leviable from the assessee.

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

**ORDER**

I hereby drop the demand of service tax of Rs. 25,96,316/- as confirmed against M/s Aaryavart Infrastructure Private Limited, 2, Dipawli Centre, Opp. Old High Court, Ahmedabad vide Order In Original No. STC STC/06/Commr./Ahd/2011 dated 15.03.2011 passed by the Commissioner of Service Tax, Ahmedabad, which was remanded back by the CESTAT, Ahmedabad Vide Final Order No. Final Order No. A/ 10224 /2022 dated 08.03.2022 for re-consideration of the said demand.



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

By Regd. Post AD./Hand Delivery  
F.No. STC/15-18/OA/2022-Denovo

Date: .02.2023.

To  
M/s Aaryavart Infrastructure Private Limited,  
2, Dipawli Centre,  
Opp. Old High Court,  
Ahmedabad-380009

Copy to:

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

  
09-02-23