

<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>GST ONE NATION. ONE TAX. ONE MARKET</p> <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No.STC/4-05/OA/16-17

आदेश की तारीख/Date of Order: - 28.01.2019
जारी करने की तारीख/Date of Issue :- 28.01.2019

द्वारा पारित/Passed by:-

जी. सी. जैन *IG. C. Jain*
अपर आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 01/JC/2019/GCJ

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 विरुद्ध 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 इ.ए.-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रु .2.00 (दो 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. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 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 Commissioner (Appeal) 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)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 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।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 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.2.00.

विषय: -कारण बताओ सूचना/Show Cause Notice F.No. DGCEI/AZU/36-84/2015-16 dated 31.03.2016 issued to 1) M/s Sambhav Infrastructure Pvt. Ltd. "Stavan Ample", TP No. 123/1, FP 99, Nr. Vadilal Godown, behind Vodafone Tower, Gota, Ahmedabad-380054. 2) Shri Mihir P. Desai, Director of M/s sambhav Infrastructure Pvt. Ltd. "Stavan Ample", TP No. 123/1, FP 99, Nr. Vadilal Godown, behind Vodafone Tower, Gota, Ahmedabad-380054.



BRIEF FACTS OF THE CASE:

M/s Sambhav Infrastructure Pvt. Ltd., "Stavan Ample", TP No. 32, Survey No. 123/1, FP 99, Nr. Vadilal Godown, Behind Vodafone Tower, Gota, Ahmedabad- 380054 and having Corporate Office at 601-602, 6th Floor, Pinnacal Business Park, Corporate Road, Near Prahladnagar, Ahmedabad [here-in-after referred to as 'M/s SIPL' or the 'assessee' for the sake of brevity], had started construction of a residential project in the name of "Stavan Ample" at above address in the year of 2010 and had obtained Service Tax Registration-ST-2 Certificate bearing No. AAKCS5194CSD006 dated 07/03/2012 under the categories of taxable services viz."Construction of Residential Complex Services" provided and "Transport of Goods by Road Services/ Goods Transport Agency (GTA) Services" received by them, from Service Tax Commissionerate, Ahmedabad.

2. The intelligence gathered by the officers of the Directorate General of Central Excise Intelligence, Zonal Unit, Ahmedabad (here-in-after referred to as "DGCEI" for the sake of brevity) was that M/s SIPL, as a builder/developer, was collecting Service Tax from their customers but not depositing the Service Tax into the Government exchequer and they were also suppressing their taxable value by not filing ST-3 Returns, even after obtaining Service Tax Registration.

3. **EXECUTIVE SUMMARY OF THE CASE** - The investigations revealed that M/s SIPL had provided / received the following taxable services:

- (i) "Construction of Residential Complex Services";
- (ii) "Management, Maintenance or Repair Services for Goods, Equipments or Properties Services";
- (iii) "Goods Transport by Road/Goods Transport Agency Services (GTA)" received by them on which Service Tax payable under reverse charge mechanism;
- (iv) "Security/ Detective Agency services" from individual/ Partnership firms, on which Service Tax payable under reverse charge mechanism.

3.1 Further, investigations revealed that M/s SIPL had evaded payment of Service Tax of Rs.54,59,869/- (Rs.47,36,809/- + Rs.7,23,060/-) by adopting following modus operandi:

- (i) Collected the amount of Service Tax on advances received towards booking/ sale of units prior to Building Use permission obtained from the competent authority viz. Ahmedabad Municipal Corporation (AMC) but not deposited the amount of Service Tax to the Govt Exchequer payable under the taxable service category of "Construction of Residential Complex Services" provided by them, by suppression of taxable value thereof by not filing ST-3 Returns - Service Tax involved- Rs.42,62,735/-;
- (ii) Non-payment of Service Tax on maintenance charges collected from prospective buyers, payable under the taxable service category of "Management, Maintenance or Repair Services for Goods, Equipments or Properties" provided by them, by

suppression of taxable value thereof by not filing ST-3 Returns-Service Tax involved- Rs.1,51,206/-;

- (iii) Non-payment of Service Tax on Freight/Cartages paid to transport agencies payable under the taxable service category of "Good Transport by Road/Goods Transport Agency Services (GTA)" received by them under reverse charge mechanism, by suppression of taxable value thereof by not filing ST-3 Returns-Service Tax Involved Rs.1,88,465/-;
- (iv) Non-payment of Service Tax on security charges paid to Security/ Detective Agencies, payable under the taxable service category of "Security/ Detective Agency services" received from an individual/ Partnership firm, under partial reverse charge mechanism, by Suppression of taxable value thereof by not filing ST-3 Returns-Service Tax involved- Rs.99,319/-;
- (v) Non-payment of Service Tax on legal fees paid to the individual Advocates/ the firm of Advocates, payable under reverse charge mechanism, by Suppression of taxable value thereof by not filing ST-3 Returns-Service Tax involved- Rs.35,003/-;
- (vi) Thus, M/s. SIPL had evaded Service Tax totally to the tune of Rs.47,36,809/- by adopting above modus;
- (vii) In addition to the above, they had also wrongly collected the amount of Service Tax on advances received on sale of units after obtaining Building Use permission from AMC, but not deposited the same to the Govt. Exchequer - Service Tax involved- Rs. 7,23,060/-;
- (viii) So far, after initiation of inquiry by DGCEI, M/s SIPL had voluntarily made payments of Service Tax of Rs.23,45,810/-, by GAR-7 Challans & Rs.2,57,948/- through CENVAT Credit, totally Rs.26,03,758/-;
- (ix) M/s SIPL had also paid Rs.6,23,932/- toward interest for delayed payment of evaded Service Tax and Rs.45,500/- toward late fees for filing of ST-3 Returns for the period from 01/04/2010 to 30/06/2012 vide various GAR-7 Challans;
- (x) Hence, overall evasion of Service Tax to the tune of Rs.54,59,869/- (Rs.47,36,809/- + Rs.7,23,060/-) for the period from 01/06/2010 to 31/03/2015, was detected during the investigation.

3.2 Based on the intelligence, the officers of DGCEI had conducted searches at corporate office premise situated at 501 & 502, Safal Prelude, Opp. Titanium Plaza, Near Prahladnagar Garden, S. G. Highway, Ahmedabad, Site Premises of "Stavan Ample" and residential premises of Shri Mihir P. Desai, Director of M/s SIPL on 11.12.2012 and resumed relevant documents/details under respective regular Panchnamas. Further, a statement of Shri Mihir P. Desai, Director of M/s SIPL, was also recorded on spot on 11.12.2012, as detailed below:

4. A statement of Shri Mihir P. Desai, Director of M/s SIPL was recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, on 11/12/2012, wherein, he, inter alia, stated that M/s SIPL was established as a Private limited Company in Ahmedabad and was engaged in construction residential-cum-commercial projects at various locations in and around Ahmedabad; that he and his wife, Smt. Toshali M. Desai were directors of the company; that he had been shown Panchnama dated 11.12.2012 drawn at his corporate office and he put his dated signature thereon in token of having agreed with the facts mentioned therein; that they had launched advance booking for sale of residential flats before construction and obtaining of BU permission in the name of "Stavan Ample" scheme at Survey No 123/1 FP 99, Nr. Vadilal Godown, Behind Vodafone Tower, Gota, Ahmedabad and receiving amounts in advance toward land and construction cost of the same from prospective buyers; that they had not received the Building Use Permission for Stavan Ample- Scheme; that they had obtained Service Tax Registration-ST-2 Certificate separately for each scheme; that they had obtained Service Tax Registration-ST-2 Certificate bearing No.AAKCS5194CSD006 dated 07/03/2012 for their "Stavan Ample Scheme under the categories of taxable services viz. "Transport of Goods by Road services/ Goods Transport Agency (GTA) Services" & "Construction of Residential Complex Services"; that till initiation of inquiry by DGCEI, they had neither paid any amount of Service Tax leviable on said advances under the category of "Construction of Residential Complex Service" nor filed any periodical Service Tax Return in ST-3 Form for said Scheme; that in some cases they had also collected amount of Service Tax from prospective buyers at the time of sale deeds but not deposited the same to the credit of Central Government; that they had received amount in advance for land and construction cost of residential flats booked for sale from their prospective buyers and, hence, they, being a developer/builder, were liable to pay Service Tax thereon after admissible abatement, under the category of "Construction of Residential Complex Service" w. e. f. 01.07.2010; that they had also received services of various goods transport agencies and paid freight to them; that they, being a recipient, were also liable to pay Service Tax on freight amount paid to them under the category of "Transport of Goods by Road services/ Goods Transport Agency (GTA) Services" under reverse charge mechanism, but till initiation of inquiry by DGCEI, they had also not paid any amount of Service Tax thereon; that he admitted that they had also not intimated the fact of non-payment of Service Tax on aforesaid taxable services in any form to the department; that till initiation of inquiry by DGCEI, due to financial crisis they could not discharge their said Service Tax liability; that he admitted his mistake and was ready to discharge their Service Tax liability.

5. Summons dated 30.04.2013, 07.08.2014, 17.10.2014, 25.04.2015, 14.05.2015, 20.05.2015, 26.05.2015 & 26.06.2015 were issued to M/s SIPL and accordingly, they had submitted the Ledger Accounts of perspective buyers; ledger accounts of Account of Service Tax Payable Accounts for Construction Services provided by them; Ledger Accounts of Maintenance Charges, Cartages Expenses, Security Charges and legal Advocate Fees; Copy of BU Permission letter; Balance Sheet for F.Y. 2010 to 2013-14; Copy of ST-2 Certificate and Copies of GAR-7 Challans and appeared for tendering further oral statement in the matter.

6. They had constructed a residential complex, in the name of "Stavan Ample" wherein they had constructed 140 residential flats. After completion of construction of said complex, they had obtained Building Use (BU) permission from the competent authority i.e. AMC, on 30.10.2013.

7. From the documents/ details resumed/ submitted, it was revealed that they have collected amounts as advances from their prospective buyers for land & construction cost toward sale/booking of residential flats before the date of BU permission under said scheme. They had also collected amount of Service Tax leviable on advances from said buyers. They, being a builder/ developer, were liable to pay Service Tax on advances received from said buyers under the category of taxable service of "Construction of Residential Complex Service" w. e. f. 01.07.2010. However, till initiation of inquiry by DGCEI, they had not deposited any amount of Service Tax leviable on advances received from said buyers to the credit of Central Government.

8. Further, they had also collected lump sum amounts towards 'Maintenance Charges' in advance at the time of execution of Sale Deeds or thereafter from their prospective buyers on which they were also liable to pay Service Tax at appropriate rate under the category of taxable service of "Management, Maintenance or Repair Services for Goods, Equipments or Properties". However, till initiation of inquiry by DGCEI, they had not deposited any amount of Service Tax leviable thereon to the credit of Central Government.

9. Further, they had also received services of Goods Transport by Road/Goods Transport Agency Services (GTA) for construction of residential flats from various Goods Transport Agencies and paid freight/ cartages to them for said Scheme. They, being a service receiver, were also liable to pay Service Tax at applicable rate on freight amount paid after admissible abatement of 75% of freight amount, under the category of taxable service of "Goods Transport by Road/Goods Transport Agency Services (GTA)" under Reverse Charge Mechanism. However, till initiation of inquiry by DGCEI, they had not paid any amount of Service Tax payable on said services to the credit of the Central Government.

10. Further, they had also received taxable services, viz. "Security/ Detective Agency services" from an individual/ Partnership firms and "Legal Consultancy services" from an Individual Advocate or a Firm of Advocates and paid service charges to them. They, being a service receiver, were also liable to pay Service Tax at applicable rate on said services under Reverse Charge Mechanism, w. e. f. 01.07.2012. However, till initiation of inquiry by DGCEI, they had also not paid any amount of Service Tax payable on said services to the credit of the Central Government.

11. On scrutiny of the Ledger Accounts of prospective buyers and Service Tax payable, it was further revealed that they had also wrongly collected but not deposited an amount of Service Tax @ 3.09% on advances received towards booking/ sale of residential flats from following prospective buyers, wherein entire consideration was received after the date of BU permission obtained from AMC, hence, Service Tax was not leviable on such advances under the category of "Construction of Residential Complex Service":

Flat No.	Party Name
During F.Y. 2013-14	
A-302	Arunaben Ghadhavi
E-104	Tinaben Laxmisankar Pandya
C-304	Hardik Jayendrabhai Gajjar-Pratik
C-102	Kashmira C. Buch
B-303	Maitray Ashwin Bhatt/Ashvin A Bhatt
E-203	Pradip Sampatlal Soni-Pratik
B-204	Dilipkumar G./Sohil D. Solanki-Pratik
C-404	Jasleen Kaur-Pratik
E-304	Jit Roy
E-301	Komal Bhavsar/Devendra M Bhavsar
During F.Y. 2013-14	
C-401	Nirav Prafulchandra Mehta-Pratik
C-301	Tejendrasingh T Saluja-Pratik
E-503	Pooja Sunilkumar Pithwa-Pratik
C-504	Kalpesh G. Mistri
F-501	Binduben Manishkumar Joshi (Pratik)
B-503	Aarti Rai (Pratik)
C-501	Hardik Yogeshbhai Joshi (Pratik)
E-202	Vijay N Ahir C/o Pratik
B-403	Naresh V Patel-Pratik

12. Further, they had obtained Service Tax registration in respect of taxable services viz. "Construction of Residential Complex Services" and "Transport of Goods by Road Services/ Goods Transport Agency Services (GTA)" on 07/03/2012, even though they were providing and receiving said taxable services well before and were liable to pay Service Tax thereon. Till that date they had not applied for including taxable services viz. "Security/ Detective Agency services", "Management, Maintenance or Repair Services for Goods, Equipments or Properties" and "Legal Consultancy services" in their existing Service Tax registration Certificate. They had, thus, failed to obtain Service Tax registration in respect of aforesaid taxable services within the stipulated time limit.

13. Further, they had also failed to furnish periodical ST-3 returns in respect of taxable services provided and received by them within stipulated period. Details of periodical ST-3 Returns filed by them, were as below:

Sr. No	Period of ST-3 Return	Category of Taxable Services for which ST-3 return filed	Date of filing of ST-3 Return	Late Fees Paid (Rs.)
1	01.04.2010 to 30.09.2010	Construction of Residential Complex Services" and "GTA"	26/01/2013	20000
2	01.10.2010 to 31.03.2011	---do---	26/01/2013	2000
3	01.04.2011 to 30.09.2011	---do---	26/01/2013	20000
4	01.10.2011 to 31.03.2012	---do---	26/01/2013	20000
5	01.04.2012 to 30.06.2012	---do---	26/01/2013	1500

Sr. No	Period of ST-3 Return	Category of Taxable Services for which ST-3 return filed	Date of filing of ST-3 Return	Late Fees Paid (Rs.)
6	01.07.2012 to 30.09.2012	---do---	29/04/2013	0
7	01.10.2012 to 31.03.2013	---do---	30/01/2014	0
8	01.04.2013 to 30.09.2013	Construction of Residential Complex Services", "GTA" and "Security/Detective Agency Service".	05/01.2015	0
9	01.10.2013 to 31.03.2014	--do--	05/01/2015	0
10	01.04.2014 to 30.09.2014	Till date not furnished	Not furnished	
11	01.10.2014 to 31.03.2015	Till date not furnished	Not furnished	
	Total			45,500/-

14. Further, during the course of investigation, they had not raised any dispute of either of the classification or the taxability of the aforesaid services. Admitting their liability, they, after initiation of inquiry by DGCEI, had voluntarily deposited an amount of Rs.23,45,810/- by GAR-7 Challans and Rs.2,57,948/- through CENVAT Credit, totally Rs.26,03,758/- toward amount of Service Tax evaded in respect of taxable services provided viz. "Construction of Residential Complex Services" and received viz. "Transport of Goods by Road Services/ Goods Transport Agency Services (GTA)" & "Security/ Detective Agency services" by them. It further revealed that they had also voluntarily deposited an amount of Rs.6,23,932/- toward interest for delayed payment of evaded Service Tax and Rs.45,500/- toward late fees for filing of ST-3 Returns for the period from 01/04/2010 to 30/06/2012, vide GAR-7 Challans.

15. On the basis of the above facts & evidences and scrutiny of the various details/ records resumed/ submitted by M/s SIPL, it appeared that:

- (i) M/s SIPL had obtained Service Tax Registration (ST-2) bearing No. AAKCS5194CSD0Q6 under the taxable service categories of "Construction of Residential Complex Services" provided and "Transport of Goods by Road Services" received by them, from Service Tax Commissionerate, Ahmedabad, on 07/03/2012;
- (ii) M/s SIPL had constructed a residential complex in the name of "Stavan Ample" wherein they had constructed 140 residential flats. After completion of construction of said complex, they have obtained the Building Use permission (BU) from the competent authority i.e. AMC on 30.10.2013;
- (iii) M/s SIPL had collected amounts as advances from their prospective buyers for land & Construction cost towards sale/booking of residential flats before the date of BU permission under said scheme. They had also collected amount of Service Tax leviable on advances received from said buyers;
- (iv) M/s SIPL, being a builder/ developer, was liable to pay Service Tax on advances received from said buyers under the category of "Construction of Residential Complex Service" w.e.f. 01.07.2010. However, till initiation of inquiry by DGCEI, they had also not deposited any amount of Service Tax leviable on advances to the credit of Central Government;
- (v) M/s SIPL had also collected lump sum amounts towards Maintenance in advance at the time of execution of Sale Deeds from their prospective

buyers on which they were also liable to pay amount of Service Tax at appropriate rate under the category of taxable service viz. "Management, Maintenance or Repair Services for Goods, Equipments or Properties". However, till initiation of inquiry by DGCEI, they had also not deposited any amount of Service Tax leviable thereon to the credit of Central Government;

(vi) M/s SIPL had also received services of Goods Transport by Road/Goods Transport Agency Services (GTA) for construction of residential flats under said scheme, from various goods transport agencies and paid freight/ cartages to them. They, being a service receiver, were also liable to pay Service Tax at applicable rate on freight amount paid after admissible abatement of 75% of freight amount, under the category of taxable service of "Goods Transport by Road/Goods Transport Agency Services (GTA)" under Reverse Charge Mechanism. However, till initiation of inquiry by DGCEI, they had also not paid any amount of Service Tax payable on said services to the credit of the Central Government;

(vii) M/s SIPL had also received taxable services, viz. "Security/ Detective Agency services" from various service providers and "Legal Consultancy services" from an Individual Advocate or a Firm of Advocates and paid service charges to them. They, being a service receiver, were also liable to pay Service Tax at applicable rate on said services under Reverse Charge Mechanism, w. e. f. 01-07-2012. However, till initiation of inquiry by DGCEI, they had also not paid any amount of Service Tax payable on said services to the credit of the Central Government;

(viii) They had also wrongly collected but not deposited an amount of Service Tax @ 3.09% on advances received towards booking / sale of residential flats from said prospective buyers, wherein entire consideration was received after the date of BU permission obtained from AMC, hence, Service Tax was not leviable on such advances under the category of "Construction of Residential Complex Service". As per the provisions of Sub-section (2) of Section 73(A) of the Finance Act, 1994, they were required to forthwith pay the amount of Service Tax wrongly collected from said buyers to the credit of the Central Government. However, till initiation of inquiry by DGCEI, they had also not deposited amount of Service Tax wrongly collected from said buyers to the credit of Central Government;

(ix) M/s SIPL had obtained Service Tax registration in respect of taxable services viz. "Construction of Residential Complex Services" and "Transport of Goods by Road Services/ Goods Transport Agency Services (GTA)" on 07/03/2012, even though they were providing and receiving said taxable services and were liable to pay Service Tax thereon well before. Further, till date they had not applied for including taxable services viz. "Management, Maintenance or Repair Services for Goods, Equipments or Properties" provided and "Security/ Detective Agency services" & "Legal Consultancy services" received by them in their existing Service Tax registration Certificate. They had, thus, failed to obtain Service Tax registration in respect of aforesaid taxable services within the stipulated time limit;

- (x) M/s SIPL had also failed to furnish periodical ST-3 returns in respect of aforesaid taxable services on or before due dates for the periods from 01/04/2010 to 31/03/2015;
- (xi) During the course of investigation, they had not raised any dispute of either of the classification or the taxability of the aforesaid services. Admitting their liability, they, after initiation of inquiry by DGCEI, had voluntarily deposited an amount of Rs.23,45,810/- by GAR-7 Challans and Rs.2,57,948/- through CENVAT Credit, totally Rs.26,03,758/- toward amount of Service Tax evaded in respect of taxable services provided viz. "Construction of Residential Complex Services and received viz. "Transport of Goods by Road Services/ Goods Transport Agency Services (GTA)", "Security/ Detective Agency Services" by them. It further revealed that they had also voluntarily deposited an amount of Rs.6,23,932/- vide GAR-7 Challans toward interest for delayed payment of evaded Service Tax and Rs.45,500/- toward late fees for filing of ST-3 Returns for the period from 01/04/2010 to 30/06/2012;
- (xii) Further, Shri Mihir P. Desai, Director of M/s SIPL, in his statement recorded on spot i.e. on 11/12/2012 admitted to have neither paid any amount of Service Tax nor filed any periodical ST-3 returns till initiation of inquiry by DGCEI and also agreed to pay evaded amount of Service Tax.
- (xiii) In view of the facts stated above, it was found that despite the knowledge of Service Tax Law and Procedure, M/s SIPL had willfully avoided filing of the ST-3 returns as well as payment of Service Tax due, even after collecting the same from buyers within due dates stipulated under the Service Tax Rules, 1994 in respect of taxable services provided viz. (a) "Construction of Residential Complex Services"; (b) "Management, Maintenance or Repair Services for Goods, Equipment or Properties" and received viz. (c) "Transport of Goods by Road/ Goods Transport Agency Service (GTA)"; (d) "Security/ Detective Agency Service" and (e) "Legal Consultancy services" under Reverse Charge Mechanism, by them during the period from 01/06/2010 to 31/03/2015, with the sole intention to evade the Service Tax liability. Further, they had also wrongly collected Service Tax but not deposited to the credit of the Central Government, on advances received from prospective buyers toward booking/sale of residential flats wherein entire consideration received after the date of "Building Use" Permission/ Completion Certificate obtained from AMC for said scheme. Thus, M/s SIPL had willfully suppressed the value of the aforesaid taxable services with an intent to evade payment of Service Tax leviable thereon and as such it was revealed that the extended period specified in the proviso to sub-section (1) of Section 73 of the Finance Act, 1994 was invocable to demand & recover the Service Tax due from them.

16. It was noticed from the facts discussed in the foregoing paras that M/s SIPL had contravened the following provisions of the Finance Act, 1994 (in short, "FA, 1994"), and the Service Tax Rules, 1994 (in short '**STR. 1994**'), with intent to evade payment of Service Tax, in as much as they had;

- (a) failed to make an application for registration for aforesaid taxable services provided and received by them with the Superintendent of

Central Excise, within the stipulated time of 30 days from the date on which the Service Tax under Section 66 of the FA, 1994 was leviable thereon, as required under Section 69 of the FA, 1994 read with Rule 4 of the STR, 1994;

- (b) failed to pay Service Tax (including Edu. Cess and S.H.E. Cess) in respect of aforesaid taxable services provided and received by them under reverse charge mechanism, at the rate specified in Section 66 of the F.A.1994, in the manner and within such period as required under Section 68 of the F.A., 1994, read with Rule 6 of the STR, 1994;
- (c) failed to pay forthwith amount of Service Tax (including Edu. Cess and S.H.E. Cess) wrongly collected on advances received toward booking/sale of residential flats wherein entire consideration was received after the date of Building Use permission/ completion Certificate obtained from AMC, under said scheme by M/s. SIPL, during the F.Y 2013-14 & F.Y 2014-15, as required under the provision of sub-section (2) of section 73(A) of the Finance Act,1994.
- (d) failed to determine the gross value of said taxable services correctly as required under Section 67 of the F.A., 1994;
- (e) failed to assess the Service Tax due on aforesaid taxable services provided and received by them and to furnish returns in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the FA, 1994, read with Rule 7 of the STR, 1994.

16.1 Further, the above acts of contravention constitute offences of the nature as described under the provisions of Section 77 & 78 of the FA, 1994 and accordingly, M/s SIPL, was liable to penalties under the provisions of (i) Section 77 of the FA, 1994 for failure to obtain Service Tax Registration for said taxable services within stipulated time as required under Section 69 of the F.A., 1994 read with Rule 4 of the STR, 1994 and (ii) Section 78 of the F.A., 1994, for suppressing the taxable value of the said services provided & received by them and also for suppressing the fact of wrongly collecting but not depositing the amount of Service Tax in respect of units for which entire consideration was received as advances toward booking/sale of residential flats after the date of Building Use permission, with an intent to evade payment of Service Tax and for aforesaid contraventions. Further, they are also liable to pay an amount as Late Fees for delay in furnishing the prescribed returns in ST-3 Form for the periods from 01/04/2010 to 31/03/2015 as per the provisions of Rule 7C of the Service Tax Rules, 1994.

16.2 Further, the amount of evaded Service Tax totally to the tune of Rs.47,36,809/- (Service Tax: Rs.45,98,843/- + Edu. Cess: Rs.91,977/- & S.H.E. Cess: Rs.45,988/-) in respect of taxable services provided viz. [a] "Construction of Residential Complex Services"; (b) "Management, Maintenance or Repair Services for Goods, Equipment or Properties" and received viz. (c) "Transport of Goods by Road/Goods Transport Agency Service [GTA]"; (d) "Security/ Detective Agency Service" and (e) "Legal Consultancy Services" under Reverse Charge Mechanism by them during the period from 01/06/2010 to 31/03/2015, as detailed in said Annexure-A to E & Annexure-F- Summary appended to this Notice, were required to be demanded and recovered from them under proviso to sub-section (1) of Section 73 of the Finance Act, 1994.

16.3 Further, Consequently, the interest on delayed payment of said amount of evaded Service Tax was also required to be demanded from M /s SIPL under the provision of Section 75 of the Finance Act, 1994.

16.4 Further, the amount of Service Tax to the tune of totally Rs.7,23,060/- wrongly collected but not deposited to the credit of the Central Government, on advances of totally Rs.2,34,00,001/- received toward booking/sale of residential flats wherein consideration was received after the date of Building Use permission/ Completion certificate obtained from AMC for said scheme by M/s. SIPL, during the F.Y. 2013-14 to F.Y. 2014-15 as detailed in Annexure-G appended to the Notice, was also required to be demanded and recovered from them under the provision of sub section (2) of Section 73A of the Finance Act, 1994 read with proviso to sub-section (1) of Section 73(1) of the Finance Act, 1994 along with Interest for delayed payment thereof under the provision of Section 75 of the Finance Act, 1994.

16.5 Further, an amount of Rs.26,03,758/- voluntarily deposited/ paid by GAR-7 Challans & through CENVAT Credit toward evaded amount of Service Tax under the categories of (a) "Construction of Residential Complex Services", (b) "Transport of Goods by Road/ Goods Transport Agency Service (GTA)" and (c) "Security/ Detective Agency Service"; Rs.6,23,932/- toward interest for delayed payment of said amount of evaded Service Tax and Rs.45,500/- toward late fees for filing of ST-3 Returns for the periods from 01/04/2010 to 30/06/2012 after due dates by them, vide GAR-7 Challans, as detailed in Annexure-H & I appended to the Notice, were also required to be appropriated against said demands of Service Tax, interest & Late Fees respectively.

16.6 In view of the facts discussed hereinabove and material evidences available on records, it further revealed that Shri Mihir P. Desai, Director of M/s SIPL, in spite of having knowledge of various provisions of Service Tax, had not properly discharged Service Tax liabilities in respect of aforesaid taxable services provided, even after collecting Service Tax from buyers and taxable services received by them during the period from 01/06/2010 to 31/3/2015, Further, he had also failed to assess/declare the correct taxable value in the periodical ST-3 Returns for the said taxable services by not furnishing the periodical ST-3 Returns on or before due dates. Further, he had also not disclosed their taxable services, since beginning and they had neither obtained registration for the same within stipulated period nor they had paid any amount of Service Tax upon their taxable value on due dates. He, in his statement dated 11/12/2012, had categorically admitted the aforesaid facts. He had, thus, willfully suppressed the aforesaid facts of providing and receiving said taxable services and deliberately avoided obtaining Service Tax registration for said services and filing of periodical ST-3 Returns within stipulated period with a blatant intent to evade the Service Tax. He, thus, appeared to have deliberately suppressed the correct nature and value of the taxable services provided & received 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 there under, as discussed hereinabove in length. Since, M/s SIPL had contravened the provisions as mentioned at clause (a) & (d) of Section 78A of the Finance Act, 1994 in as much as M/s SIPL had evaded Service Tax and failed to pay an amount of Rs.54,59,869/- (Rs.47,36,809 + Rs.7,23,060/-) collected as Service Tax to the credit of the Central Government beyond a period of six months from the date on which

such payment become due, he, at the time of such contravention, was in charge of and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, appeared to be liable to a penalty under Section 78A of the Finance Act, 1994, for the commissions & commissions committed by him, after 10/05/2013.

17. In view of the above, a Show Cause Notice bearing F. No. DGCEI/AZU/36-84/2015-16 dated 31.03.2016 was issued to M/s. SIPL by the Additional Director General, DGCEI, Zonal Unit Ahmedabad, called upon to show cause as to why:-

- (i) the amount of evaded Service Tax totally to the tune of Rs.47,36,809/- (Service Tax: Rs.45,98,843/- + Edu. Cess: Rs.91,977/- & S.H.E. Cess: Rs.45,988/-) (Rupees Forty Seven Lakh Thirty Six Thousand Eight Hundred & Nine only) in respect of taxable services provided viz. (a) "Construction of Residential Complex Services" & (b) "Management, Maintenance or Repair Services for Goods, Equipment or Properties" and received viz. (c) "Transport of Goods by Road/Goods Transport Agency Service (GTA)"; (d) "Security/ Detective Agency Services" and (e) "Legal Consultancy services", by them during the period from 01/06/2010 to 31/03/2015, as detailed in said Annexure- A to E & Annexure- F-Summary appended to the Notice, should not be demanded & recovered from them under proviso to Sub-section (1) of Section 73 of the Finance Act, 1994;
- (ii) the amount of Service Tax wrongly collected but not deposited to the credit of the Central Government, to the tune of totally Rs.7,23,060/- (Rupees Seven Lakh Twenty Three Thousand and Sixty only) on advances of totally Rs.2,34,00,001/- received toward booking/sale of residential flats, for which entire consideration received after the date of obtaining of Building Use" permission/Completion Certificate from AMC for said scheme, during the F.Y. 2013-14 to F.Y. 2014-15, as detailed in Annexure-G appended to the Notice, should not be demanded and recovered from them under the provision of Sub-section (2) of Section 73A of the Finance Act, 1994 read with proviso to Sub-section (1) of Section 73 of the Finance Act, 1994;
- (iii) an amount of totally Rs.26,03,758/- (Rupees Twenty Six Lakh Three Thousand Seven Hundred & Fifty Eight only) voluntarily deposited/ paid by GAR-7 Challans and through CENVAT Credit, as detailed in Annexure-H & I appended to the Notice, should not be appropriated against demand of evaded Service Tax as mentioned at S. No. (i) herein above, subject to verification by Jurisdictional Range officer;
- (iv) the interest on the amounts of evaded Service Tax as mentioned at S. No. (i) & (ii) here-in-above, should not be demanded & recovered from them, under Section 75 of FA 1994;
- (v) an amount of totally Rs.6,23,932/- (Rupees Six Lakh Twenty Three Thousand Nine Hundred and Thirty Two only) voluntarily deposited vide GAR-7 Challans as detailed in Annexure-H appended to this Notice, should not be appropriated against demand of interest as mentioned at S. No. (i) & (iv) herein above, subject to verification by Jurisdictional

Range officer;

(vi) the penalty should not be imposed upon them for failure to obtain Service Tax Registration within stipulated period for said taxable services as require Section 69 of the FA, 1994 read with Rule 4 of the STR, 1994, under the provisions the Section 77 of the FA, 1994;

(vii) the 'Late Fees' for delay in furnishing the prescribed returns in ST-3 Form for the periods from 01/04/2010 to 31/03/2015 should not be recovered from them as per the provisions of Rule 7C of the Service Tax Rules, 1994;

(viii) an amount of totally Rs.45,500/- (Rupees Forty Five Thousand & Five Hundred only) voluntarily deposited as 'Late Fees' vide GAR-7 Challans as detailed in Annexure-H appended to this Notice, should not be appropriated against demand of 'Late Fees' as mentioned at S. No. (vii) hereinabove, subject to verification by Jurisdictional Range Officer;

(ix) the penalty should not be imposed upon them for suppressing & concealing the taxable value of the aforesaid taxable services provided & received by them and also for suppressing the fact of wrongly collecting but not depositing the amount of Service Tax into Government Account, with a blatant & pre-conceived intent to evade payment of the resultant Service Tax due from them, under the provisions of the Section 78 of the FA, 1994.

17.1 Under the same Show Cause Notice, Shri Mihir P. Desai, Director of M/s SIPL, was also called upon to show cause as to why the personal penalty should not be imposed upon him for the omissions & commissions committed by him after 10/05/2013, under the provisions of the Section 78A of the Finance Act, 1994.

DEFENSE SUBMISSION & RECORD OF PERSONAL HEARINGS:

18. Both the noticees have not filed any reply to the Show Cause Notice in the matter. Similarly, personal hearing was offered to them on eight different dates i.e. on 19.07.2016, 16.11.2017, 19.12.2017, 08.01.2018, 27.02.2018, 15.10.2018, 29.10.2018 and 18.12.2018, which was communicated to them well in advance. But, the noticees or their representatives did not attend the same on these dates. No request for postponement of the hearing was also received from them. I am constrained to presume that both the noticees are not desirous of being heard in person.

DISCUSSION AND FINDINGS:

19. I have carefully gone through the facts of the case and material evidences available on record. As already mentioned, both the noticees have neither filed any reply to the Show Cause Notice nor have appeared for personal hearing offered to them on eight different dates i.e. on 19.07.2016, 16.11.2017, 19.12.2017, 08.01.2018, 27.02.2018, 15.10.2018, 29.10.2018 & 18.12.2018.

Thus, the sufficient opportunities have been given to both the noticees to make representation and to adduce evidence against the charges or allegations levelled against them under subject notice and, hence, the "*Principle of Natural Justice*" is properly followed in this case. However, they have never bothered to file any defense submission even after lapse of more than 2 years & 10 months and also not attended any Personal Hearings granted to them. It is worthwhile to mention that proviso to sub-section (2) of Section 33A of the Central Excise Act, 1994 provided that no adjournment shall be granted more than three times to a party during the proceedings. Whereas, in present case, both the noticees have been granted Personal Hearings for eight times, as mentioned herein above. Under these circumstances, it can be inferred that none of them intend to submit any written submissions and to be heard in person. The subject case is pending for adjudication since long i.e. for more than 2 years & 10 months. The adjudication proceedings cannot be kept pending for indefinite period, I, therefore, proceed to take up the matter for decision on the basis of material evidences available on record.

20. I find that the moot issues to be decided in the present proceedings are:

- (i) Whether the assessee had evaded Service Tax to the tune of Rs.47,36,809/- in respect of taxable services, provided viz. (a) "Construction of Residential Complex Services" & (b) "Management, Maintenance or Repair Services for Goods, Equipment or Properties" and received viz. (c) "Transport of Goods by Road/Goods Transport Agency Service (GTA)"; (d) "Security/Detective Agency Services" and (e) "Legal Consultancy services", by them during the period from 01/06/2010 to 31/03/2015, as detailed in Annexure- A to Annexure-F to the SCN? and
- (ii) Whether the assessee had wrongly collected the amount of Service Tax to the tune of Rs.7,23,060/- on advances of Rs.2,34,00,001/- received toward booking/sale of residential flats from prospective buyers, for which entire consideration received after obtaining Building Use permission/ Completion Certificate from AMC for said scheme, but not deposited the same to the Government Exchequer, during the F.Y. 2013-14 to F.Y. 2014-15, as detailed in Annexure-G to the SCN?

21. From the Show Cause Notice, I find that the subject case was booked on the basis of the information gathered by the officers of DGCEI. M/s SIPL had obtained Service Tax Registration (ST-2) bearing No. AAKCS5194CSD0Q6 under the taxable service categories of "Construction of

Residential Complex Services" provided and "Transport of Goods by Road Services" received by them, from Service Tax Commissionerate, Ahmedabad, on 07/03/2012. M/s SIPL had constructed a residential complex in the name of "Stavan Ample" wherein they had constructed 140 residential flats. After completion of construction of said complex, they had obtained the Building Use permission (BU) from the competent authority i.e. AMC on 30.10.2013.

21.1 M/s SIPL had sold the residential flats, to be constructed under said scheme, before obtaining the Building Use (BU) permission from the competent authority viz. Ahmedabad Municipal Corporation (AMC) and collected amounts as advances towards land & construction cost of said residential flats. Thus, they had provided service in relation to construction of complex to the prospective buyer and collected amounts as advances towards land & construction cost of said residential flats along with applicable Service Tax from them. I further note that M/s SIPL, being a builder/ developer, was liable to pay Service Tax on said advances under the category of "Construction of Residential Complex Service" as defined under Section 65 (105) (zzzh) of the Finance Act, 1994, w. e. f. 01.07.2010. However, till initiation of inquiry by DGCEI, they had not deposited any amount of Service Tax leviable on said advances to the Government Exchequer, even after collecting the same from the prospective buyers. I further note that the assessee had collected advances amounting to Rs.14,73,21,878/- from the prospective buyers and evaded Service Tax amounting to Rs.42,62,735/- leviable thereon under the taxable service category of "Construction of Residential Complex Service" during the period from 01-08-2010 to 31-03-2015, as detailed in Annexure-A-1 & A to the subject SCN.

22. I further find that M/s SIPL had also collected lump sum amounts towards Maintenance in advance at the time of execution of Sale Deeds from their prospective buyers on which they were also liable to pay amount of Service Tax at appropriate rate under the category of taxable service viz. "Management, Maintenance or Repair Services for Goods, Equipments or Properties". However, till initiation of inquiry by DGCEI, they had also not deposited any amount of Service Tax leviable thereon to the credit of Central Government. I find that that the assessee had collected maintenance charges amounting to Rs.12,78,000/- from the prospective buyers and evaded Service Tax to the tune of Rs.1,51,286/- leviable thereon under the taxable service category of "Management, Maintenance or Repair Services for Goods, Equipments or Properties" during the period from 01-10-2013 to 31-03-2015, as detailed in Annexure-B to the subject SCN.

23. I further find that M/s SIPL had also received services of Goods Transport by Road/Goods Transport Agency Services (GTA) for construction of residential flats under said scheme, from various goods transport agencies and paid freight/ cartages to them. They, being a service receiver, were also liable to pay Service Tax at applicable rate on freight amount paid after admissible abatement of 75% of freight amount, under the category of taxable service of "Goods Transport by Road/Goods Transport Agency Services (GTA)" under *reverse charge mechanism*. However, till initiation of inquiry by DGCEI, they had also not paid any amount of Service Tax payable on said services to the credit of the Central Government. I find that that the assessee had paid freight/cartages amounting to Rs.65,97,702/- to various Goods Transport Agencies and evaded Service Tax to the tune of Rs.1,88,465/- leviable thereon under the taxable service category of "Goods Transport by Road/Goods Transport Agency Services (GTA)" during the period from 01-06-2010 to 31-03-2015, as detailed in Annexure-C to the subject SCN.

24. I further note that M/s SIPL had also received taxable service, viz. "Security/ Detective Agency services" from various service providers and paid service charges to them. They, being a service receiver, were also liable to pay Service Tax at applicable rate on said service under *partial reverse charge mechanism*, w. e. f. 01-07-2012. However, till initiation of inquiry by DGCEI, they had not paid any amount of Service Tax payable on said service to the credit of the Central Government. I further find that that the assessee had paid security charges amounting to Rs.10,71,407/- to various security/ detective agencies and evaded Service Tax to the tune of Rs.99,319/- leviable thereon under the taxable service category of "Security/ Detective Agency services", during the period from 01-07-2012 to 31-03-2015, as detailed in Annexure-D to the subject SCN.

25. I further find that M/s SIPL had also received taxable service, viz. "Legal Consultancy services" from an Individual Advocate or a Firm of Advocates and paid legal fees to them. They, being a service receiver, were also liable to pay Service Tax at applicable rate on said service under *reverse charge mechanism*, w. e. f. 01-07-2012. However, till initiation of inquiry by DGCEI, they had not paid any amount of Service Tax payable on said service to the credit of the Central Government. I further find that that the assessee had paid legal fees amounting to Rs.2,83,196/- to various individual Advocates/ the firm of Advocates and evaded Service Tax to the tune of Rs.35,003/- leviable thereon under the taxable service category of "Legal Consultancy services", during the period from 01-07-2012 to 31-03-2015, as detailed in Annexure-E to the subject SCN.

26. I, thus, find that M/s SIPL has evaded Service Tax amounting to totally Rs.47,36,809/- (Rs.42,62,735/- + Rs.1,51,286/- + Rs.1,88,465/- + Rs.99,319/- + Rs.35,003/-) leviable on said taxable services provided and received by them, as discussed in Para-21 to 25 herein above and as also summarized in Annexure-F to the subject SCN.

27. I further find that in addition to above, M/s SIPL had also wrongly collected amount of Service Tax from certain buyers even after the date of BU permission, when entire consideration was received after the date of BU permission. However, till initiation of inquiry by DGCEI, they had not deposited any amount of Service Tax wrongly collected from said buyers to the credit of Central Government. As such, M/s SIPL had wrongly collected the Service Tax amounting to Rs.7,23,060/- from buyers but not deposited the same to the Government Exchequer during the F.Y. 2013-14 & F.Y. 2014-15, as detailed in Annexure-G to the subject SCN. In this regard, I find that in terms of sub-section (2) of Section 73(A) of the Finance Act, 1994, any amount collected as Service Tax, which is not required to be collected from such buyers, requires to be paid forthwith to the credit of the Central Government. The provisions of Sub-section (2) of Section 73A of the Finance Act, 1994, read as below:

"Where any person who has collected any amount, which is not required to be collected, from any other person, in any manner as representing service tax, such person shall forthwith pay the amount so collected to the credit of the Central Government."

28. I, thus, find from the above that total liability of the noticee comes to Rs.54,59,869/- (Rs.47,36,809/- + Rs.7,23,060/-). Since all the above workings are on the basis of documents/ records resumed during searches or submitted later on by the noticee during investigation, no fault can be found in them. The noticee has nowhere during investigation raised any objection to the leviability of Service Tax in respect of service activities involved. Classification and taxability of the activities under mentioned service categories is a foregone conclusion in view of the fact that noticee during investigation had not raised any objection in this regard. Shri Mihir P. Desai, Director of the noticee company, in his statement dated 11-12-2012 recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, admitted the tax liability in respect of construction of residential complex and other taxable services provided and received by them as well as of wrongly collecting but not depositing the amount of Service Tax, is a clear evidence of noticee's admission of tax liability as demanded under subject SCN. Moreover, the noticee had also voluntarily deposited an amount of Rs.26,03,758/- toward

their Service Tax liability, Rs.6,23,932/-toward their interest liability and Rs.45,500/- as late fee for late filing of ST-3 Returns under various GAR-7 Challans and through CENVAT Credit, as mentioned in the subject Show Cause Notice and also detailed in Annexure-H & I to the subject SCN. All these goes to show that tax liability worked out during investigation and demanded in the subject Show Cause Notice is not in dispute and, accordingly, I have no reason to discuss the same in greater length. It is a fact based on noticee's own records that consideration received/ paid against different service activities are liable to Service Tax under respective specified service categories until 30-06-2012 and thereafter under "Service" in terms of Section 65B of the Finance Act, 1994. With respect to Service Tax wrongly collected but not deposited, I find that any amount collected as Service Tax, which is not required to be collected from any person, requires to be paid forthwith to the credit of the Central Government. Thus, Service Tax collected from some buyers, even after the date of BU permission, when entire consideration was received after the date of BU permission, requires to be paid to the credit of the Government Exchequer. It is worthwhile to further mention that M/s SIPL has evaded the said amount of Service Tax by way of suppression of taxable value thereof by not filing periodical ST-3 Returns until detected by the DGCEI. In view of the above, the demand of Service Tax amounting to Rs.47,36,809/- leviable on aforesaid taxable services provided and received by them, in terms of sub-section (2) of the section 73 of the Finance Act, 1994 and Rs.7,23,060/- wrongly collected as Service Tax from some buyers but not deposited with Central Government, in terms of sub-section (4) of the section 73A of the Finance Act, 1994 is liable to be confirmed and, accordingly, M/s SIPL is required to pay Service Tax amounting to totally Rs.54,59,869/- (Rs.47,36,809/- + Rs.7,23,060/-) as demanded under subject SCN, forthwith.

29. With regard to invocation of extended period of limitation as envisaged under proviso to sub-section (1) of section 73 of the Finance Act, 1994, it is a fact that despite having Service Tax registration, noticee had failed to pay the applicable Service Tax and also failed to file periodical Service Tax returns in Form-ST-3 in timely manner. Non-filing of ST-3 return makes it evident that noticee's intention was to hide the relevant facts from the department. I, therefore, have no hesitation in concluding that noticee had indulged themselves in suppressing of facts with intention to evade payment of legible Service Tax on aforesaid taxable services provided, even after collecting the same from buyers and received by them as well as wrongly collected by them. Suppression of facts is being one of the reasons to invoke extended period of limitation under proviso to sub-section 1 of section 73 of the Finance Act,

1994. I, accordingly, hold that the invocation of the extended period under subject SCN is justified.

30. With regard to demand of interest under Section 75 of the Finance Act, 1994, on said demand of Service Tax amounting to totally Rs.54,59,869/- , I find that the provisions of Section 75 are clear and unambiguous that where a person, liable to pay service tax in accordance with the provision of Section 68 of the Finance Act, 1994 or rules made there-under, fails to credit the tax or any part thereof to the account of the central government within the period prescribed, he shall be liable to pay interest at the prescribed rate for the period by which such crediting of the tax or any part thereof is delayed. As per provisions of Rule 6 of the Service Tax Rules, 1994 read with Section 68 of the Finance Act, 1994, service tax for a month or a quarter is to be paid to the credit of the Central Government by 6th day of succeeding month, except for the month or quarter ending March, when last day of March is the last day to pay the tax. In the present case, there being obvious delay in payment of service tax, provisions of Section 75 get attracted and, accordingly, I hold the noticee liable to pay interest at appropriate rate in terms of Section 75 ibid on the amount of Service Tax amounting to totally Rs.54,59,869/- (Rs.47,36,809/- + Rs.7,23,060/-) as demanded under subject SCN.

31. With regard to penalty proposed under Section 77 of the Finance Act, 1994 for failure to obtain service tax registration within stipulated time, it is a matter of record that noticee obtained service tax registration (ST-2 Certificate) on 07-03-2012 for taxable services viz. "Construction of Residential Complex Services" and "Transport of Goods by Road Services/ Goods Transport Agency (GTA) Services", whereas service tax on the services provided/ received by the noticee was leviable much before to this date. Even in the registration certificate dated 07-03-2012, noticee did not register himself for "Management, Maintenance or Repair Services for Goods, Equipments or Properties" and also for "Security/ Detective Agency services" & "Legal Consultancy services". In terms of Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994, noticee was required to make an application with the Superintendent concerned within 30 days from the date on which the Service Tax under Section 66 of the FA, 1994 was leviable thereon. In the present case, noticee had failed to obtain service tax registration within stipulated time, in accordance with the provision of Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994, and, I, therefore, hold the noticee liable to penalty in terms of Section 77(1) of the Finance Act, 1994 as proposed in the subject SCN.

32. With regard to penalty proposed under Section 78 of the Finance Act, 1994, I find that penalty under Section 78 is attracted where any service tax has not been levied or paid, or has been short levied or short-paid, or erroneously refunded, by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there-under with the intent to evade payment of service tax. Since non-payment of service tax by reason of suppression of facts is already established, in addition to the service tax and interest specified in the notice, I, therefore, hold the noticee liable to pay penalty equal to hundred per cent of the amount of such service tax evaded by them, in terms of Section 78 *ibid*.

33. The Show Cause Notice has also raised demand of 'Late Fees' for late filing of the ST-3 return for the period from 01-04-2010 to 31-03-2015. In this regard, I find that Para-14 of the Show Cause Notice shows the details of ST-3 returns filed late by them and, therefore, need not be repeated here. Rule 7C of the Service Tax Rules, 1994 specifies the amount to be paid for delay in furnishing the returns. I, therefore, hold the noticee liable to pay late fees for delay in filing of the ST-3 Returns for the stated period, in terms of Rule 7C *ibid*.

34. The Show Cause Notice has also proposed personal penalty upon Shri Mihir P. Desai, Director of the noticee company for his omission and commission after 10-05-2013 under the provisions of Section 78A of the Finance Act, 1994. I note that Section 78A introduced by the Finance Act, 2013, provides penalty on, *inter alia*, director of the company, for following contraventions, if such director of the company was in charge of, and was responsible for conduct of business of the company and was knowingly concerned with contraventions:

(a) evasion of service tax; or

(b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of this Chapter; or

(c) availment and utilisation of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or

(d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due.

34.1 Shri Mihir P. Desai, was a Director of the noticee company and was at the helm of affairs when evasion of service tax has happened, as he is the person who came forward and gave his statement to the DGCEI officer on 11.12.2012 with regard to evasion detected. Shri Mihir P. Desai stated in his statement dated 11.12.2012 that the service tax was not paid due to financial crisis. This proves that he was well aware of his tax liability and he has knowingly evaded the payment of service tax. Evasion of service tax has already been established hereinbefore, which is one of the contraventions for imposition of personal penalty. In addition, noticee's failure to pay the amount collected as service tax to the credit of the Central Government is also well established. These are the specified contraventions attracting personal penalty. In my view, Shri Mihir P. Desai, being responsible and being in control of the affairs of the noticee company, is the brain behind evasion and contravention which make him liable to pay personal penalty under Section 78A ibid. I, therefore, consider Shri Mihir P. Desai responsible for the conduct of company's business and consider him responsible for evading amount of service tax knowingly and, accordingly, find him liable to personal penalty under the provisions of Section 78A ibid.

35. In view of the foregoing discussion and findings, I pass the following order-

ORDER

- (i) I confirm the demand of Service Tax amounting to **Rs.47,36,809/- (Rupees Forty Seven Lakh Thirty Six Thousand Eight Hundred & Nine only)** (Service Tax: Rs.45,98,843/- + Edu. Cess: Rs.91,977/- & S.H.E. Cess: Rs.45,988/-), evaded by them in respect of taxable services provided viz. (a) "Construction of Residential Complex Services & (b) "Management, Maintenance or Repair Services for Goods, Equipment or Properties" and taxable services received viz. (c) "Transport of Goods by Road/Goods Transport Agency Service (GTA)"; (d) "Security/ Detective Agency Services" and (e) "Legal Consultancy services", during the period from 01/06/2010 to 31/03/2015, and order to recover the same from M/s Sambhav Infrastructure Pvt. Ltd., Ahmedabad, under the provisions of sub-section (2) of Section 73 of the Finance Act, 1994. Since noticee has already voluntarily paid an amount of **Rs.26,03,758/- (Rupees Twenty Six Lakh Three**

Thousand Seven Hundred & Fifty Eight only) by GAR-7 challans and through CENVAT Credit, I order to appropriate this amount towards above tax liability of Rs.47,36,809/-, subject to verification of payment by Jurisdictional Range Officer and order to recover the rest from M/s Sambhav Infrastructure Pvt. Ltd., Ahmedabad.

- (ii) I further confirm the demand of Service Tax to the tune of **Rs.7,23,060/-(Rupees Seven Lakh Twenty Three Thousand and Sixty only)**, which was wrongly collected during F.Y.2013-14 to F.Y.2014-15 but was not deposited to the credit of the Central Government and order to recover the same from M/s Sambhav Infrastructure Pvt. Ltd., Ahmedabad, under the provisions of sub-section (4) of the Section 73A of the Finance Act, 1994.
- (iii) I confirm the demand of interest payable on the demand of Service Tax confirmed at (i) & (ii) above, under Section 75 of the Finance Act, 1994. Since noticee has already voluntarily paid an amount of Rs.6,23,932/- (Rupees Six Lakh Twenty Three Thousand Nine Hundred and Thirty Two only) by GAR-7 Challans, I order to appropriate the same towards total interest liability, subject to verification of payment by Jurisdictional Range Officer and order to recover the rest amount from M/s Sambhav Infrastructure Pvt. Ltd., Ahmedabad.
- (iv) I impose penalty of Rs.10000/- (Rupees Ten Thousand only) under the provisions of the Section 77 (1) of the Finance Act, 1994 upon M/s Sambhav Infrastructure Pvt. Ltd., Ahmedabad for failure to obtain Service Tax Registration within stipulated period for said taxable services as required under Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994.
- (v) I confirm the demand of 'Late Fees' for delay in furnishing the prescribed returns in ST-3 Form for the periods from 01/04/2010 to 31/03/2015 as per the provisions of Rule 7C of the Service Tax Rules, 1994 and appropriate the amount of Rs.45,500/- (Rupees Forty Five Thousand & Five Hundred only) already paid by GAR-7 Challans toward late fees, subject to verification of payment by Jurisdictional Range Officer.
- (vi) I impose penalty of **Rs.54,59,869/- (Rupees Fifty Four Lakh Fifty Nine Thousand Eight Hundred & Sixty Nine only)** (Rs.47,36,809/- + Rs.7,23,060/-) on M/s Sambhav Infrastructure Pvt. Ltd.,

Ahmedabad under Section 78 of the Finance Act, 1994. However, if the noticee pays amount of evaded Service Tax of Rs.54,59,869/- along with appropriate interest thereon within 30 days from the date of receipt of this Order, the penalty payable would be reduced to 25% of the amount of evaded Service Tax of Rs.54,59,869/-, provided the reduced penalty is also paid within 30 days from the receipt of this Order.

- (vii) I impose a personal penalty of Rs.1,00,000/- (Rupees One Lakh only) upon Shri Mihir P. Desai, Director of M/s Sambhav Infrastructure Pvt Ltd., Ahmedabad under Section 78A of the Finance Act, 1994.

36. Proceedings under the above mentioned provisions are saved by Section 174 of the Central Goods and Service Act, 2017.

37. The Show Cause Notice bearing **F. No. DGCEI/AZU/36-84/2015-16** dated **31/03/2016** issued to M/s. SIPL by the Additional Director General, DGCEI, Zonal Unit Ahmedabad, is decided and disposed of in above terms.


(G.C. Jain)

Joint Commissioner
Central Goods & Service Tax and C.Excise,
Ahmedabad-North

F. No. STC/4-05/O&A/16-17

Ahmedabad, dated 28.01.2019

By Regd. Post A.D.

To

M/s Sambhav Infrastructure Pvt. Ltd.,

"Stavan Ample",

TP No. 32, Survey No. 123/1, FP 99,

Nr. Vadilal Godown, Behind Vodafone Tower,

Gota, Ahmedabad- 380054

(2) Shri Mihir P. Desai,

Director of M/s Sambhav Infrastructure Pvt. Ltd.,

"Stavan Ample",

TP No. 32, Survey No. 123/1, FP 99,

Nr. Vadilal Godown, Behind Vodafone Tower,

Gota, Ahmedabad- 380054

Copy to:-

- (1) The Commissioner, CGST & C. Excise, Ahmedabad-North (RRA section)
- (2) The Assistant/Deputy Commissioner of CGST & C. Excise, Division-VII, Ahmedabad North
- (3) The Superintendent of CGST & C. Excise, AR-IV /Division-VII, Ahmedabad North
- (4) Guard file.