आयुक्त का कार्यालय,
केंद्रीय जी. एस. टी. एवं
केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर,
कस्टम हॉउस, प्रथम तल,
नवरंगपुरा ,अहमदाबाद- 380009

OFFICE OF COMMISSIONER
CENTRAL GST & CENTRAL EXCISE,
AHMEDABAD- NORTH
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निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. STC/15-46/OA/2021

DIN-20230864WT0000000D83
आदेश की तारीख़/Date of Order: - 25.08.2023
जारी करने की तारीख़/Date of Issue :- 25.08.2023

द्वारा पारित/Passed by:- लोकेश डामोर /*Lokesh Damor*
सयुक्त आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 30/JC/ LD /2023-24

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है। This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील ,इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी ,अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रू. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है ।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(3) उक्त अपील की प्रति।

(4) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5) 00. पांच रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.
(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-46/OA/2021 dated 23.04.2021 issued to M/s Parimalkumar Kantilal Patel, D/10, Dhananjay Appartment, Opp. Sant Kabir School, Naranpura, Ahmedabad, Gujarat-380013.

BRIEF FACTS OF THE CASE :

M/s. Parimalkumar Kantilal Patel, D/10, Dhananjay Appartment, Opp. Sant Kabir School, Naranpura, Ahmedabad, Gujarat - 380013 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. ADTPP5743KSD001 and was engaged in providing Taxable Services.

2. On going through the third party CBDT data for the Financial Year 2015-16 and 2016-17, it was observed that the Assessee had declared less taxable value in their Service Tax Return (ST- 3) for the F.Y. 2015-16 and 2016-17 as compared to the Service related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

Amt. in Rupees

Sr. No.	F.Y.	Taxable as per ST-3 returns	Gross Receipts Services (Value from ITR/26AS)	Diff. Between Value of Services from ITR/26AS and Gross Value in Service Tax Provided	Resultant Service Tax short paid
1	2015-16	0/-	41408536/-	41408536/-	6004238/-
2	2016-17	0/-	33701814/-	33701814/-	5055272/-
TOTAL					11059510/-

3. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said assessee had not paid service tax as worked out as above in Table for Financial Year 2015-16 and 2016-17.

4. No data was forwarded by CBDT, for the period 2017-18 (upto June-2017) and the assessee had also failed to provide any information regarding rendering of taxable service for this period. Therefore, at the time of issue of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017). With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies that:

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

5. As per Section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services

provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 Returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appeared that the said service provider had not assessed the tax dues properly, on the services provided by him, as discussed above, and failed to file correct ST-3 Returns thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

6. Further, as per Section 75 ibid, every person liable to pay the tax in accordance with the provisions of Section 68 ibid, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider had failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

7. In view of above, it appeared that the Assessee had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of Rs.1,10,59,510/-, by declaring less value in their ST-3 Returns vis-a-vis their ITR / Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(l)(d) of Service Tax Rules, 1994.

8. It has been noticed that at no point of time, the Assessee had disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2015-16 and 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs. 1,10,59,510/-. It appeared that the above act of omission on the part of the Assessee resulted into nonpayment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appeared to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appeared that the Assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

9. The said assessee was given an opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 22.04.2021 but the said assessee did not appear for the same.

10. Therefore, a Show Cause Notice bearing F.No.STC/15-46/OA/2021 dated 23.04.2021 was issued to M/s. Parimalkumar Kantilal Patel asking them to show cause as to why:

(i) The demand for Service tax to the extent of Rs.1,10,59,510/- short paid /not paid by them in F.Y. 2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;

(ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;

(iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

(iv) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

DEFENCE REPLY

11. The assessee vide letters dated 23.02.2023, 16.03.2023, 19.04.2023, 04.05.2023 and 30.05.2023 submitted their reply to SCN wherein they stated that they are engaged in the business of rendering services related to "Construction of Residential complex, construction services other than residential complex including commercial/industrial building or civil structures and works contract services to the government organizations based on tenders listed out by various government departments. Their whole business is based on works contract services serviced from Govt. entities. They have produced copies of ITR, Form 26AS and copies of ST 3 Returns filed for the respective Financial Years. Vide letter dated 19.04.2023 the assessee submitted details of works from M/s.Jyoti Infratech for under taking construction work in the capacity of sub contractor for construction of Mehsul Bhavan, West Prant Office, Mamaldar office Ghatlodiya, Ahmedabad and construction of C category multistoried 2 nos. of towers at Vastrapur, Govt. colony Ahmedabad. Vide letter dated 04.05.2023, the assessee also submitted that they have also produced copies of work order issued by Executive Engineer, R & B Division, Godhra to M/s.Jyoti Builders with reference to the construction of model school building at Shehra, Dist.Panchmahal Taluka Pradhamik Kumar School No.1 building, Jilla Panchayat at Mehsana.

PERSONAL HEARING

12. In the instant case, Personal Hearing was granted to the assessee on 17.04.2023 and Shri Arjun Patel , C.A., duly authorised representative attended the P.H on behalf of the assessee. He submitted written submissions dated 16.03.2023. They further submitted their written submissions dated 19.04.2023, 04.05.2023 and 30.05.2023 and requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

13. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding to adjudicate the SCN.

14. I have carefully gone through the Show Cause Notice, reply to SCN, reconciliation statement, ledger accounts, invoices and Form 26AS for the F.Y. 2015-16 & 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.1,10,59,510/- for the F.Y. 2015-16 & 2016-17 on the basis of data received from Income Tax authorities. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 1,10,59,510/- for the F.Y 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

15. On perusal of the reply to SCN and other related documents, I find that the assessee have receipt from providing services related to construction of road of general public and construction of pipeline for disposal of sewerages. Here I would like to go the definition of service on which service tax is payable. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified according to the different category of services. Further after introduction of negative list with effect from 01.07.2012, service has been defined as:

> *(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—*
>
> *(a) an activity which constitutes merely,—*
>
> *(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
>
> *(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the constitution or*
>
> *(iii) a transaction in money or actionable claim.*
>
> *(b) A provision of service by an employee to the employer in the course of or in relation to his employment.*
>
> *(c) fees taken in any court or tribunal established under any law for the time being in force.*

From the definition it is evident that any activity carried out by any person to another person for any consideration is covered under the above definition of service. Further the term "taxable service" is defined under Section 66B(51) of the Finance act, 1994 as under:

(51) taxable service means any service on which service tax is leviable under Section 66B.

It is clear that the service tax is levied under Section 66B of the Finance Act, 1994 which reads as under:

Section 66B : Charge of service tax on and after Finance Act, 2012- There shall be levied a tax (hereinafter referred to as the service tax) at the rate fourteen percent on the value of all services other than those services specified in negative list, provided r agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed"

According to which service tax is levied on all services other than those specified in negative list (Section 66 D of Finance act, 1994) in the taxable territory by one person to another. In this context the services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,

SECTION 66D. Negative list of services.— The negative list shall comprise of the following services, namely :—

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers; or 9

(iv) Any service, other than services covered under clauses (i) to (iii) above, provided to business entities;

(b) services by the Reserve Bank of India;

(c) services by a foreign diplomatic mission located in India;

(d) services relating to agriculture or agricultural produce by way of—

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or [* * *] testing;

(ii) supply of farm labour;

(iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(v) loading, unloading, packing, storage or warehousing of agricultural produce;

(vi) agricultural extension services;

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

(e) trading of goods;

(f) [****].;

(g) selling of space for advertisements in print media;

(h) service by way of access to a road or a bridge on payment of toll charges;

(i) betting, gambling or lottery; Explanation. - For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in Explanation2 to clause (44) of section 65B;

(j) [* * * *]

(k) transmission or distribution of electricity by an electricity transmission or distribution utility; 10

(l) [* * * *]

(m) services by way of renting of residential dwelling for use as residence;

(n) services by way of—

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;

(ii) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;

(o) service of transportation of passengers, with or without accompanied belongings, by—

(i) [* * * *]

(ii) railways in a class other than— (A) first class; or (B) an air-conditioned coach;

(iii) metro, monorail or tramway ,

(iv) inland waterways;

(v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

(vi) metered cabs or auto rickshaws

(p) services by way of transportation of goods—

(i) by road except the services of— (A) a goods transportation agency; or (B) a courier agency;

(ii) [* * *]

(iii) by inland waterways;

(q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

16. Thus with effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the negative list are exempted. It is not disputed that the assessee has provided taxable service and the service provided by them are not mentioned in the negative list given under Section 66D of the Finance Act, 1994. In view of the above the services provided by the assessee are covered under service tax and they are also liable to pay service tax on the said services.

17. In the instant case, I have gone through Show Cause Notice, reply to SCN, reconciliation statement, ledger accounts, invoices, copies of work orders issued by various service receivers l authorities and Form 26AS for the F.Y. 2015-16 & 2016-17. In their reply to SCN, they stated that they have provided service of construction of Taluka Prathamic kumar school No.1 building, Jilla Panchayat, Mehsana, Construction of model school building at Shehra, Dist.Panchmahal and construction of Mehesul Bhavan , West prant office, Mamaldar office, Ghatlodiya, Ahmedabad as a subcontractor on behalf of main contractors M/s.Jyoti Infratech Co and M/s.Jyoti Builders and claimed exemption from service tax availing exemption under Notification No.25/2012 dated 20.06.2012. In view of the above, I would like to examine the applicability of relevant Notification No.25/2012-ST dated 20.06.2012, as amended vide Notification No.6/2015-ST dated 01.03.2015 which reads as follows :-

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

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

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

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

(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) 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.

Thereafter notification No.25/2012-Service Tax dated 20.06.2012 was amended vide Notification No.06/2015 dated 01.03.2015 wherein entry 12, items (a), (c) and (f) were omitted with effect from 01.04.2015. Then again notification No.25/2012-Service Tax dated 20.06.2012 was further amended vide Notification No.9/2016-Service Tax dated 01.03.2016 wherein after entry 12, with effect from 1st March, 2016, the following was inserted, namely –

"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;"

18. In view of the above, I find that the 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 structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment is exempted from payment of service tax.

19. In this connection, I have gone through the work orders submitted by the said assessee. On perusal of the work orders, I find that the assessee has got work orders for construction of Taluka Prathamic kumar school No.1 building, Jilla Panchayat, Mehsana, Construction of model school building at Shehra, Dist.Panchmahal and construction of Mehesul Bhavan, West prant office, Mamaldar office, Ghatlodiya, Ahmedabad as a subcontractor on behalf of main contractors M/s.Jyoti Infratech Co and M/s.Jyoti Builders and claimed exemption from service tax availing exemption under clause 12A(b) of the Notification No.25/2012 dated 20.06.2012.

20. Further, the assessee being a sub contractor is exempted from payment of service tax under Sl.No.29(h) of the said Notification. The relevant portion of the Notification is also referred as under:

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

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

21. Further , a plain reading of the said exemption point clearly indicates that the said exemption is granted to those sub contractors who are providing works contract services which are exempted. Here in this case the assessee is providing works contract service of construction of school and govt.buildings on sub contract basis and exempted from payment of service tax by virtue of clause 12A(b) of exemption Notification No.25/2012 dated 20.06.2012. As the said works contract services is exempted from the purview of service tax, the service performed by the assessee being a sub contractor is also exempted from service tax under clause 29(h) of the above referred Notification. For the sake of clarity, I would like to examine the taxability Financial Year wise:

FINANCIAL YEAR 2015-16

22. On perusal of the SCN, reply to SCN, ledger accounts, copy of 26AS, copy of invoices, and agreement, reconciliation statement and other records for the FY 2015-16, I find that the service tax of Rs.60,04,238/- is demanded on the differential value of Rs.4,14,08,536/-.

23. Further during the Financial Year 2015-16, the assessee has accrued income of Rs.4,14,85,536/- from services provided for construction of Taluka Prathamic kumar school No.1 building, Jilla Panchayat, Mehsana & Construction of model school building at Shehra, Dist. Panchmahal. The work was originally allotted to M/s. Jyoti Builders, Ahmedabad and was subsequently re alotted to the assessee for construction of the said schools. Accordingly they have derived income of Rs.4,14,85,536/- from works contract service of construction of Taluka Prathamic kumar school No.1 building, Jilla Panchayat, Mehsana & Construction of model school building at Shehra, Dist. Panchmahal on sub contract basis.

24. In this connection, I have gone through the clause 12A(b) of Noti.No.25/2012 dated 20.06.2012 according to which the 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 structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment is exempted from payment of service tax. Here, in the instant case, the service of construction of school building is used for educational use and therefore, I find that the said construction Service is exempted from payment of service tax by virtue of clause 12A(b) of exemption Notification No.25/2012 dated 20.06.2012. As the said works contract services is exempted from the purview of service tax, the service performed by the assessee being a sub contractor is also exempted from service tax under clause 29(h) of the above referred Notification. In view of the above facts, the service tax demand of Rs.60,04,238/- demanded on differential value of

Rs.8,12,25,640/- is not sustainable and therefore the same is required to be dropped

FINANCIAL YEAR 2016-17

25. On perusal of the SCN, reply to SCN, ledger accounts, copy of 26AS, copy of invoices, and agreement, reconciliation statement and other records for the FY 2015-16, I find that the service tax of Rs.50,55,272/- is demanded on the differential value of Rs.3,37,01,814/-.

26. In this connection, I have gone through the details such as copy of contract and agreement and invoices and find that, during the Financial Year 2016-17, the assessee has accrued total income of Rs.3,37,01,814/- from works contract service. Out of which Rs.2,10,64,880/- received from services provided for construction of Taluka Prathamic Kumar school No.1 building, Jilla Panchayat, Mehsana & Construction of model school building at Shehra, Dist. Panchmahal. I have gone through the work order, 26AS and agreement and find that the work was originally allotted to Shri Arvind M Prajapati Prop. Of M/s. Jyoti Builders, Ahmedabad and was subsequently re allotted to the assessee for construction of the said schools. Accordingly they have derived income of Rs. 2,10,64,880/- from works contract service of construction of Taluka Prathamic kumar school No.1 building, Jilla Panchayat, Mehsana & Construction of model school building at Shehra, Dist. Panchmahal on sub contract basis.

27. In this connection, I have gone through the clause 12A(b) of Noti.No.25/2012 dated 20.06.2012 according to which the 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 structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment is exempted from payment of service tax. Here, in the instant case, the service of construction of school building is used for educational use and therefore, I find that the said construction Service is exempted from payment of service tax by virtue of clause 12A(b) of exemption Notification No.25/2012 dated 20.06.2012 as amended. As the said works contract services is exempted from the purview of service tax, the service performed by the assessee being a sub contractor is also exempted from service tax under clause 29 (h) of the above referred Notification. In view of the above facts, no service tax is required to be paid by assessee on the exempted value of Rs.2,10,64,880/-.

28. Further, I find that, during the Financial Year 2016-17, the assessee has accrued total income of Rs.3,37,01,814/- out of which Rs1,26,36,934/- received from services provided for construction of Mehesul Bhavan, West prant office, Mamaldar office, Ghatlodiya, Ahmedabad as a subcontractor on behalf of main contractors M/s.Jyoti Infratech Co. I have gone through the invoices and work agreement and find that the work was originally allotted to M/s.Jyoti Infratech Co and was subsequently re alotted to the assessee for construction of the said civil structure. Accordingly they have derived income of Rs. 1,26,36,934/- from said works contract service. They have claimed exemption from service tax in view of by virtue of clause 12A(b) of exemption Notification No.25/2012 dated 20.06.2012 as amended.

29. In this connection, I would like to reproduce herewith the relevant portion of the said Notification :

"Notification 25/2012 ---
.....the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-
1.....
2.....
3.....
.....
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) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

30. However, the exemption to Entry no. (a), (c) and (f) was withdrawn with effect form 01.04.2015 vide notification 06/2015-ST dated 01.03.2015. hence the assessee is not eligible for exemption under this entry from 01.04.2015. Further vide notification 09/2016 –ST dated 1.3.2016 a new entry 12 A was inserted in notification 25/2012-ST dated 20.06.2012 which read as under. –

"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;";"

31. Vide this entry the exemption was partially restored but the condition specifically stated that the contract to provide the said service should have been entered into before 01.03.2015 and appropriate stamp duty is also to be discharged before 01.03.2015. According to which the services provided to Government, a local authority or a governmental authority by way of erection, construction, maintenance, repair, alteration renovation or restoration of Canal, dam or other irrigation works for use other than for

commerce, industry, or any other business or profession is exempted from the ambit of service tax.

32. In this connection, I have gone through the clause 12A(b) of Noti.No.25/2012 dated 20.06.2012 as amended. Vide this entry the exemption was partially restored but the condition specifically stated that the contract to provide the said service should have been entered into before 01.03.2015 and appropriate stamp duty is also to be discharged before 01.03.2015. According to which the services provided to Government, a local authority or a governmental authority by way of erection, construction, maintenance, repair, alteration renovation or restoration of Canal, dam or other irrigation works for use other than for commerce, industry, or any other business or profession is exempted from the ambit of service tax if the contract to provide the said service should have been entered into before 01.03.2015 and appropriate stamp duty is also to be discharged before 01.03.2015.

33. In the instant case, I have gone through the agreement between the main contractor M/s. Jyoti Infratech and the assessee for construction of Mahesul Bhavan, West prant Office, Mamaldar Office at Ghatlodiya, Ahmedbad and find that the agreement was executed on 07.12.2016. On perusal of the agreement it was also seen that the agreement between the Executive Engineer, Ahmedabad R & B Division, Ahmedabad was made on 14.09.2016 vide agreement No.B-2/12 of 2016-17. As the contract to provide service is entered is after 01.03.2015 and therefore the said work contract service is not eligible for exemption as envisaged vide Mega Exemtpion Notification No.12/2015 dated 20.06.2012 as amended vide Noti. No. 09/2016 –ST dated 01.03.2016. Therefore, the assessee is not eligible for exemption for the works contract services provided for construction of Mahesul Bhavan, West prant Office, Mamaldar Office at Ghatlodiya, Ahmedbad amounting to Rs.1,26,36,934/- and accordingly the said income is subject to service tax.

34. In this connection, I have gone through the definition under Section 65 of Finance Act, 1994 of works contract service which reads as follows.

Clause 44 of section 65B of Finance Act, 1994, defines the Work-Contact as follows. "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property

according to which the activity of construction of Mahesul Bhavan, West prant Office, Mamaldar Office at Ghatlodiya, Ahmedbad is covered under the definition of works contract service. As the material is involved in these services the taxable value is to be determined as per Rule 2A of service tax (Determination of value Rules) 2006 which reader as under:

"2A. Determination of value of service portion in the execution of a works contract.- Subject to the provisions of section 67, the value of service portion in

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

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Explanation.- For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services;

(vii) other similar expenses relatable to supply of labour and services; and

(viii) profit earned by the service provider relatable to supply of labour and services; 1 amended by Service Tax (Determination of Value) Second Amendment Rules, 2012 vide Notification no 24/2012-ST, dated 6.06.2012 w.e.f. 1.7.2012.

(c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

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

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

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property , service tax shall be payable on sixty per cent. of the total amount charged for the works contract;

Explanation 1. - For the purposes of this rule,-

(a) "original works" means-

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

(b) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or

in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-
(i) the amount charged for such goods or services, if any; and
(ii) the value added tax or sales tax, if any, levied thereon: Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.
Explanation 2.--For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004."

35. In view of the above, I find that the service provided by the assessee is falls under original works and accordingly the taxable value is to be determined as per Rule 2A of service tax (Determination of value Rules) 2006. According to which the assessee is eligible for abatement of 60% of total receipts and accordingly liable to pay service tax on abated value of 40 % of the total amount received from the works contract services provided by the assessee. Accordingly the assessee is liable to pay service tax on 40% (Rs.50,54,774/-) of the total receipts i.e. Rs.1,26,36,934/- received by the assessee during the period as the assessee is not eligible for any exemption as discussed above. Therefore, I find that, the assessee is required to pay service tax of Rs.7,58,216/- on the abated value of Rs. Rs.50,54,774/- as discussed above and the remaining demand of Rs.42,97,056/- (Rs. 50,55,272/- - Rs.7,58,216/-) is required to be dropped for the FY 2016-17. For the sake of clarity, I reconcile the taxability as under:

Sl.No.	Particulars	2015-16	2016-17
01	Gross receipts as per SCN	41408356	33701814
02	Less: value of services exempted vide 12A(d) of No.No.25/2012 dated 20.06.2012 as discussed.	41408536	21064880
03	Difference on which ST payable	0	12636934
04	Less: abatement @60% as discussed	0	75821604
05	Taxable value	0	5054774
07	Service tax @15% (inclusive of Cess)	0	758216

36. Accordingly, on the basis of above facts and figures, I find that the assessee is required to pay service tax of Rs.7,58,216/- for the FY 2016-17. Accordingly service tax demand of Rs.1,03,01,294/- (Rs.60,04,238/- for FY 2015-16 and Rs. Rs.42,97,056/- for the FY 2016-17) is required to be dropped from the total demand of Rs.1,10,59,510/- as proposed vide instant SCN.

37. I find that the financial and other records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company/ individual during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a

company and also to call additional information required for verification and to arrive at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs of the company/ individual. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

38. The government has from the very beginning placed full trust on the service tax assessee so far as service tax is concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of the service tax assessee; therefore, the governing statutory provisions create an absolute liability, when any provision is contravened or there is a breach of trust, on the part of service tax assessee, no matter how innocently. From the information/data received from CBDT, it appeared that the assessee has not discharged service tax liability in spite of declaring before Income Tax Department. Non-payment of service tax is utter disregard to the requirements of law and the breach of trust deposed on them which is outright act of defiance of law by way of suppression, concealment & non-furnishing value of taxable service with intent to evade payment of service tax. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts. Therefore, service tax amounting to Rs. 7,58,216/- as discussed above for Financial Year 2015-16 is required to be recovered from them under Section 73 (1) of Finance Act, 1994 by invoking extended period of five years under the proviso to Section 73(1) of the Finance Act, 1994.

39. Further the onus is on the assessee to prove that they are eligible for any exemption Notification. In this connection the Hon"ble Supreme Court of India in the case of Commissioner of Central Excise New Delhi Vs. Hari Chand Shri Gopal reported in2010(260) ELT 3 (SC) clarified that the person claims exemption or concession has to establish that he is entitled to that exemption or concession. The relevant portion of the order is reproduced as under:

*"**22.** The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In Novopan Indian Ltd. (supra), this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave - (1996) 2 SCR 253, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any*

intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption." . Here in the instant case the assessee failed to prove that they are eligible for the exemption Notifications.

40. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the said assessee had failed to pay their Service Tax liabilities in the prescribed time limit, I find that the said assessee is liable to pay the said.amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

41. As far as imposition of penalty under Section 78 of Finance Act, 1994 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under section 78 of Finance Act, 1994 as they failed to pay the correct duty with the intend to evade the same. It is also a fact that they had deliberately suppressed the value of services provided by them, with an intent to evade the proper payment of service tax on its due date. These facts would not have come to light had the CBDT not shared the data. The assessee had thus, willfully suppressed the actual provision of taxable service provided by them with an intent to evade the Service Tax. Hence it is found that the said assessee, as a service provider, deliberately suppressed the actual provision of the taxable services provided by them, from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed hereinabove. Hence, I find that this is a fit case to impose penalty under Section 78 of Finance Act,1994.

42. In this regard, I rely upon the decision of Larger Bench of Hon'ble Supreme Court in the case of UIO Vs Dharmendra Textile Processors -2008 (231)ELT 3(SC) and further clarification in the case of M/s Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C) wherein, it was, inter alia held that:

"23. The decision in Dharmendra Textile must, therefore, be understood to mean that though the application of Section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no jurisdiction in quantifying the amount and penalty must be imposed equal to the duty determined under sub section (2) of Section 11 A. that is what Dharmendra Textile decides". With the above observation, the Hon'ble Apex court held that mens rea is not an essential ingredient to impose penalty under Section 11AC of the Central Excise Act, 1944 and there is no discretion available on quantum of penalty imposable under that section. As penal provisions of Section 78 of the Finance Act, 1944 and Section 11 AC of Central Excise Act, 1944 are pari materias, the ratio of decision of the Apex court is applicable to Service Tax matters also.

43. 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 behaviour. The said assessee deliberately not supplied their documents, the actual service provisions rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but only after going through the CBDT data these facts would have come to light. The said assessee himself admits in their reply to SCN that they were provided various services. Moreover, the Hon'ble apex court in the case of Rajasthan Spinning and Weaving Mills / High Court of Gujarat at Ahmedabad in Tax Appeal No. 338 of 2009 in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. dated 22.04.2010 has made the following observations regarding applicability of the extended period in different situations.

"11. A plain reading of sub-section (1) of section 11A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless of the fact that such non-levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.

12. The Proviso under the said sub-section stipulates that in case of such non-levy, etc. of duty which is by reason of fraud, collusion, or any mis - statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under, the provisions of sub-section (1) of section 11A of the Act shall have effect as if the words one year have been substituted by the words five years.

13. The Explanation which follows stipulates that where service of notice has been stayed by an order of a Court, the period of such stay shall be excluded from computing the aforesaid period of one year or five years, as the case may be.

14. Thus the scheme that unfolds is that in case of non-levy where there is no fraud, collusion, etc., it is open to the Central Excise Officer to issue a show cause notice for recovery of duty of excise which has not been levied, etc. The show cause notice for recovery has to be served within one year from the relevant date. However, where fraud, collusion, etc., stands established the period within which the show cause notice has to be served stands enlarged by substitution of the words one year by the words five years. In other words the show cause notice for recovery of such duty of excise not levied etc., can be served within five years from the relevant date.

15. To put it differently, the proviso merely provides for a situation where under the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of one year or five years as the case may be.

16. The termini from which the period of one year or five years has to be computed is the relevant date which has been defined in sub-section (3)(ii) of section 11A of the Act. A plain reading of the said definition shows that

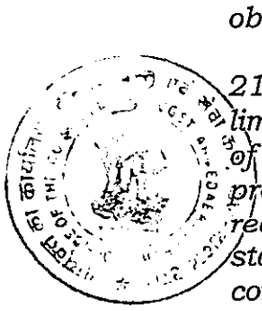
the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.

17. The proviso cannot be read to mean that because there is knowledge the suppression which stands established disappears. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.

18. The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term relevant date nugatory and such an interpretation is not permissible.

19. The language employed in the proviso to sub-section (1) of section 11A, is clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder , the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.

20. Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of section 11A would be applicable. However, such reasoning appears to be fallacious in as much as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.



21. It may be noticed that where the statute does not prescribe a period of limitation, the Apex Court as well as this Court have imported the concept of reasonable period and have held that where the statute does not provide for a period of limitation, action has to be taken within a reasonable time. However, in a case like the present one, where the statute itself prescribes a period of limitation the question of importing the concept of reasonable period does not arise at all as that would mean that

the Court is substituting the period of limitation prescribed by the legislature, which is not permissible in law.

22. The Apex Court in the case of Rajasthan Spinning and Weaving Mills (supra) has held thus :
"From sub-section 1 read with its proviso it is clear that in case the short payment, nonpayment, erroneous refund of duty is unintended and not attributable to fraud, collusion or any willful mis -statement or suppression of facts, or contravention of any of the provisions of the Act or of the rules made under it with intent to evade payment of duty then the Revenue can give notice for recovery of the duty to the person in default within one year from the relevant date (defined in sub-section 3). In other words, in the absence of any element of deception or malpractice the recovery of duty can only be for a period not exceeding one year. But in case the non-payment etc. of duty is intentional and by adopting any means as indicated in the proviso then the period of notice and a priory the period for which duty can be demanded gets extended to five years."

23. This decision would be applicable on all fours to the facts of the present case, viz. when non-payment etc. of duty is intentional and by adopting any of the means indicated in the proviso, then the period of notice gets extended to five years."

44. Further, as mentioned in the SCN, I find that the levy of Service Tax for the financial year 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of subject SCN, if he same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under proviso to Section 73(1) read with master Circular No. 1053/02/2017-CX dated 10.03.2017, the service tax liability was to be recovered from the assessee accordingly, I however, do not find any charges leveled for the demand for the year 2017-18 (Up to June 2017), in charging para of the SCN, hence I refrain from discussing the taxability of any income for the period 2017-18(upto June 2017).

In view of the above facts, the extended period is correctly invoked while issuing this Show Cause Notice. Further, the assessee in their reply to SCN relied upon a large number of case laws in their favour on various points, however, I find that the said case laws are not relevant on the disputed points.

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

ORDER

(i) I hereby confirm the demand of service tax of Rs. 7,58,216/- (Rupees Seven Lakh Fifty Eight Thousand Two Hundred Sixteen Only), 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 drop the remaining demand of Service Tax amounting to Rs.1,03,01,294/- as discussed above;

(ii) I confirm the demand of Interest at the appropriate rate and order to recover the same from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;

(iii) I impose penalty of Rs.10,000/- on M/s. Parimalkumar Kantilal Patel under Section 77(2) of the Finance Act, 1994;

(iv) I impose Penalty of Rs. 7,58,216/- (Rupees Seven Lakh Fifty Eight Thousand Two Hundred Sixteen Only), under Section 78 of the Finance Act, 1994, as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if on M/s. Parimalkumar Kantilal Patel pays the amount of Service Tax as determined at Sl. No. (1) above and interest payable thereon at (2) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by on M/s. Parimalkumar Kantilal Patel shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

46. Accordingly the Show Cause Notice bearing F.No. STC/15-46/OA/2021 dated 23.04.2021 is disposed off.

25/08/2023

(Lokesh Damor)
Joint Commissioner
Central GST & Central Excise
Ahmedabad North

BY SPEEDPOST/BY HAND
No. STC/15-46/OA/2021

Dt.

To
M/s. Parimalkumar Kantilal Patel,
D/10, Dhananjay Appartment,
Opp. Sant Kabir School, Naranpura,
Ahmedabad, Gujarat – 380013.

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, CGST & Central Excise, Division-VII Ahmedabad North.
3. The Supdt., Range-I, Division-VII, CGST & C. Excise, Ahmedabad North
4. The Supdt (System), CGST & C. Excise Ahmedabad North for uploading the order on website.
5. Guard File.